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Compliance Update

Court Pauses Beneficial Ownership Reporting Under the Corporate Transparency Act

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On December 3, 2024, the District Court for the Eastern District of Texas issued an order implementing a nationwide preliminary injunction of the Corporate Transparency Act and its enforcement. The court also stayed the compliance deadlines of the rule. For companies subject to the CTA's reporting requirements, this order at least puts a temporary pause on the obligation to file a Beneficial Ownership Initial Report (BOIR). In response, FinCEN issued a statement on December 9, 2024, confirming that they will comply with the order and that BOIRs are not currently required. However, given the potential for the injunction to be removed, reporting companies should still continue to prepare for filing a BOIR to ensure compliance with any new timeframes. FinCEN will likely issue further guidance on CTA compliance in consideration of any material updates in the litigation. We will be sure to provide further updates regarding such guidance.

The Case

In *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.), six plaintiffs, including the National Federation of Independent Business (NFIB), are challenging the constitutionality of the CTA. As part of seeking a declaratory judgment on the law's unconstitutionality, the plaintiffs also sought a preliminary injunction against its enforcement. After analyzing that the plaintiffs met the four necessary elements for obtaining an injunction including likelihood of success on the merits, the District Court granted plaintiff's request for a preliminary injunction and additionally stayed the compliance deadline of the rule. The court recognized that because one of the plaintiffs included the NFIB, an organization with nationwide membership, the preliminary injunction and stay on the compliance date would have nationwide effect.

FinCEN's Response

On December 9, 2024, FinCEN issued its first statement regarding the ruling. In this statement, FinCEN indicated that it would comply with the order issued by the U.S. District Court for the Eastern District of Texas for as long as it remains in effect. Therefore, FinCEN confirmed that reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. However, FinCEN also highlighted that reporting companies may continue to submit beneficial ownership information voluntarily. FinCEN also stated that the government has filed an appeal of the Eastern District of Texas's decision.

The Impact

Based on this ruling and subsequent guidance, companies with filing obligations under the CTA may consider pausing their filings until the case is resolved or the preliminary injunction is lifted. While it is possible that this injunction and stay will hold through the upcoming January 1, 2025 filing deadline,

companies should still be prepared to file their reports in case there is an emergency decision overturning the preliminary injunction or other action that reinstates the enforceability of the CTA. Companies may also consider submitting filings with FinCEN during the preliminary injunction on a voluntary basis. However, companies making voluntary reports with FinCEN should consider any privacy law implications associated with such voluntary filings.

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