

Insights

FINCEN PROVIDES GUIDANCE TO REPORTING COMPANIES IN WAKE OF SECOND APPEAL TO FIFTH CIRCUIT

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As previously reported, the Supreme Court has already considered on an emergency basis whether to stay Corporate Transparency Act (“CTA”) enforcement deadlines. In that case, *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653, the highest court declined to stay the deadlines. An appeal on the merits of that decision remains pending in the Fifth Circuit. The government filed its Brief for Appellants on February 7, 2025, and oral argument is scheduled for March 25, 2025.

Meanwhile, a separate case, *Smith v. United States Dep’t of the Treasury*, No. 6:24-CV-336-JDK, 2025 WL 41924 (E.D. Tex. Jan. 7, 2025), raises the same issue. There, a different Texas district court issued a nationwide stay of the CTA reporting deadlines under Section 705 of the Administrative Procedure Act on January 7, 2025. *Id.* at *14. On February 5, 2025, the government filed a notice of appeal of the *Smith* order to the Fifth Circuit, as well as a motion for a stay of that order pending appeal, asking the Fifth Circuit to reinstate the CTA’s reporting deadlines while and until the appeal is decided.

While CTA reporting remains voluntary in light of the *Smith* stay, the Fifth Circuit may rule consistently with the Supreme Court’s prior directive in *Texas Top Cop Shop*. On February 6, 2025, FinCEN therefore provided guidance on its plans for future CTA deadlines if or when the law becomes enforceable again. In a [publication to its website](#), FinCEN confirmed that should the Fifth Circuit grant the government’s motion for a stay in *Smith*, thus reinstating the reporting deadlines, FinCEN intends to extend such deadlines for all reporting companies by 30 days. FinCEN further indicated that it will additionally consider modifications to the deadlines or to reporting requirements for entities posing a lower risk to national security, including U.S. small businesses.

Given continued uncertainty regarding when—and whether—the CTA filing deadlines will be reinstated, reporting companies should carefully consider their options, and should be prepared to file.

To navigate these rules and deadlines for reporting requirements and recent updates, [contact BCLP’s CTA team](#) with any questions. Please note that BCLP does not provide advice as to the application of these laws to an entity unless we have been expressly engaged to provide such advice.

RELATED CAPABILITIES

- Corporate

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