

**FEDERAL COURT OVERTURNS THE CDC'S NATIONWIDE EVICTION MORATORIUM:  
HAS IT BREATHED ITS LAST BREATH?**

**By: Eric D. Molina, Esq.**

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On May 5, 2021, a federal district court for the District of Columbia vacated the Centers for Disease Control and Prevention's ("CDC") nationwide eviction moratorium, which was set to expire on June 30, 2021, after several prior extensions of the ban. The moratorium, which was originally implemented by order of the CDC early last Fall, prohibited residential evictions for nonpayment of rent and imposed significant criminal penalties, including fines and incarceration, for noncompliance by landlords. The CDC, under delegated authority from the United States Department of Health and Human Services ("Department"), determined that the prohibition was necessary to prevent the further spread of COVID-19.

The CDC's ban on residential evictions has been challenged before. In the roughly seven months since the CDC's order was issued, at least a half dozen lawsuits have been initiated throughout the country, seeking to overturn the moratorium. The grounds asserted and relief obtained in these cases have been as varied as the results. Two federal district courts have held that the CDC exceeded its authority, while another two federal district courts have refused to enter preliminary injunctions against the enforcement of the eviction ban. Yet another federal district court has ruled that the federal government lacks the constitutional authority altogether to issue the nationwide moratorium. All of the decisions have been appealed with at least one federal appellate court refusing to stay the district court's decision that the CDC exceeded its authority pending the appeal.

These decisions, however, have been of questionable precedential value outside of the territorial jurisdictions of the courts that made them for a variety of reasons. First, the nature and scope of the relief awarded by the courts has largely been limited to the parties involved in the cases, so the outcomes tend not to have widespread application. Second, as evidenced by the immediacy and frequency with which they have been appealed regardless of the district court outcome, neither the federal government nor the opponents of the ban are conceding defeat. Third, since there are conflicting district court decisions on

appeal, there may also be conflicting appellate decisions resulting from the appeals. In other words, the law has not yet been settled on the issue of the CDC's legal authority to issue and maintain its nationwide eviction moratorium, but the most recent decision addressing the matter may provide a step in that direction.

In *Alabama Association of Realtors, et al., v. United States Department of Health and Human Services, et al.*, the federal district court for the District of Columbia recently held that the Public Health Service Act, which authorizes the Department to combat the spread of disease through a range of measures, does not authorize the nationwide eviction moratorium implemented by the CDC's order. This court, like some of its sister courts from other jurisdictions, concluded that the CDC exceeded its delegated authority by issuing the order that banned residential evictions for nonpayment of rent. Unlike those courts' earlier decisions, which merely enjoined enforcement of the CDC's order against the plaintiffs before those courts, this decision invalidated the order altogether. Accordingly, assuming the decision is upheld on appeal, it will have nationwide application.

Unsurprisingly, the decision is being appealed. Moreover, upon the government's request, the court that struck down the eviction ban has agreed to temporarily place its decision on hold, allowing the parties to present arguments for and against a stay of the decision while the appeal is pending. Regardless of whether a stay is issued, this case, along with the others presently on appeal, may finally settle the question of the legality of the CDC's nationwide eviction ban.

It is important to note that Florida, along with the vast majority of other states, had a statewide eviction moratorium in place prior to the issuance of the CDC's order. Like most other states, however, Florida allowed its ban to expire after the CDC's order took effect. While it is conceivable that some states might reinstitute such measures, especially if decisions adverse to the government are affirmed on appeal, Florida is not presently trending in the direction of extending COVID-related restrictions. Finally, whatever the outcome of these appeals, neither the federal nor the state moratoria have at any time prohibited landlords from evicting tenants for reasons other than nonpayment of rent, including engaging in criminal activity on the leased premises, threatening the health or safety of other residents, damaging or posing an immediate and significant threat of damage to property, or violating any other nonmonetary statutory or contractual obligations.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. If you have questions regarding compliance with the law, you should consult competent legal counsel.*

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