

No. 21-5256

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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TIGER LILY, LLC, et al.,

*Plaintiffs-Appellees,*

v.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, et al.,

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Western District of Tennessee

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**EMERGENCY MOTION FOR STAY PENDING APPEAL AND  
FOR IMMEDIATE ADMINISTRATIVE STAY**

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## INTRODUCTION

The government respectfully seeks a stay pending appeal and immediate administrative stay of the district court's judgment of March 16, 2021, declaring unlawful a temporary moratorium on certain evictions that was issued by the Centers for Disease Control and Prevention (CDC) as one of several measures to combat the spread of COVID-19. In issuing the moratorium, the CDC explained that eviction of families and individuals significantly increases risks of contagion. Among other reasons, maintaining appropriate distancing and effectuating other precautions are vastly more difficult when families are placed in homeless shelters or similar facilities. Congress subsequently extended the initial moratorium by statute, and the CDC has temporarily extended it again. More than fifty thousand new COVID-19 cases continue to be reported each day.

A stay is plainly warranted. The district court did not question that setting aside the moratorium would increase the already significant risks to the public health. And, as the district court recognized in denying plaintiffs' request for a preliminary injunction, plaintiffs suffer no irreparable injury as a result of the moratorium. The CDC Order temporarily prohibits evictions of certain persons for failure to pay rent. It does not, however, excuse their obligations to pay rent or to comply with other obligations of their lease. Nor does it preclude a landlord from commencing a state court eviction proceeding, provided that actual eviction does not occur while the Order remains in effect. Thus, the district court explained, plaintiffs' "loss of rental

income” is “merely temporary” because the CDC Order “does not relieve tenants of their obligation to pay rent,” and it “allows [p]laintiffs to charge and collect fees, penalties, or interest as the result of a tenant failing to pay rent on a timely basis.” *Tiger Lily LLC v. U.S. Dep’t of Hous. & Urban Dev.*, --- F. Supp. 3d ---, No. 20-2692, 2020 WL 7658126, at \*8 (W.D. Tenn. Nov. 6, 2020). And, in extending the moratorium, Congress appropriated \$25 billion in emergency rental assistance designed to reach landlords whose tenants have rent in arrears, and it recently appropriated an additional \$21 billion for the same purpose.

The government also has a substantial likelihood of success on appeal. The district court recognized that the Public Health Service Act vests broad authority in the CDC to take measures to prevent the spread of communicable diseases. It concluded, however, that the broad terms of the authority militated in favor of a narrow construction to avoid the possibility that the statute might constitute an unconstitutional delegation of authority. The court posed various hypothetical exercises of power, none of which suggests that the CDC exceeded its authority here. Congress explicitly recognized the source of the CDC’s authority to issue the moratorium under the Public Health Service Act and gave its legislative imprimatur to the CDC’s understanding of that statute. The CDC acted well within its authority in issuing a temporary eviction moratorium as one means of combatting the unprecedented pandemic that has caused more than half a million deaths in the United States.

As the result of the district court's ruling, local courts have already been informed that evictions may proceed in the Western District of Tennessee.<sup>1</sup> To preserve the status quo, we ask this Court to issue a stay pending appeal and an immediate administrative stay pending the Court's consideration of this stay motion.<sup>2</sup>

## STATEMENT

### I. Statutory And Regulatory Background

In 1944, as part of the Public Health Service Act, Pub. L. No. 78-410, 58 Stat. 682, Congress authorized the Secretary of Health and Human Services to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.” 42 U.S.C. § 264(a). This statute codified the federal government's “basic authority to make regulations to prevent the spread of disease into this country or between the States.” H.R. Rep. No. 78-1364, at 24 (1944).<sup>3</sup>

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<sup>1</sup> See Tom Bailey, *State Supreme Court tells all West Tennessee judges: Eviction ban lifted*, Daily Memphian (March 16, 2021), <https://dailymemphian.com/section/business/article/20703/rulings-effect-onevictions-is-unclear-renters>.

<sup>2</sup> As required by Rule 8 of the Federal Rules of Appellate Procedure, the government filed a motion for a stay pending appeal in district court. See RE 106, Page ID # 2911-2918. We will inform the Court promptly when the district court acts on that motion. Plaintiffs oppose this motion.

<sup>3</sup> The statute assigned authority to the Surgeon General, but these statutory powers and functions were later transferred to the Secretary of Health, Education, and Welfare, now the Secretary of Health and Human Services. See Reorganization



The Secretary’s implementing regulations delegate enforcement authority to the CDC, a division of the Department of Health and Human Services (HHS). The governing regulation provides that when the CDC Director “determines that the measures taken by health authorities of any State . . . are insufficient to prevent the spread of any of the communicable diseases” between or among States, the CDC Director may “take such measures to prevent such spread of the diseases as he/she deems reasonably necessary.” 42 C.F.R. § 70.2.

## II. The CDC’s Temporary Moratorium On Certain Evictions

A. To curb the spread of COVID-19, “Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria.” Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292, 55,292 (Sept. 4, 2020). This case involves one such measure—a temporary moratorium on the eviction of certain individuals who otherwise would likely become homeless or move into settings such as crowded shelters, thereby increasing the spread of COVID-19. *Id.* at 55,294-96.

The CDC issued the temporary eviction moratorium in September 2020, pursuant to the agency’s statutory and regulatory authority to prevent the interstate spread of communicable disease. *See* 85 Fed. Reg. at 55,292. While the moratorium

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Plan No. 3 of 1966, 31 Fed. Reg. 8855 (June 25, 1966), *reprinted in* 80 Stat. 1610 (1966); *see also* 20 U.S.C. § 3508(b).

remains in effect, landlords may not evict covered persons from residential properties for the nonpayment of rent. *Id.* at 55,292, 55,297. The moratorium applies only to individuals who, if evicted, would likely become homeless or be forced to live in close quarters in a new congregate or shared living setting. *Id.* at 55,293. To qualify as a “covered person,” a tenant must provide a sworn declaration to her landlord indicating that she (1) “has used best efforts to obtain all available government assistance for rent or housing”; (2) satisfies certain income requirements; (3) “is unable to pay the full rent . . . due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses”; (4) “is using best efforts to make timely partial payments that are as close to the full payment as . . . permit[ted]”; and (5) “has no other available housing options” and therefore would likely become homeless or be forced to “live in close quarters in a new congregate or shared living setting” if evicted. *Id.* (footnote omitted).

Although the CDC Order temporarily prohibits evictions of covered persons for failure to pay rent, it does not excuse their obligations to pay rent or to comply with other obligations of their lease. 85 Fed. Reg. at 55,294. And even if a tenant qualifies as a covered person, the CDC Order does not bar a landlord from commencing a state court eviction proceeding, provided that actual eviction does not occur while the Order remains in effect. *See id.* at 55,293 (defining “evict” as “to remove or cause the removal of”); *see also* CDC, *HHS/CDC Temporary Halt in*

*Residential Evictions to Prevent the Further Spread of COVID-19: Frequently Asked Questions* 1, <https://go.usa.gov/x7dhh> (last visited Mar. 18, 2021) (stating that landlords are not prevented from “starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the Order”).

In issuing the Order, the CDC relied on data showing that congregate living situations, such as homeless shelters, significantly exacerbate the spread of COVID-19. *See* 85 Fed. Reg. at 55,294-95. Maintaining appropriate distancing and taking other precautionary measures are far more difficult when families are relocated to these facilities, and the CDC noted the “[e]xtensive outbreaks of COVID-19 . . . in homeless shelters” across the country. *Id.* at 55,295. Many families are experiencing increased economic hardship as a result of the pandemic, and research indicates that as many as 30 to 40 million people in the United States could be at risk of eviction in the absence of state and local protections. *Id.*

The Order explained that, despite the various measures that states and localities have put in place, “COVID-19 continues to spread and further action is needed.” 85 Fed. Reg. at 55,292. The CDC cited a state-by-state analysis indicating that “eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions.” *Id.* at 55,296 n.36 (citing Eviction Lab, *COVID-19 Housing Policy Scorecard*, <https://evictionlab.org/covid-policy-scorecard> (last visited Mar. 18, 2021)).

**B.** The CDC Order was set to expire on December 31, 2020. *See* 85 Fed. Reg. at 55,297. In December 2020, Congress—by overwhelming majority—enacted legislation that extended the Order through January 31, 2021. In relevant part, that legislation provided:

The order issued by the Centers for Disease Control and Prevention under section 361 of the Public Health Service Act (42 U.S.C. 264), entitled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19” (85 Fed. Reg. 55292 (September 4, 2020)) is extended through January 31, 2021, notwithstanding the effective dates specified in such Order.

Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. V, § 502, 134 Stat. 1182, 2078-2079 (2020) (2021 Appropriations Act). The same legislation appropriated \$25 billion in emergency rental assistance designed to reach landlords whose tenants have fallen behind in rent because of the pandemic. *See id.* § 501(a)(1), (c)(2), 134 Stat. at 2070, 2072-73.

**C.** On January 29, 2021, the CDC extended the Order through March 31, 2021. *See* Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020 (Feb. 3, 2021).

That order documented the ongoing danger from and increased severity of the pandemic in the United States since the issuance of the original order. As of January 21, 2021, more than 24.4 million COVID-19 cases, resulting in more than 400,000 deaths, had been reported in the United States, with vast numbers of new cases arising daily. 86 Fed. Reg. at 8021. On a single day in January 2021 alone, more than 300,000 COVID-19 cases were reported to the CDC, a figure approximately seven

times the highest daily cases in April 2020 and four times the highest daily cases in July 2020. *Id.* The need for swift and effective action was underscored by the emergence of new variants of SARS-CoV-2, the virus that causes COVID-19, some of which are transmitted even more easily than the original strain of the virus. *Id.* The CDC Director therefore determined that “[t]he rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat.” *Id.* at 8025.

The order discussed newly available evidence “indicat[ing] that evictions substantially contribute to COVID-19 transmission.” 86 Fed. Reg. at 8022. The order cited data demonstrating that eviction filings were ongoing and that “large numbers of evictions” would occur if the moratorium were lifted prematurely. *Id.* at 8025. The CDC thus concluded that extending the temporary eviction moratorium was reasonably necessary to prevent the further spread of COVID-19. *Id.* at 8024.

**D.** On March 11, 2021, Congress appropriated an additional \$21.5 billion in funding for emergency rental assistance designed to reach landlords whose tenants have fallen behind in rent due to the pandemic. *See* American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201(a)(1), 135 Stat. 4, 54.

### **III. District Court Proceedings**

**A.** Plaintiffs are entities that own or manage residential rental properties in the Western District of Tennessee. Compl., RE 1, ¶¶ 1–8, Page ID # 7-8. They challenged the CDC order on various statutory and constitutional grounds.

The district court denied plaintiffs' request for a preliminary injunction, finding that plaintiffs failed to establish irreparable harm. *Tiger Lily LLC v. U.S. Dep't of Hous. & Urban Dev.*, --- F. Supp. 3d ---, No. 20-2692, 2020 WL 7658126 (W.D. Tenn. Nov. 6, 2020). The court explained that plaintiffs' "loss of rental income" is "merely temporary" because the CDC Order "does not relieve tenants of their obligation to pay rent," and it "allows [p]laintiffs to charge and collect fees, penalties, or interest as the result of a tenant failing to pay rent on a timely basis." *Id.* at \*8. The court noted that plaintiffs failed to show that they do not have an adequate remedy at law for this alleged harm, because they may sue their tenants for unpaid rent. *See id.*

**B.** After merits briefing, the district court entered final judgment on March 16, 2021, declaring that the CDC Order exceeds the agency's statutory authority and is unenforceable in the Western District of Tennessee. *See* Judgment, RE 104, at 2, Page ID # 2907; *see also* Op., RE 103, at 20, Page ID # 2905.

The district court recognized that the first sentence of 42 U.S.C. § 264(a) authorizes the CDC Director to "make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases . . . from one State or possession into any other State or possession." Op. 12, RE 103, Page ID # 2897 (quoting 42 U.S.C. § 264(a)). The court did not "minimize the gravity of the pandemic" or question the CDC's judgment that the temporary eviction moratorium is necessary to prevent the interstate spread of COVID-19. Op. 13, RE 103, Page ID # 2898.

Nonetheless, the court ruled that the authority conferred in the first sentence of § 264(a) is limited to measures similar to those enumerated in that provision's second sentence, which specifies that the agency may "provide for . . . inspection, fumigation, disinfection, sanitation, pest extermination, [and] destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings." Op. 12-16, RE 103, Page ID # 2897-2901 (quoting 42 U.S.C. § 264(a)) (emphasis omitted). The court reasoned that, absent this limitation, the grant of authority to take such measures that the CDC Director finds necessary to control the interstate spread of communicable disease would amount to an unconstitutional delegation of legislative power. Op. 17-19, RE 103, Page ID # 2902-2904. The court ruled that the text of § 264 cannot be read to encompass the temporary eviction moratorium, even though the 2021 Appropriations Act itself specified that Congress was extending the temporary eviction moratorium that the CDC issued "under section 361 of the Public Health Service Act (42 U.S.C. 264)." 2021 Appropriations Act, § 502, 134 Stat. at 2078-79; *see* Op. 19-20, RE 103, Page ID # 2904-2905.

## ARGUMENT

### **I. The Balance Of Harms And Public Interest Overwhelmingly Warrant A Stay Pending Appeal**

The district court correctly concluded that plaintiffs suffer no irreparable injury as a result of the temporary moratorium. It is equally clear that setting aside the

moratorium exacerbates the significant public-health risks identified by the CDC and recognized by Congress in its legislative extension of the moratorium. This Court has previously recognized that immediate stays are warranted when a district court halts government efforts to combat the spread of COVID-19, and it has done so even when, in sharp contrast to this case, plaintiffs faced “the very real risk of losing their businesses.” *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, 814 F. App’x 125, 129 (6th Cir. 2020) (unpub.). An immediate stay is likewise warranted here.

**A.** The “gravity of the pandemic” is undeniable. Op. 13, RE 103, Page ID # 2898. COVID-19 has killed more than half a million Americans, imposed critical strains on U.S. healthcare systems, devastated domestic industries, and triggered unprecedented restrictions on interstate and foreign travel. Against that backdrop of this evolving and urgent situation, “federal courts across the country have routinely concluded that undoing orders deemed necessary by public health officials and experts to contain a contagious and fast-spreading disease would result in comparatively more severe injury to the community.” *Brown v. Azar*, --- F. Supp. 3d ---, No. 20-3702, 2020 WL 6364310, at \*22 (N.D. Ga. Oct. 29, 2020) (refusing to enjoin the CDC Order), *appeal filed*, No. 20-14210 (11th Cir. Nov. 9, 2020), *mot. for inj. pending appeal denied*, No. 20-14210 (11th Cir. Dec. 17, 2020).

There is no doubt that Congress can act to control an “interstate epidemic.” *United States v. Comstock*, 560 U.S. 126, 134-35, 148 (2010) (citing U.S. Const. Art. I, § 8, cl. 3 (the Commerce Clause)). And the CDC’s temporary moratorium on evictions



has been a crucial part of the federal government's broader effort to curb the spread of COVID-19. The CDC found that, absent the moratorium, 30 to 40 million people in the United States could be at risk of eviction, and a significant portion of that population would likely be forced to move into congregate living situations, such as housing shelters, or to become homeless. 85 Fed. Reg. at 55,294-95. Because COVID-19 spreads easily among people in close contact, the risk of transmission would be highly exacerbated, with one study finding that "household contacts are estimated to be [six] times more likely to become infected by an index case of COVID-19 than other close contacts." *Id.* at 55,294. In part because maintaining social distance is particularly difficult in these settings, "[e]xtensive outbreaks of COVID-19 have been identified in homeless shelters," including in Seattle, Boston, and San Francisco. *Id.* at 55,295.

State efforts at establishing moratoria have proven inadequate to curb the risks posed by evictions. The importance of the CDC moratorium is highlighted by the experience in states that imposed their own moratoria and then rescinded the restrictions. The CDC found that lifting eviction moratoria led to a 40 percent increased risk of contracting COVID-19 among evicted persons and family or friends with whom they shared housing after eviction. 86 Fed. Reg. at 8022. Moreover, the same models predicted an increase in overall community transmission even among those who did not share housing when evictions occurred. *Id.*

The CDC's analysis underscored the extent to which state and local measures have insufficiently addressed the spread of COVID-19. Even where states have imposed some forms of moratoria, those restrictions have often lapsed, and a state-by-state analysis indicated that "eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions." 85 Fed. Reg. at 55,296 n.36. Data comparing COVID-19 spread in states that lifted eviction moratoria with states that maintained eviction moratoria "showed significant increases in COVID-19 incidence and mortality approximately 2-3 months after eviction moratoria were lifted." 86 Fed. Reg. at 8022. The data indicated that "over 433,000 cases of COVID-19 and over 10,000 deaths could be attributed to lifting state moratoria." *Id.* Thus, there is no question that interference with the temporary eviction moratorium will cause severe and irreparable harm.

**B.** By contrast, every court to consider the issue—including the district court in this case—has concluded that plaintiff landlords face no irreparable injury as a result of the moratorium.<sup>4</sup> As discussed above, the CDC Order does not excuse tenants' obligations to pay rent or to comply with other obligations of their lease, and

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<sup>4</sup> See *Tiger Lily LLC v. U.S. Dep't of Housing & Urban Dev.*, --- F. Supp. 3d ---, No. 20-2692, 2020 WL 7658126 (W.D. Tenn. Nov. 6, 2020); *Brown v. Azar*, --- F. Supp. 3d ---, No. 20-3702, 2020 WL 6364310 (N.D. Ga. Oct. 29, 2020), *appeal filed*, No. 20-14210 (11th Cir. Nov. 9, 2020), *mot. for inj. pending appeal denied*, No. 20-14210 (11th Cir. Dec. 17, 2020); *Chambless Enters., LLC v. Redfield*, No. 20-1455, 2020 WL 7588849 (W.D. La. Dec. 22, 2020), *appeal filed*, No. 21-30037 (5th Cir. Jan. 22, 2021); Order, *KBW Inv. Props. LLC v. Azar*, ECF No. 16, No. 20-4852 (S.D. Ohio Sept. 25, 2020).

it does not bar landlords from pursuing state court eviction proceedings as long as the eviction itself does not occur while the moratorium remains in place. The district court correctly emphasized that plaintiffs' "temporary monetary harm" is "the antithesis" of "irreparable harm." *Tiger Lily*, 2020 WL 7658126, at \*8. A tenant's inability to remain current on rent in the midst of the economic destruction wrought by the pandemic does not demonstrate that the tenant will be unable to pay the debt in the future. *See Brown*, 2020 WL 6364310, at \*19-20. Indeed, as the *Brown* court anticipated, *id.* at \*20, Congress has appropriated more than \$45 billion in emergency assistance for rent and rental arrears.

In sum, plaintiffs will suffer no irreparable injury as a result of a stay of the district court's judgment, which threatens to exacerbate the harms posed by an already devastating pandemic.

## **II. The Government Is Likely To Succeed On The Merits**

**A.** In relevant part, the Public Health Service Act authorizes the Secretary of Health and Human Services to make and enforce such regulations "as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases . . . from one State or possession into any other State or possession." 42 U.S.C. § 264(a). This provision codified the federal government's "basic authority to make regulations to prevent the spread of disease into this country or between the States." H.R. Rep. No. 78-1364, at 24.

The district court mistakenly read the second sentence of § 264(a) to implicitly limit this broad grant of authority. The second sentence states that, “[f]or purposes of carrying out and enforcing . . . regulations” promulgated under the first sentence, the Secretary “may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of [infected or contaminated] animals or articles . . . , and other measures, as in his judgment may be necessary.” 42 U.S.C. § 264(a). That list is not exhaustive. That is clear from other subsections of § 264 itself, which expressly contemplate other exercises of authority. For example, § 264(b), (c), and (d) place restrictions on the circumstances in which the agency may provide for the “apprehension, detention, examination, or conditional release of individuals.” *Id.* § 264(c); *see id.* § 264(b), (d). These subsections make plain that the broad grant of authority in the first sentence of § 264(a) is not confined to the specific intrusions on private property described in the second sentence. As another district court explained, “[t]he presence of the additional subsections governing detainment of individuals means that the list contained in the first subsection is not an exhaustive list of the permissible measures available to the Secretary of HHS.” *Brown*, 2020 WL 6364310, at \*8. Other courts have reached the same conclusion. *See Chambliss Enters.*, 2020 WL 7588849, at \*5 (concluding that § 264(a)’s second sentence is illustrative, not exhaustive), *appeal filed*, No. 21-30037 (5th Cir. Jan. 22, 2021); *Independent Turtle Farmers of La., Inc. v. United States*, 703 F. Supp. 2d 604, 619-20 (W.D. La. 2010) (same).

**B.** The district court’s reading is also incompatible with Congress’s extension of the moratorium in the 2021 Appropriations Act, which explicitly extended the CDC Order issued “under section 361 of the Public Health Service Act (42 U.S.C. 264).” 2021 Appropriations Act, § 502, 134 Stat. at 2078-79. Congress did not doubt that the CDC had acted within the scope of its authority, and the district court had no basis for reaching a different conclusion. That Congress did not extend the moratorium indefinitely, as the district court noted, *see* Op. 19, RE 103, Page ID # 2904, has no bearing on Congress’s explicit recognition that the moratorium was a proper exercise of the CDC’s authority under § 264(a). Furthermore, Congress’s massive appropriations for emergency rental assistance in both the 2021 Appropriations Act and recent American Rescue Plan are meant to work in tandem with the extended eviction moratorium, which ensures that “millions of renters across America are not evicted while waiting to receive assistance.” U.S. House Comm. on Fin. Servs., *COVID-19 Stimulus Package: Temporary Extension of the CDC Eviction Moratorium & Emergency Rental Assistance*, <https://go.usa.gov/xss3y> (last visited Mar. 18, 2021); *see also* 167 Cong. Rec. H1281 (daily ed. Mar. 10, 2021) (Rep. Waters) (urging the CDC to “again extend the federal eviction moratorium that expires on March 31, 2021 so that grantees have time to distribute assistance to renters in need”).

The district court mistakenly believed that this understanding of the CDC’s authority might create an unconstitutional delegation of legislative power. Such concern is especially unjustified after Congress endorsed the very agency action in

question. Moreover, even apart from Congress’s endorsement of the CDC’s action, there would be no basis for the district court’s concern that approving the temporary moratorium would effectively sanction virtually unbridled exercises of authority. The moratorium is a temporary measure adopted to combat an unprecedented deadly pandemic. Whatever might be the limits of § 264, it plainly encompasses this measure in these circumstances.

The district court’s constitutional concern also lacks doctrinal basis. “Only twice in this country’s history” (and only in 1935) has the Supreme Court “found a delegation excessive—in each case because ‘Congress had failed to articulate *any* policy or standard’ to confine discretion.” *Gundy v. United States*, 139 S. Ct. 2116, 2129 (2019) (plurality op.) (quoting *Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989), and citing *A. L. A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Ref. Co. v. Ryan*, 293 U.S. 388 (1935)).

“By contrast,” the Supreme Court has “over and over upheld even very broad delegations.” *Gundy*, 139 S. Ct. at 2129. For example, it has “approved delegations to various agencies to regulate in the ‘public interest.’” *Id.* (citing *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943), and *New York Central Securities Corp. v. United States*, 287 U.S. 12, 24 (1932)). It has “sustained authorizations for agencies to set ‘fair and equitable’ prices and ‘just and reasonable’ rates.” *Id.* (quoting *Yakus v. United States*, 321 U.S. 414, 422 (1944), and *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 595 (1944)). And it has “more recently affirmed a delegation to an agency to issue

whatever air quality standards are ‘requisite to protect the public health.’” *Id.* (quoting *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 472 (2001)). In such decisions, the Supreme Court has made clear that Congress’s delegations are valid so long as they provide an “intelligible principle” to which the agency must conform. *Mistretta*, 488 U.S. at 372 (quotation marks omitted).

Section 264(a) permits only measures aimed at preventing the introduction, transmission, or spread of communicable disease from State to State or from foreign countries into the United States. That standard is at least as intelligible as the directions to agencies upheld by the Supreme Court in other cases, which the district court did not discuss.

## CONCLUSION

For the foregoing reasons, the Court should stay the district court's judgment pending appeal and issue an immediate administrative stay to preserve the status quo.

Respectfully submitted,

BRIAN M. BOYNTON

*Acting Assistant Attorney General*

JOSEPH C. MURPHY, JR.

*Acting United States Attorney*

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*/s/ Brian J. Springer*

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MARCH 2021



## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 4,583 words. The motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 2016 in proportionally spaced 14-point Garamond typeface.

*/s/ Brian J. Springer*  
\_\_\_\_\_  
BRIAN J. SPRINGER

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2021, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*/s/ Brian J. Springer*  
\_\_\_\_\_  
BRIAN J. SPRINGER

**ADDENDUM**

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APPEAL,LR16.2 TR4

**U.S. District Court**  
**Western District of Tennessee (Memphis)**  
**CIVIL DOCKET FOR CASE #: 2:20-cv-02692-MSN-atc**

Tiger Lily LLC et al v. United States Department of Housing and  
Urban Development et al  
Assigned to: Judge Mark S. Norris  
Referred to: Magistrate Judge Annie T. Christoff  
Cause: 28:1331 Fed. Question

Date Filed: 09/16/2020  
Date Terminated: 03/16/2021  
Jury Demand: None  
Nature of Suit: 290 Real Property: Other  
Jurisdiction: Federal Question

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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/16/2020	<a href="#">1</a>	COMPLAINT <i>for Declaratory Judgement and Injunctive Relief</i> against All Defendants (Filing fee \$ 400 receipt number BTNWDC-3437313), filed by All Plaintiffs. (Attachments: # <a href="#">1</a> Civil Cover Sheet, # <a href="#">2</a> Summons, # <a href="#">3</a> Summons, # <a href="#">4</a> Summons, # <a href="#">5</a> Summons, # <a href="#">6</a> Summons, # <a href="#">7</a> Summons, # <a href="#">8</a> Summons, # <a href="#">9</a> Summons, # <a href="#">10</a> Summons, # <a href="#">11</a> Summons, # <a href="#">12</a> Exhibit, # <a href="#">13</a> Exhibit, # <a href="#">14</a> Exhibit, # <a href="#">15</a> Exhibit, # <a href="#">16</a> Exhibit) (Kahane, S.) (Entered: 09/16/2020)
09/16/2020	<a href="#">2</a>	Judge Mark S. Norris and Magistrate Judge Annie T. Christoff added. (jld) (Entered: 09/16/2020)
09/16/2020	3	NOTICE OF CASE TRACKING ASSIGNMENT PURSUANT TO LOCAL RULE 16.2: Pursuant to Local Rule 16.2, this case has been assigned to the Standard track. <a href="http://www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf">http://www.tnwd.uscourts.gov/pdf/content/LocalRules.pdf</a> (jld) (Entered: 09/16/2020)
09/16/2020	4	NOTICE TO COMPLY WITH PLAN FOR ALTERNATE DISPUTE RESOLUTION (ADR): Pursuant to Section to 2.1 of the ADR Plan, all civil cases filed on or after Sept. 1, 2014, shall be referred automatically for ADR. For compliance requirements, refer to the ADR Plan at: <a href="http://www.tnwd.uscourts.gov/pdf/content/ADRPlan.pdf">http://www.tnwd.uscourts.gov/pdf/content/ADRPlan.pdf</a> (jld) (Entered: 09/16/2020)
09/16/2020	5	NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE Pursuant to 28 U.S.C. 636(c), Fed.R.Civ.P.73, and Local

		Rule 72.1, this Court has designated the Magistrate Judges of this District to conduct trials and otherwise dispose of any civil case that is filed in this Court. Your decision to consent, or not consent, to the referral of your case to a United States Magistrate Judge for trial and entry of a final judgment must be entirely voluntary. The judge or magistrate judge to whom the case has been assigned will not be informed of your decision unless all parties agree that the case may be referred to a magistrate judge for these specific purposes. A less than unanimous decision will not be communicated by this office to either the judge or magistrate judge. The consent form is available on the courts website at <a href="https://www.tnwd.uscourts.gov/forms-and-applications.php">https://www.tnwd.uscourts.gov/forms-and-applications.php</a> (jld) (Entered: 09/16/2020)
09/16/2020	<a href="#">6</a>	Summons Issued as to All Defendants, U.S. Attorney and U.S. Attorney General. The filer has been notified electronically that the summons has been issued, and the new docket entry reflects this. Upon notification of the new docket entry, the filer is to print the issued summons in order to effect service. (Attachments: # <a href="#">1</a> Summons Honorable Benjamin S. Carson, # <a href="#">2</a> Summons United States Dept. of Justice, # <a href="#">3</a> Summons United States Atty. General William Barr, # <a href="#">4</a> Summons United States Center for Disease Control and Prevention, # <a href="#">5</a> Summons Hon. Nina B. Witkovski Action Chief of Staff, # <a href="#">6</a> Summons U.S. Dept. of Health and Human Services, # <a href="#">7</a> Summons Hon. Secretary Alex Azar, # <a href="#">8</a> Summons Hon. Vice Admiral Jerome M. Adams, M.D. Surgeon General, # <a href="#">9</a> Summons Hon. D. Michael Dunavant)(jld) (Entered: 09/16/2020)
09/16/2020	7	COURTESY NOTICE: Pursuant to Rule 5 of the Federal Rules of Civil Procedure, document <a href="#">1</a> Complaint, filed by Brittany Railey, Hunter Oaks Apartments Utah, LLC, Churchill Townhomes LLC, Cherry Hill Gardens LLC, North 22nd Flat, LLC, Applewood Property Management, LLC, Tiger Lily LLC has been filed. Please note the plaintiff's attorney name and address are missing from the summonses. Please fill in before service. <a href="#">ECF User Manual</a> and <a href="#">ECF Policies and Procedures</a> . Filer is not required to resubmit document. (jld) (Entered: 09/16/2020)
09/17/2020	<a href="#">8</a>	Corporate Disclosure Statement by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC. (Kahane, S.) (Entered: 09/17/2020)
09/18/2020	<a href="#">9</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to D. Michael Dunavant. (Kahane, S.) (Entered: 09/18/2020)
09/23/2020	<a href="#">10</a>	MOTION for Leave to File <i>Motion for Permission to Exceed the Page Limit Under Local Rule 7.2 Relating to Their Application for Emergency Hearing and Preliminary Injunction - proposed order submitted by All Plaintiffs.</i> (Kahane, S.) (Entered: 09/23/2020)
09/25/2020	<a href="#">11</a>	ORDER GRANTING IN PART AND DENYING IN PART <a href="#">10</a> PLAINTIFFS' MOTION FOR PERMISSION TO EXCEED THE PAGE LIMIT UNDER LOCAL RULE 7.2 RELATING TO THEIR APPLICATION FOR EMERGENCY HEARING AND PRELIMINARY INJUNCTION. Signed by Judge Mark S. Norris on 9/25/2020. (Norris, Mark) (Entered: 09/25/2020)
09/27/2020	<a href="#">12</a>	MOTION for Hearing <i>PLAINTIFFS' MOTION AND APPLICATION FOR EMERGENCY HEARING AND PRELIMINARY INJUNCTION</i> by All Plaintiffs. (Attachments: # <a href="#">1</a> Memorandum in Support of Motion and Application for Emergency Hearing and Preliminary Injunction)(Kahane, S.) (Entered: 09/27/2020)
09/28/2020	<a href="#">13</a>	NOTICE of Appearance by Aubrey Brode Greer on behalf of All Plaintiffs (Greer, Aubrey) (Entered: 09/28/2020)

09/29/2020	<a href="#">14</a>	CERTIFICATE OF SERVICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC <i>of the Summons and Complaint was had on 09/21/2020 on United States Center for Disease Control and Prevention</i> (Kahane, S.) (Entered: 09/29/2020)
09/30/2020	<a href="#">15</a>	CERTIFICATE OF SERVICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey <i>of the Summons and Complaint was had on 09/22/2020 on Acting Chief of Staff, Nina B. Witkovsky, United States Center for Disease Control and Prevention</i> (Kahane, S.) (Entered: 09/30/2020)
09/30/2020	16	COURTESY NOTICE: Pursuant to Rule 5 of the Federal Rules of Civil Procedure, document <a href="#">14</a> Certificate of Service, filed by Brittany Railey, Hunter Oaks Apartments Utah, LLC, Churchill Townhomes LLC, Cherry Hill Gardens LLC, North 22nd Flat, LLC, Applewood Property Management, LLC, Tiger Lily LLC has been filed. For future reference, please note should have used the "Summons Returned Executed" event. Please refer to the <a href="#">ECF User Manual</a> and <a href="#">ECF Policies and Procedures</a> . Filer is not required to resubmit document. (agj) (Entered: 09/30/2020)
10/01/2020	<a href="#">17</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to United States Department Of Justice. (Kahane, S.) (Entered: 10/01/2020)
10/02/2020	<a href="#">18</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to William P. Barr. (Kahane, S.) (Entered: 10/02/2020)
10/07/2020	<a href="#">19</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to Benjamin S. Carson, M.D.. (Kahane, S.) (Entered: 10/07/2020)
10/08/2020	20	<p>SETTING LETTER: Initial Scheduling Conference set for Wednesday, 10/14/2020 at 10:00 AM before Judge Mark S. Norris.</p> <p>The proceeding will be done via Skype for Business video conference. The Court will email the parties an invitation for the video conference prior to the proceeding.</p> <p>Counsel should submit any exhibits to be offered to the Judge's ECF mailbox prior to the proceeding.</p> <p>The public may also access the video proceeding. If the public and/or media wish to attend in the video proceeding, please click on the following link to request access information: <a href="https://www.tnwd.uscourts.gov/videohearings">https://www.tnwd.uscourts.gov/videohearings</a> The access information will be delivered via email to the email address from which the request originated.</p> <p>Parties shall consult the <a href="#">Skype for Business webpage</a> for instructions on downloading the proper extensions for their computer. (zsf) (Entered: 10/08/2020)</p>
10/08/2020	<a href="#">21</a>	AMENDED COMPLAINT <i>FOR DECLARATORY JUDGMENT, VACATUR, AND INJUNCTIVE RELIEF</i> against All Defendants All Defendants., filed by All Plaintiffs. (Kahane, S.) (Entered: 10/08/2020)
10/09/2020	<a href="#">22</a>	NOTICE of Appearance by Audrey M. Calkins on behalf of All Defendants (Calkins,

		Audrey) (Entered: 10/09/2020)
10/09/2020	<a href="#">23</a>	NOTICE of Appearance by Stuart J. Canale on behalf of United States Department of Housing and Urban Development (Canale, Stuart) (Entered: 10/09/2020)
10/13/2020	<a href="#">24</a>	Consent MOTION for Leave to File Excess Pages <i>in Opposition to Plaintiffs' Motion for Preliminary Injunction (proposed order submitted)</i> by All Defendants. (Attachments: # <a href="#">1</a> Exhibit 1 - Memorandum in Opposition to Motion for Preliminary Injunction, # <a href="#">2</a> Exhibit A to Memorandum - CDC Eviction Moratorium FAQs, # <a href="#">3</a> Exhibit B to Memorandum - KBW Investment Properties Order Denying TRO, # <a href="#">4</a> Exhibit C to Memorandum - CDC Order, # <a href="#">5</a> Exhibit D to Memorandum - CDC Delegation of Authority)(Calkins, Audrey) (Entered: 10/13/2020)
10/13/2020	<a href="#">25</a>	MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> by Neighborhood Preservation, Inc.. (Schwarz, Earle) (Entered: 10/13/2020)
10/13/2020	<a href="#">26</a>	MOTION for Leave to File <i>Opposition to Emergency Motion for Preliminary Injunctive Relief Combined with Memo in Support and Proposed Opposition Memorandum</i> by Neighborhood Preservation, Inc.. (Schwarz, Earle) (Entered: 10/13/2020)
10/14/2020	27	COURTESY NOTICE: Pursuant to Rule 5 of the Federal Rules of Civil Procedure, document <a href="#">26</a> MOTION for Leave to File <i>Opposition to Emergency Motion for Preliminary Injunctive Relief Combined with Memo in Support and Proposed Opposition Memorandum</i> filed by Neighborhood Preservation, Inc., <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> filed by Neighborhood Preservation, Inc. has been filed. For future reference, please note No electronic signature of attorney filing the documents. Please refer to the <a href="#">ECF User Manual</a> and <a href="#">ECF Policies and Procedures</a> . Filer is not required to resubmit document. (btg) (Entered: 10/14/2020)
10/14/2020	28	MINUTES: Initial Scheduling Conference held via Skype Video on 10/14/2020 before Judge Mark S. Norris. Attys S. Joshua Kahane & Aubrey Greer appeared for the plaintiffs; Attys Audrey Calkins, Stuart Canale, Steven Myers & Leslie Vigen appeared for the defendant's; Attys Steven Myers & Leslie Vigen oral motion for special admission - granted as stated on the record in open Court ; also present via teleconference were Attys Earle Schwartz & Webb A. Brewer for Neighborhood Preservation, Inc.; defendant's consent motion <a href="#">24</a> for leave to file excess pages - granted; Neighborhood Preservation, Inc.'s motion <a href="#">25</a> to intervene - pending; plaintiff's response to motion to intervene due by 10/20/2020; plaintiff's supplemental response due by 10/27/2020. Preliminary Injunction Hearing set for Friday, 10/30/2020 at 10:00 AM before Judge Mark S. Norris. Atty Leslie Vigen's oral request for the preliminary injunction hearing to be held via Skype video - taken under advisement. (Court Reporter: Lisa Mayo) (zsf) (Entered: 10/14/2020)
10/14/2020	<a href="#">29</a>	RESPONSE in Opposition re <a href="#">12</a> MOTION for Hearing <i>PLAINTIFFS' MOTION AND APPLICATION FOR EMERGENCY HEARING AND PRELIMINARY INJUNCTION</i> filed by All Defendants. (Attachments: # <a href="#">1</a> Exhibit A - CDC Eviction Moratorium FAQs, # <a href="#">2</a> Exhibit B - KBW Investment Properties Order Denying TRO, # <a href="#">3</a> Exhibit C - CDC Order, # <a href="#">4</a> Exhibit D - CDC Delegation of Authority)(Calkins, Audrey) (Entered: 10/14/2020)
10/16/2020	<a href="#">30</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, Neighborhood Preservation, Inc., North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC re <a href="#">12</a> MOTION for Hearing <i>PLAINTIFFS' MOTION AND APPLICATION FOR EMERGENCY HEARING AND PRELIMINARY INJUNCTION Supplement to Motion and Application for Emergency Hearing and Preliminary Injunction and Memorandum of Law in Support Thereof</i> (Kahane, S.) (Entered: 10/16/2020)

10/19/2020	<a href="#">31</a>	Supplemental MOTION Permission to Intervene re <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> by Neighborhood Preservation, Inc.. (Schwarz, Earle) (Entered: 10/19/2020)
10/20/2020	<a href="#">32</a>	RESPONSE to Motion re <a href="#">31</a> Supplemental MOTION Permission to Intervene re <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> , <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> filed by All Defendants. (Attachments: # <a href="#">1</a> Exhibit A - Response Opposing Motion for Preliminary Injunction in Brown v. Azar, # <a href="#">2</a> Exhibit B - KBW Investment Properties Order Denying TRO)(Calkins, Audrey) (Entered: 10/20/2020)
10/20/2020	33	<p>SETTING LETTER: Preliminary Injunction Hearing set for Friday, 10/30/2020 at 10:00 AM before Judge Mark S. Norris.</p> <p>The proceeding will be done via Skype for Business video conference. The Court will email the parties an invitation for the video conference prior to the proceeding.</p> <p>Counsel should submit any exhibits to be offered to the Judge's ECF mailbox prior to the proceeding.</p> <p>The public may also access the video proceeding. If the public and/or media wish to attend in the video proceeding, please click on the following link to request access information: <a href="https://www.tnwd.uscourts.gov/videohearings">https://www.tnwd.uscourts.gov/videohearings</a> The access information will be delivered via email to the email address from which the request originated.</p> <p>Parties shall consult the <a href="#">Skype for Business webpage</a> for instructions on downloading the proper extensions for their computer. (zsf) (Entered: 10/20/2020)</p>
10/20/2020	<a href="#">34</a>	RESPONSE in Opposition re <a href="#">31</a> Supplemental MOTION Permission to Intervene re <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> , <a href="#">25</a> MOTION to Intervene <i>As Defendant combined with Memo in support and Proposed Answer</i> filed by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, Neighborhood Preservation, Inc., North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC. (Kahane, S.) (Entered: 10/20/2020)
10/21/2020	<a href="#">35</a>	MOTION for Leave to File <i>AMICUS BRIEF (PROPOSED ORDER SUBMITTED)</i> by NATIONAL HOUSING LAW PROJECT. (Attachments: # <a href="#">1</a> Exhibit Brief of Amicus Curiae in Opposition to Plaintiff's Motion for Preliminary Injunction)(Feibelman, Jef) (Entered: 10/21/2020)
10/21/2020	<a href="#">36</a>	ORDER DENYING <a href="#">25</a> NEIGHBORHOOD PRESERVATION INC.'S MOTION TO INTERVENE. Signed by Judge Mark S. Norris on 10/21/2020. (Norris, Mark) (Entered: 10/21/2020)
10/21/2020	<a href="#">37</a>	ORDER DENYING <a href="#">26</a> PROPOSED INTERVENOR'S MOTION FOR LEAVE TO OPPOSE PLAINTIFFS' APPLICATION FOR EMERGENCY RELIEF. Signed by Judge Mark S. Norris on 10/21/2020. (Norris, Mark) (Entered: 10/21/2020)
10/22/2020	<a href="#">38</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on October 14, 2020 before Judge Mark S. Norris. Court Reporter Lisa Mayo, Telephone number (901) 495-1537.</p> <p>Notice is hereby given that an official transcript of a proceeding has been filed by the court reporter in this matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript, and twenty-one (21) calendar days to file a Request for Redaction. Redaction is the responsibility of the</p>

		attorneys and pro se litigants who attended the hearing to which the transcription applies. Each party is responsible for reviewing and requesting redaction of testimony of witnesses that were called for the party and for that party's own statements.  Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal.. Notice of Intent to Request Redaction due 10/27/2020. Redaction Request due 11/12/2020. Release of Transcript Restriction set for 1/20/2021. (Mayo, Lisa) (Entered: 10/22/2020)
10/22/2020	<a href="#">39</a>	ORDER GRANTING <a href="#">35</a> NATIONAL HOUSING LAW PROJECT'S MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE. Signed by Judge Mark S. Norris on 10/22/2020. (Norris, Mark) (Entered: 10/22/2020)
10/22/2020	<a href="#">40</a>	RESPONSE in Opposition re <a href="#">12</a> MOTION for Hearing <i>PLAINTIFFS' MOTION AND APPLICATION FOR EMERGENCY HEARING AND PRELIMINARY INJUNCTION BRIEF OF AMICUS CURIAE</i> filed by NATIONAL HOUSING LAW PROJECT. (Feibelman, Jef) (Entered: 10/22/2020)
10/22/2020	<a href="#">41</a>	NOTICE of Appearance by Lani D. Lester on behalf of NATIONAL HOUSING LAW PROJECT (Lester, Lani) (Entered: 10/22/2020)
10/23/2020	<a href="#">42</a>	MOTION to Strike <i>Plaintiffs' Supplement (D.E. # 30) or, in the Alternative, to File a Response and Continue Hearing Date</i> by All Defendants. (Calkins, Audrey) (Entered: 10/23/2020)
10/25/2020	<a href="#">43</a>	RESPONSE in Opposition re <a href="#">42</a> MOTION to Strike <i>Plaintiffs' Supplement (D.E. # 30) or, in the Alternative, to File a Response and Continue Hearing Date</i> filed by All Plaintiffs. (Kahane, S.) (Entered: 10/25/2020)
10/26/2020	<a href="#">44</a>	ORDER GRANTING <a href="#">42</a> DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' SUPPLEMENT. Signed by Judge Mark S. Norris on 10/26/2020. (Norris, Mark) (Entered: 10/26/2020)
10/27/2020	<a href="#">45</a>	NOTICE of Appearance by Braden H. Boucek on behalf of BEACON CENTER OF TENNESSEE (Boucek, Braden) (Entered: 10/27/2020)
10/27/2020	<a href="#">46</a>	MOTION for Leave to File ( <i>proposed order submitted</i> ) by BEACON CENTER OF TENNESSEE. (Attachments: # <a href="#">1</a> Exhibit Brief of Amici (proposed))(Boucek, Braden) (Entered: 10/27/2020)
10/27/2020	<a href="#">47</a>	Certificate of of Consultation by BEACON CENTER OF TENNESSEE. (Boucek, Braden) (Entered: 10/27/2020)
10/27/2020	<a href="#">48</a>	NOTICE of Appearance by Webb A. Brewer on behalf of Neighborhood Preservation, Inc. (Brewer, Webb) (Entered: 10/27/2020)
10/27/2020	<a href="#">49</a>	REPLY to Response to Motion re <a href="#">29</a> Response in Opposition to Motion, filed by All Plaintiffs. (Attachments: # <a href="#">1</a> Exhibit Exhibit A - Declaration on behalf of Tiger Lily LLC, # <a href="#">2</a> Exhibit Exhibit B - Declaration on behalf of Hunter Oaks Apartments Utah, LLC, # <a href="#">3</a> Exhibit Exhibit C - Declaration on behalf North 22nd Flat, LLC, # <a href="#">4</a> Exhibit Exhibit D - Declaration on behalf of Cherry Hill Gardens LLC, # <a href="#">5</a> Exhibit Exhibit E - Declaration on behalf of Churchill Townhomes LLC, # <a href="#">6</a> Exhibit Exhibit F - Declaration of Brittany Railey, # <a href="#">7</a> Exhibit Exhibit G - Declaration on behalf of Applewood Property Management, LLC)(Kahane, S.) (Entered: 10/27/2020)
10/27/2020	<a href="#">50</a>	Amicus Curiae APPEARANCE entered by Earle J. Schwarz on behalf of Neighborhood Preservation, Inc.. (Attachments: # <a href="#">1</a> Exhibit Declaration of Steve Barlow, # <a href="#">2</a> Exhibit

		Collective Declarations of ESP Clients, # <a href="#">3</a> Exhibit Declaration of Kathryn Ramsey, # <a href="#">4</a> Exhibit Slip Op Mitchell v Commonwealth)(Schwarz, Earle) (Entered: 10/27/2020)
10/27/2020	<a href="#">51</a>	MOTION <i>For Leave to Participate in Hearing on Application for Injunctive Relief (Proposed Order Submitted)</i> by Neighborhood Preservation, Inc.. (Schwarz, Earle) (Entered: 10/27/2020)
10/28/2020	<a href="#">52</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to Alex Azar. (Kahane, S.) (Entered: 10/28/2020)
10/28/2020	<a href="#">53</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to Jerome M. Adams, M.D.. (Kahane, S.) (Entered: 10/28/2020)
10/28/2020	<a href="#">54</a>	SUMMONS Returned Executed by Applewood Property Management, LLC, Hunter Oaks Apartments Utah, LLC, Tiger Lily LLC, Brittany Railey, North 22nd Flat, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC as to United States Department of Health & Human Services. (Kahane, S.) (Entered: 10/28/2020)
10/28/2020	<a href="#">55</a>	MOTION for Leave to Appear Pro Hac Vice <i>proposed order submitted</i> (Filing fee \$ 150 receipt number ATNWDC-3471028) by BEACON CENTER OF TENNESSEE. (Boucek, Braden) (Entered: 10/28/2020)
10/28/2020	56	DEFICIENCY NOTICE: Pursuant to Rule 5 of the Federal Rules of Civil Procedure, document <a href="#">55</a> MOTION for Leave to Appear Pro Hac Vice <i>proposed order submitted</i> (Filing fee \$ 150 receipt number ATNWDC-3471028) filed by BEACON CENTER OF TENNESSEE has been filed. However, the following deficiency has been found: Motion was submitted by an attorney other than the attorney requesting to appear Pro Hac Vice; Certificates of good standing must be dated within 30 days of the filing of the motion; 'wet' signature of attorney appears on the document. All signatures must be electronic. Please refer to the <a href="#">ECF User Manual</a> and <a href="#">ECF Policies and Procedures</a> . The filer has one business day to correct the deficiency. (btg) (Entered: 10/28/2020)
10/28/2020	<a href="#">57</a>	RESPONSE in Opposition re <a href="#">46</a> MOTION for Leave to File ( <i>proposed order submitted</i> ) <i>Amicus Brief by the New Civil Liberties Alliance, The Beacon Center of Tennessee, the National Apartment Association, and the National Association of Residential Property Managers</i> filed by All Defendants. (Calkins, Audrey) (Entered: 10/28/2020)
10/28/2020	<a href="#">58</a>	ORDER GRANTING <a href="#">46</a> THE NEW CIVIL LIBERTIES ALLIANCE, THE BEACON CENTER OF TENNESSEE, THE NATIONAL APARTMENT ASSOCIATION, AND THE NATIONAL ASSOCIATION OF RESIDENTIAL PROPERTY MANAGERS' MOTION FOR LEAVE TO FILE AMICUS BRIEF. Signed by Judge Mark S. Norris on 10/28/2020. (Norris, Mark) (Entered: 10/28/2020)
10/28/2020	<a href="#">59</a>	ORDER DENYING <a href="#">51</a> NPI'S MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT ON PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTIVE RELIEF. Signed by Judge Mark S. Norris on 10/28/2020. (Norris, Mark) (Entered: 10/28/2020)
10/28/2020	<a href="#">60</a>	Amicus Curiae APPEARANCE entered by Braden H. Boucek on behalf of BEACON CENTER OF TENNESSEE. (Boucek, Braden) (Entered: 10/28/2020)
10/29/2020	<a href="#">61</a>	MOTION for Leave to Appear Pro Hac Vice (Fee paid as part of previous filing) by BEACON CENTER OF TENNESSEE. (Attachments: # <a href="#">1</a> Certificate of Good Standing, # <a href="#">2</a> Certificate of Good Standing)(Kruckenberg, Caleb) (Entered: 10/29/2020)



10/29/2020	<a href="#">62</a>	ORDER granting <a href="#">61</a> Motion for Leave to Appear Pro Hac Vice. Signed by Judge Mark S. Norris on 102920. (msn) (Entered: 10/29/2020)
10/29/2020	<a href="#">63</a>	MOTION for Leave to Appear Pro Hac Vice <i>Proposed Order Submitted</i> (Filing fee \$ 150 receipt number ATNWDC-3472484) by All Defendants. (Attachments: # <a href="#">1</a> Exhibit Certificate of Good Standing (District of Columbia), # <a href="#">2</a> Exhibit Certificate of Good Standing (U.S. District Court for the District of Columbia))(Vigen, Leslie) (Entered: 10/29/2020)
10/29/2020	<a href="#">64</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky of <i>Supplemental Authority</i> (Attachments: # <a href="#">1</a> Exhibit Order, Brown v. Azar, No. 20-3702 (N.D. Ga. Oct. 29, 2020))(Vigen, Leslie) (Entered: 10/29/2020)
10/30/2020	<a href="#">65</a>	ORDER granting <a href="#">63</a> Motion for Leave to Appear Pro Hac Vice. Signed by Judge Mark S. Norris on 103020. (msn) (Entered: 10/30/2020)
10/30/2020	<a href="#">66</a>	ORDER REGARDING BROADCASTING, TELEVISIONING, RECORDING OR PHOTOGRAPHING COURTROOM PROCEEDINGS. Signed by Judge Mark S. Norris on 10/30/2020. (Norris, Mark) (Entered: 10/30/2020)
10/30/2020	<a href="#">67</a>	MINUTES: Preliminary Injunction Hearing held via Skype Video on 10/30/2020 before Judge Mark S. Norris. Attys S. Joshua Kahane & Aubrey Greer appeared for the plaintiffs; Attys Leslie Vigen, Audrey Calkins & Steven Myers appeared for the defendant's. Oral arguments given by counsel. Matter taken under advisement. Order to be entered. (Court Reporter: Lisa Mayo) (zsf) (Entered: 10/30/2020)
11/05/2020	<a href="#">68</a>	MOTION for Leave to Appear Pro Hac Vice by <i>Eric Dunn for amicus NHLP</i> (Filing fee \$ 150 receipt number ATNWDC-3477727) by NATIONAL HOUSING LAW PROJECT. (Attachments: # <a href="#">1</a> Exhibit Certificates of Good Standing)(Dunn, Eric) (Entered: 11/05/2020)
11/06/2020	<a href="#">69</a>	ORDER DENYING <a href="#">12</a> PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION. Signed by Judge Mark S. Norris on 11/6/2020. (Norris, Mark) (Entered: 11/06/2020)
11/09/2020	<a href="#">70</a>	ORDER granting <a href="#">68</a> Motion for Leave to Appear Pro Hac Vice. Signed by Judge Mark S. Norris on 11/09/20. (msn) (Entered: 11/09/2020)
11/12/2020	<a href="#">71</a>	Consent MOTION for Extension of Time to File Answer <i>Proposed Order Submitted</i> by All Defendants. (Vigen, Leslie) (Entered: 11/12/2020)
11/13/2020	<a href="#">72</a>	[**TEXT ORDER ONLY - NO IMAGE ATTACHED**] ORDER GRANTING <a href="#">71</a> DEFENDANTS' CONSENT MOTION FOR EXTENSION OF TIME. Defendants' motion is hereby GRANTED. Defendants shall have up to and including November 30, 2020 to file a response to the Complaint in this matter. Signed by Judge Mark S. Norris on 11/13/2020. (Norris, Mark) (Entered: 11/13/2020)
11/13/2020	<a href="#">73</a>	SETTING LETTER: Status Conference set for Tuesday, 11/24/2020 at 10:00 AM in before Judge Mark S. Norris.  The proceeding will be done via Skype for Business video conference. The Court will email the parties an invitation for the video conference prior to the proceeding.  Counsel should submit any exhibits to be offered to the Judge's ECF mailbox prior to the proceeding.

		<p>The public may also access the video proceeding. If the public and/or media wish to attend in the video proceeding, please click on the following link to request access information: <a href="https://www.tnwd.uscourts.gov/videohearings">https://www.tnwd.uscourts.gov/videohearings</a> The access information will be delivered via email to the email address from which the request originated.</p> <p>Parties shall consult the <a href="#">Skype for Business webpage</a> for instructions on downloading the proper extensions for their computer. (zsf) (Entered: 11/13/2020)</p>
11/24/2020	74	<p>SETTING LETTER: Scheduling Conference set for Tuesday, 12/1/2020 at 10:30 AM before Judge Mark S. Norris.</p> <p>The proceeding will be done via Skype for Business video conference. The Court will email the parties an invitation for the video conference prior to the proceeding.</p> <p>Counsel should submit any exhibits to be offered to the Judge's ECF mailbox prior to the proceeding.</p> <p>The public may also access the video proceeding. If the public and/or media wish to attend in the video proceeding, please click on the following link to request access information: <a href="https://www.tnwd.uscourts.gov/videohearings">https://www.tnwd.uscourts.gov/videohearings</a> The access information will be delivered via email to the email address from which the request originated.</p> <p>Parties shall consult the <a href="#">Skype for Business webpage</a> for instructions on downloading the proper extensions for their computer. (jam) (Entered: 11/24/2020)</p>
12/01/2020	75	<p>MINUTES: Scheduling Conference held by Skype Video on 12/01/2020 before Judge Mark S. Norris. Atty S. Joshua Kahane appeared for plaintiffs. Atty Leslie Vigen appeared for defendants. Court heard statements from both parties regarding how they wish to proceed as stated on the record in open court. The following deadlines/schedules were established: filing of the administrative record and answer to complaint due on or before close of business on Friday, 12/11/2020. The court will contact the parties regarding filing of plaintiff's motion and briefing schedule as stated on the record in open court. (Court Reporter: Lisa Mayo) (zsf) (Entered: 12/01/2020)</p>
12/02/2020	<a href="#">76</a>	<p>SCHEDULING ORDER. Signed by Judge Mark S. Norris on 12/2/2020. (Norris, Mark) (Entered: 12/02/2020)</p>
12/07/2020	<a href="#">77</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on October 30, 2020 before Judge Mark S. Norris. Court Reporter Lisa Mayo, Telephone number (901) 495-1537.</p> <p>Notice is hereby given that an official transcript of a proceeding has been filed by the court reporter in this matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript, and twenty-one (21) calendar days to file a Request for Redaction. Redaction is the responsibility of the attorneys and pro se litigants who attended the hearing to which the transcription applies. Each party is responsible for reviewing and requesting redaction of testimony of witnesses that were called for the party and for that party's own statements.</p> <p>Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal.. Notice of Intent to Request Redaction due 12/14/2020. Redaction Request due 12/28/2020. Release of Transcript Restriction set for 3/8/2021. (Mayo, Lisa) (Entered: 12/07/2020)</p>
12/08/2020	<a href="#">78</a>	<p>MOTION Modify the Briefing Schedule re <a href="#">76</a> Scheduling Order <i>Proposed Order Submitted</i> by All Plaintiffs. (Kahane, S.) (Entered: 12/08/2020)</p>

12/11/2020	<a href="#">79</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky <i>of Filing of the Administrative Record</i> (Attachments: # <a href="#">1</a> Exhibit Administrative Record - Certification and Index, # <a href="#">2</a> Exhibit Administrative Record - Part 1, # <a href="#">3</a> Exhibit Administrative Record - Part 2, # <a href="#">4</a> Exhibit Administrative Record - Part 3, # <a href="#">5</a> Exhibit Administrative Record - Part 4)(Vigen, Leslie) (Entered: 12/11/2020)
12/11/2020	<a href="#">80</a>	ANSWER to <a href="#">21</a> Amended Complaint by All Defendants.(Vigen, Leslie) (Entered: 12/11/2020)
12/16/2020	<a href="#">81</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky re <a href="#">79</a> Notice (Other),, <i>of Filing of Appendix to the Administrative Record</i> (Attachments: # <a href="#">1</a> Exhibit Updated Certification and Index of Administrative Record, # <a href="#">2</a> Exhibit Administrative Record - Part 5)(Vigen, Leslie) (Entered: 12/16/2020)
12/18/2020	<a href="#">82</a>	MOTION for Judgment on the Pleadings by All Defendants. (Attachments: # <a href="#">1</a> Memorandum in Support of Defendants' Motion for Judgment on the Pleadings)(Vigen, Leslie) (Entered: 12/18/2020)
12/18/2020	<a href="#">83</a>	RESPONSE in Opposition re <a href="#">78</a> MOTION Modify the Briefing Schedule re <a href="#">76</a> Scheduling Order <i>Proposed Order Submitted</i> filed by All Defendants. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Vigen, Leslie) (Entered: 12/18/2020)
12/18/2020	<a href="#">84</a>	MOTION for Summary Judgment <i>on the Administrative Record</i> by All Plaintiffs. (Attachments: # <a href="#">1</a> Memorandum of Law in Support of Motion for Judgment on the Administrative Record, # <a href="#">2</a> Exhibit A - Executive Order 13132, # <a href="#">3</a> Exhibit B - White House Fact Sheet, # <a href="#">4</a> Exhibit C - Attorney General Memorandum, # <a href="#">5</a> Exhibit D - Selected Bibliography of Sources Cited by the Halt Order, # <a href="#">6</a> Exhibit E - Memorandum Opinion, District of Columbia v. U.S. Department of Agriculture, # <a href="#">7</a> Exhibit F - Order, P.J.E.S. v. Wolf)(Kahane, S.) (Entered: 12/18/2020)
12/21/2020	<a href="#">85</a>	ORDER denying <a href="#">78</a> Plaintiffs' Motion to Modify the Briefing Schedule. Signed by Judge Mark S. Norris on 12/21/2020. (Mark S. Norris) (Entered: 12/21/2020)
12/31/2020	<a href="#">86</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky <i>of Congressional Action</i> (Vigen, Leslie) (Entered: 12/31/2020)
01/15/2021	<a href="#">87</a>	Consent MOTION for Leave to File Excess Pages by All Defendants. (Attachments: # <a href="#">1</a> Exhibit Defendants' Memorandum in Opposition to Plaintiffs' Motion for Judgment on the Administrative Record and In Support of Partial Motion to Dismiss)(Vigen, Leslie) (Entered: 01/15/2021)
01/15/2021	<a href="#">88</a>	RESPONSE to Motion re <a href="#">82</a> MOTION for Judgment on the Pleadings filed by All Plaintiffs. (Kahane, S.) (Entered: 01/15/2021)
01/15/2021	<a href="#">89</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC <i>Plaintiffs' Notice of Intent to File Reply to Defendants'</i>

		<i>Response in Opposition to Plaintiffs' Motion for Judgment on the Administrative Record</i> (Greer, Aubrey) (Entered: 01/15/2021)
01/25/2021	90	<p>TRANSCRIPT RELEASE NOTICE:</p> <p>By Administrative Order 2008-35 the United States District Court for the Western District of Tennessee implemented a policy regarding remote access to electronic transcripts. Pursuant to that policy, as well as Civil Rule 5.2 and Criminal Rule 49.1, each party's attorney is required to review a transcript for information that should be redacted pursuant to the Judicial Conference's privacy policy which requires that Social Security numbers be redacted to show only the last four digits; birth dates should contain only the year of birth; individuals known to be minors should be referred to with initials; and financial account numbers should be redacted to the last four digits. Additionally, in criminal case files, home addresses should reveal only the city and state of residence.</p> <p>Our records indicate that the 90-day restriction on public access to an electronic transcript(s) in this matter will lapse within 10 days. If a redaction request is required but has not been filed, please do so immediately. Please feel free to contact our office for further guidance on this issue. Document #38: Release Date 1/20/2021. (cas) (Entered: 01/25/2021)</p>
01/29/2021	<a href="#">91</a>	REPLY to Response to Motion re <a href="#">88</a> Response to Motion <i>for Judgment on the Pleadings</i> filed by All Defendants. (Vigen, Leslie) (Entered: 01/29/2021)
01/29/2021	<a href="#">92</a>	REPLY to Response to Motion re <a href="#">91</a> Reply to Response to Motion <i>Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Judgment on the Administrative Record</i> filed by All Plaintiffs. (Kahane, S.) (Entered: 01/29/2021)
02/01/2021	<a href="#">93</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky (Attachments: # <a href="#">1</a> Exhibit January 29, 2021 CDC Order)(Vigen, Leslie) (Entered: 02/01/2021)
02/23/2021	<a href="#">94</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky <i>of Filing of Supplemental Administrative Record</i> (Attachments: # <a href="#">1</a> Affidavit Certification of Supplemental Administrative Record, # <a href="#">2</a> Appendix Index of Supplemental Administrative Record, # <a href="#">3</a> Supplement Supplemental Administrative Record)(Vigen, Leslie) (Entered: 02/23/2021)
02/25/2021	<a href="#">95</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC <i>of Judicial Determination that the CDC's Halt Order is Unconstitutional</i> (Attachments: # <a href="#">1</a> Exhibit Opinion and Order of Judge Barker)(Greer, Aubrey) (Entered: 02/25/2021)
02/27/2021	<a href="#">96</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky re <a href="#">95</a> Notice (Other), <i>in Response to Plaintiffs' Notice of Supplemental Authority</i> (Vigen, Leslie) (Entered: 02/27/2021)
03/01/2021	97	TRANSCRIPT RELEASE NOTICE:

		<p>By Administrative Order 2008-35 the United States District Court for the Western District of Tennessee implemented a policy regarding remote access to electronic transcripts. Pursuant to that policy, as well as Civil Rule 5.2 and Criminal Rule 49.1, each party's attorney is required to review a transcript for information that should be redacted pursuant to the Judicial Conference's privacy policy which requires that Social Security numbers be redacted to show only the last four digits; birth dates should contain only the year of birth; individuals known to be minors should be referred to with initials; and financial account numbers should be redacted to the last four digits. Additionally, in criminal case files, home addresses should reveal only the city and state of residence.</p> <p>Our records indicate that the 90-day restriction on public access to an electronic transcript(s) in this matter will lapse within 10 days. If a redaction request is required but has not been filed, please do so immediately. Please feel free to contact our office for further guidance on this issue. (re: DE# <a href="#">77</a> ; release date 3/8/2021) (tlh) (Entered: 03/01/2021)</p>
03/01/2021	<a href="#">98</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC re <a href="#">96</a> Notice (Other), <i>in Reply to Defendants Response to Plaintiffs Notice of Supplemental Authority, (D.E. 96)</i> (Kahane, S.) (Entered: 03/01/2021)
03/11/2021	<a href="#">99</a>	SETTING LETTER: A Telephonic Conference is set for Monday, 03/15/2021 at 01:00 PM (CST) before Judge Mark S. Norris. <u>Please see attached for call in instructions.</u> (zsf) (Entered: 03/11/2021)
03/12/2021	<a href="#">100</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC <i>of Second Judicial Determination that the CDC's Halt Order is Unlawful</i> (Attachments: # <a href="#">1</a> Exhibit Exhibit A - Order and Opinion in Skyworks, Ltd. v. Centers for Disease Control and Prevention)(Greer, Aubrey) (Entered: 03/12/2021)
03/12/2021	<a href="#">101</a>	NOTICE by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health & Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky <i>in Response to Plaintiffs' Notice</i> (Vigen, Leslie) (Entered: 03/12/2021)
03/15/2021	102	MINUTES: Telephonic Conference held on 03/15/2021 before Judge Mark S. Norris. Attys S. Joshua Kahane & Aubrey Greer participated on behalf of the plaintiffs. Attys Leslie Vigen, Steven Myers & Audrey Calkins participated on behalf of the defendants. (Court Reporter: Lisa Mayo) (zsf) (Entered: 03/15/2021)
03/15/2021	<a href="#">103</a>	ORDER GRANTING <a href="#">84</a> PLAINTIFFS' MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD AND ORDER DENYING <a href="#">82</a> DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS. Signed by Judge Mark S. Norris on 3/15/2021. (Norris, Mark) (Entered: 03/15/2021)
03/16/2021	<a href="#">104</a>	JUDGMENT. Signed by Judge Mark S. Norris on 3/16/2021. (Norris, Mark) (Entered: 03/16/2021)
03/17/2021	<a href="#">105</a>	NOTICE OF APPEAL as to <a href="#">104</a> Judgment, <a href="#">103</a> Order on Motion for Judgment on the Pleadings, Order on Motion for Summary Judgment, Order on Motion for Leave to File Excess Pages by Jerome M. Adams, M.D., Alex Azar, William P. Barr, Benjamin S. Carson, M.D., D. Michael Dunavant, United States Center for Disease Control and Prevention, United States Department Of Justice, United States Department of Health &

		Human Services, United States Department of Housing and Urban Development, Nina B. Witkovsky. (Vigen, Leslie) (Entered: 03/17/2021)
03/17/2021	<a href="#">106</a>	Emergency MOTION to Stay <i>Judgment Pending Appeal and for Immediate Administrative Stay (Proposed Order Submitted)</i> by All Defendants. (Vigen, Leslie) (Entered: 03/17/2021)
03/17/2021	<a href="#">107</a>	NOTICE by Applewood Property Management, LLC, Cherry Hill Gardens LLC, Churchill Townhomes LLC, Hunter Oaks Apartments Utah, LLC, North 22nd Flat, LLC, Brittany Railey, Tiger Lily LLC <i>of Intent to File Response in Opposition to Defendants' Motion for Stay</i> (Kahane, S.) (Entered: 03/17/2021)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/18/2021 07:17:02			
<b>PACER Login:</b>	alisaklein	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:20-cv-02692-MSN-atc
<b>Billable Pages:</b>	17	<b>Cost:</b>	1.70

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

TIGER LILY LLC, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN  
DEVELOPMENT, *et al.*,

Defendants.

Case No. 2:20-cv-2692-MSN-atc

**DEFENDANTS' NOTICE OF APPEAL**

PLEASE TAKE NOTICE that all Defendants (United States Department of Housing and Urban Development; Marcia Fudge in her official capacity as United States Secretary of Housing and Urban Development; United States Department of Justice; Merrick B. Garland in his official capacity as United States Attorney General; United States Centers for Disease Control and Prevention; Sherri A. Berger, in her official capacity as Acting Chief of Staff, Centers for Disease Control and Prevention; United States Department of Health and Human Services; Norris Cochran, in his official capacity as Acting Secretary of Health and Human Services; RADM Susan Orsega, Acting Surgeon General; and Joseph C. Murphy, Jr., in his official capacity as Acting United States Attorney for the Western District of Tennessee), hereby appeal to the United States Court of Appeals for the Sixth Circuit from this Court's March 16, 2021, Judgment, *see* ECF No. 104, along with its March 15, 2021, Order, *see* ECF No. 103.

Dated: March 17, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

ERIC BECKENHAUER  
Assistant Director, Federal Programs Branch

/s/ Leslie Cooper Vigen  
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*Counsel for Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify I served this document today by filing it using the Court's CM/ECF system, which will automatically notify all counsel of record.

Dated: March 17, 2021

/s/ Leslie Cooper Vigen

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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TIGER LILY, LLC;  
HUNTER OAKS APARTMENTS UTAH, LLC;  
NORTH 22ND FLAT, LLC;  
CHERRY HILL GARDENS, LLC;  
CHURCHILL TOWNHOMES, LLC;  
BRITTANY RAILEY; and  
APPLEWOOD PROPERTY MANAGEMENT, LLC,

Plaintiffs,

v.

No: 2:20-cv-02692-MSN-atc

UNITED STATES DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT and BENJAMIN S. CARSON, M.D.,  
in his official capacity as United States Secretary of Housing  
and Urban Development;  
UNITED STATES DEPARTMENT OF JUSTICE and WILLIAM  
P. BARR, in his official capacity as United States Attorney General;  
UNITED STATES CENTER FOR DISEASE CONTROL AND  
PREVENTION and NINA B. WITKOVSKY, in her official capacity  
as Acting Chief of Staff of the Center for Disease Control and Prevention;  
UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES  
and ALEX AZAR, in his official capacity as United States Secretary of  
Health and Human Services;  
VICE ADMIRAL JEROME M. ADAMS, M.D., in his official capacity as  
United States Surgeon General; and  
D. MICHAEL DUNAVANT, in his official capacity as United States Attorney General for the  
Western District of Tennessee,

Defendants.

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**JUDGMENT**

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**JUDGMENT BY COURT.** This action came before the Court on Plaintiff's Complaint (ECF

No. 1), filed September 16, 2020,

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that, in accordance with the Order Granting Plaintiffs’ Motion for Judgment on the Administrative Record and Order Denying Defendants’ Motion for Judgment on the Pleadings (ECF No. 103), entered March 15, 2021, Plaintiff’s Motion for Judgment on the Administrative Record is **GRANTED**. The Court hereby **DECLARES** that the nationwide eviction moratorium promulgated by the CDC in orders dated September 4, 2020 and January 29, 2021, and referred to by this Court as the “Halt Order,” exceeds the statutory authority of the Public Health Act, 42 U.S.C. § 264; is *ultra vires*; and is unenforceable in the Western District of Tennessee.

**APPROVED:**

*s/ Mark S. Norris*  
\_\_\_\_\_  
MARK S. NORRIS  
UNITED STATES DISTRICT JUDGE

March 16, 2021  
\_\_\_\_\_  
Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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TIGER LILY, LLC;  
HUNTER OAKS APARTMENTS UTAH, LLC;  
NORTH 22ND FLAT, LLC;  
CHERRY HILL GARDENS, LLC;  
CHURCHILL TOWNHOMES, LLC;  
BRITTANY RAILEY; and  
APPLEWOOD PROPERTY MANAGEMENT, LLC,

Plaintiffs,

v.

No: 2:20-cv-02692-MSN-atc

UNITED STATES DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT and BENJAMIN S. CARSON, M.D.,  
in his official capacity as United States Secretary of Housing  
and Urban Development;  
UNITED STATES DEPARTMENT OF JUSTICE and WILLIAM  
P. BARR, in his official capacity as United States Attorney General;  
UNITED STATES CENTER FOR DISEASE CONTROL AND  
PREVENTION and NINA B. WITKOVSKY, in her official capacity  
as Acting Chief of Staff of the Center for Disease Control and Prevention;  
UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES  
and ALEX AZAR, in his official capacity as United States Secretary of  
Health and Human Services;  
VICE ADMIRAL JEROME M. ADAMS, M.D., in his official capacity as  
United States Surgeon General; and  
D. MICHAEL DUNAVANT, in his official capacity as United States Attorney General for the  
Western District of Tennessee,

Defendants.

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**ORDER GRANTING PLAINTIFFS' MOTION FOR JUDGMENT ON THE  
ADMINISTRATIVE RECORD AND ORDER DENYING DEFENDANTS' MOTION  
FOR JUDGMENT ON THE PLEADINGS**

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This cause comes before the Court on Plaintiffs' Motion for Judgment on the Administrative Record (ECF No. 84) and Defendants' Motion for Judgment on the Pleadings. (ECF No. 82). The parties filed their respective responses on January 15, 2021.<sup>1</sup> (ECF Nos. 87, 88.) The parties then filed their replies on January 29, 2021. (ECF Nos. 91, 92.) For the reasons below, the Court **GRANTS** Plaintiffs' Motion and **DENIES** Defendants' Motion.

### **FACTUAL BACKGROUND**

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. The next day, Tennessee Governor Bill Lee issued Executive Order No. 14 declaring a State of Emergency in response to the COVID-19 outbreak. Then-President Trump declared a national emergency for COVID-19 on March 13, 2020.

On March 27, 2020, then-President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020). Sections 4022 and 4023 of the CARES Act protected those with federally backed mortgages from foreclosures until at least August 31, 2020 and allowed for a mortgage forbearance for up to 180 days. Section 4024(b) provided for a 120-day eviction moratorium for rental units in properties that participated in federal assistance programs or had a federally backed mortgage or multifamily loan. Congress did not renew the CARES Act protections for homeowners or renters upon their expiration.

On August 8, 2020, then-President Trump issued an executive order directing the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention (the "CDC") to "consider whether any measures temporarily halting residential evictions for any

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1. In conjunction with their Response, Defendants requested for leave to file excess pages. (ECF No. 87.) Plaintiffs do not oppose Defendants' request. (*Id.* at PageID 2499.) The Court finds the motion well-taken and hereby **GRANTS** the motion.

tenants for failure to pay rent [were] reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.” Less than a month later, on September 4, 2020, the CDC issued the “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” (the “Halt Order”). 85 Fed. Reg. 55,292 (Sept. 4, 2020).

The Halt Order imposes a moratorium on evictions of certain tenants under residential leases, “subject to further extension, modification, or rescission.” *Id.* at 55,296. To qualify for protection under the Halt Order, a tenant must submit a declaration under penalty of perjury affirming that the tenant:

- (1) has used best efforts to obtain government assistance to make rental payments;
- (2) expects to earn less than \$99,000 in annual income in 2020, was not required to pay income taxes in 2019, or qualified for a stimulus check under the CARES Act;
- (3) is unable to pay full rent due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;
- (4) is using best efforts to make partial payments;
- (5) would likely experience homelessness or need to move into a shared residence if evicted;
- (6) understands that rent obligations still apply; and
- (7) understands that the moratorium was to end on December 31, 2020.

*Id.* at 55,297.

The Halt Order provides extensive background on COVID-19 and its historic threat to public health. The Halt Order notes that “[t]he virus that causes COVID-19 spreads very easily

between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks.” *Id.* at 55,293. In light of this, the Halt Order makes specific findings about the use and effectiveness of eviction moratoria in the context of a pandemic, providing that such moratoria “facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition.” *Id.* at 55,294. Further, eviction moratoria “allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19,” while also facilitating “housing stability [that] helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.” *Id.*

While the Halt Order prohibits evictions at the national level, it contains several exceptions. It provides that it “does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection” as the Halt Order’s requirements. *Id.* It does not relieve any individual of the obligation to pay rent, and nothing in the Halt Order prevents landlords from charging or collecting fees, penalties, or interest as a result of a failure to pay rent. *Id.* The Halt Order also does not preclude evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging property; (4) violating any applicable building code or other similar regulations as to health and safety; or (5) violating any other contractual obligation other than the timely payment of rent. *Id.*

The Halt Order imposes criminal penalties for those that violate its provisions: Individuals could be subject to a fine of up to \$250,000, one year in jail, or both, while organizations could be subject to a fine of up to \$500,000. *Id.* at 55,296.

The Halt Order was originally set to expire on December 31, 2020. However, prior to its expiration, Congress passed the Consolidated Appropriations Act, 2021 (the “CAA”), which extended the Halt Order an additional month until January 31, 2021. H.R. 133, 116th Cong., div. N, tit, V, § 502. Additionally, the CAA allocated \$25 billion to states to aid individuals behind on rent. H.R. 133, 116th Cong., div. N, tit, V, § 501.

On January 20, 2021, Joseph R. Biden Jr. was sworn in as President of the United States. Upon taking office, President Biden asked the CDC to consider extending the Halt Order until March 31, 2021. *Fact Sheet: President-elect Biden’s Day One Executive Actions Deliver Relief for Families Across America Amid Converging Crises*, THE WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-elect-bidens-day-one-executive-actions-deliver-relief-for-families-across-america-amid-converging-crises/>. On January 29, 2021, the Director of the CDC signed an order extending and superseding the original Halt Order. (ECF No. 93-1 at PageID 2590–603.) As it stands, the Halt Order, as extended and superseded by the CDC’s January 29th order, is in place until March 31, 2021, unless further extended, modified, or rescinded. (ECF No. 93-1 at PageID 2603.)

### **PROCEDURAL BACKGROUND**

Plaintiffs in this matter are a group of business organizations and individuals who own and/or manage residential real property in the form of multi-family apartment complexes, duplexes, townhomes, and single-family residences located within the Western District of Tennessee. (ECF No. 21 at PageID 195, 199–200.) On September 16, 2020, Plaintiffs filed their



Complaint for Declaratory Judgment and Injunctive Relief, (ECF No. 1), seeking a declaratory judgment that the Halt Order violates the Constitution and for injunctive relief to prevent Defendants from enforcing the Halt Order. On September 27, 2020, Plaintiffs filed a Motion and Application for Emergency Hearing and Preliminary Injunction. (ECF No. 12.) On October 8, 2020, Plaintiffs filed an Amended Complaint, which presents an additional claim but seeks the same relief set forth in their original Complaint. (See ECF No. 21.)

On November 6, 2020, this Court issued an Order denying Plaintiffs' Motion for Preliminary Injunction. (ECF No. 69.) In the Order, this Court found that it had jurisdiction to hear the matter but held that Plaintiffs were not entitled to a preliminary injunction because they were unable to demonstrate that they would face irreparable harm because Plaintiffs' harm was reducible to monetary damages. (*Id.* at PageID 967–71, 975–81.)

Defendants filed their Answer to First Amended Complaint (ECF No. 80), as well as the Administrative Record (ECF No. 79), on December 11, 2020. Defendants supplemented the administrative record on December 16, 2020. (ECF No. 81.)

On December 18, 2020, Defendants filed a Motion for Judgment on the Pleadings. (ECF No. 82.) In their motion, Defendants argue:

1. the Order does not violate the Administrative Procedure Act (“APA”);
2. Plaintiffs have made no allegation that could overcome the presumption that agency action is valid;
3. the Order is demonstrably not arbitrary or capricious; and
4. Plaintiffs' due process claims fail because the Halt Order: (1) passes the extremely deferential rational basis test applied to substantive due process challenges to economic

regulations; and (2) is the type of broadly applicable governmental action to which procedural due process rights do not attach. (*Id.* at PageID 2169.)

Plaintiffs also filed a Motion for Judgment on the Administrative Record on December 18, 2020. (ECF No. 84.) In their motion, Plaintiffs argue that the Halt Order exceeded the CDC's authority under the enabling statute, is arbitrary and capricious in violation of the APA, violates the procedural due process requirements of the APA, and is unconstitutional. (ECF No. 84 at PageID 2248.)

On January 15, 2021, Plaintiffs responded in opposition to Defendants' Motion for Judgment on the Pleadings. (ECF No. 88.) In their response, Plaintiffs echo the arguments included in their Motion for Judgment on the Administrative Record. (*Id.*) On the same day, Defendants filed their response in opposition to Plaintiffs' Motion for Judgment on the Administrative Record and argued that in light of congressional action, Count 1 of Plaintiffs' Amended Complaint was now constitutionally moot,<sup>2</sup> or, in the alternative, the matter should be dismissed because Congress had ratified the Halt Order. (ECF No. 87-1 at PageID 2513–18.)

On January 29, 2021, the parties filed replies to one another. (ECF Nos. 91, 92.) Both replies contained the same arguments made in the past with Plaintiffs alleging the Halt Order was both unlawful and unconstitutional and Defendants contending otherwise. On February 1, 2021, Defendants filed Notice with the Court that the Halt Order has now been extended March 31, 2021. (ECF No. 93.) On February 23, 2021, Defendants filed the supplemental administrative record which contained the information on which the CDC Director based her decision to extend the Halt Order. (ECF No. 94.) On February 25, 2021, Plaintiffs filed Notice that the United States District Court for the Eastern District of Texas had deemed the Halt Order unconstitutional under the

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2. Defendants have since withdrawn this argument. (ECF No. 93 at PageID 2587.)

Commerce Clause. (ECF No. 95.) In response, Defendants asserted that the holding of this case was irrelevant to the one before the Court because Plaintiffs did not contend that the Halt Order was unconstitutional under the Commerce Clause, and because that case did not extend beyond the parties involved in the case. (ECF No. 96 at PageID 2839.) On March 1, 2021, Plaintiffs replied that the Halt Order cannot be unconstitutional in the Eastern District of Texas but lawful in the Western District of Tennessee. (ECF No. 98 at PageID 2843.) Lastly, Plaintiffs filed Notice of the decision of the United States District Court for the Northern District of Ohio on March 12, 2021. (ECF No. 100.) Defendants responded that same day. (ECF No. 101.) At a status conference today, March 15, 2021, the parties confirmed that the American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021), (the “Rescue Act”) does not extend the Halt Order.

#### **STANDARD OF REVIEW**

As an initial matter, the Court notes what appears to be a discrepancy between the parties. Plaintiffs have titled their Motion “Plaintiffs’ Motion for Judgment on the Administrative Record,” (ECF No. 84) and ask that the Court review the Halt Order under the APA. (ECF No. 84-1 at PageID 2257–59.) Defendants, on the other hand, title their Motion “Defendants’ Motion for Judgement on the Pleadings,” which asks the Court to review the Halt Order under the standard set forth under Federal Rule of Civil Procedure 12(c). (ECF No. 82-1 at PageID 2191–92.) In reality, there is not much daylight between the two sides for the Court’s review: Under either a Rule 56 motion or a Rule 12(c) motion, the standard of review is the same when it comes to agency action. *See Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993) (“[T]here is no real distinction in this context between the question presented on a 12(b)(6) motion and a motion for summary judgment.”). When reviewing agency action, the district court “sits as

an appellate tribunal,” *see Rempfer v. Sharfstein*, 583 F.3d 860, 865 (D.C. Cir. 2009), and the question before it “is a question of law, and only a question of law.” *Shalala*, 988 F.2d at 1226.

The Court reviews the propriety of agency action under the Administrative Procedure Act (“APA”). *See Freeman v. United States Dep’t of Labor*, 653 F. App’x 405, 409 (6th Cir. 2016).

[T]he reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; . . . .

5 U.S.C. § 706(2); *see also Bangura v. Hansen*, 434 F.3d 487, 502 (6th Cir. 2006) (“The APA directs courts to review agency actions under a deferential standard. A court may not set aside or hold unlawful an agency action unless that action is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” (internal citations omitted)). An agency’s interpretation of a statute “is entitled to deference, but the courts are the final authorities on issues of statutory construction. They must reject administrative constructions of the statute . . . that are inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement.” *Fed. Election Comm’n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 31–32 (1981) (internal citations omitted).

### **DISCUSSION**

This is no ordinary case. The task at hand, statutory construction of the Public Health Act and scrutiny of the Halt Order under the Administrative Procedure Act, is not unusual per se, but the circumstances precipitating it are rather extraordinary. Prompted by the worst pandemic in

more than a century, the Executive and Legislative branches of two different Administrations and two different Congresses have played ping pong, if not “hot potato,” with an eviction moratorium spanning two different years, impacting the lives and property of thousands of souls in ways never before experienced in the history of the United States.

The “on-again, off-again” activity between the Legislative and Executive Branches of Government has made adjudication of the Halt Order something of a “greased pig.” No sooner may courts get a grasp than it slips away. From the CARES Act to Executive Order to the Consolidated Appropriations Act, 2021 to and back Executive Order, the Halt Order (or its equivalent) has been embraced at various times as executive action, legislative action, or both. But it has never been made law.

One hundred and three years ago this month, in 1918, the last great flu epidemic began. And, just last week, Congress enacted its latest version of pandemic relief, the Rescue Act. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021). The Rescue Act provides over \$20 billion to underwrite rental assistance, but it does not extend the moratorium on evictions. Whereas Defendants previously asserted Congress had ratified the Halt Order under the Consolidated Appropriations Act, 2021 (ECF No. 87-1 at PageID 2516–18), any such ratification was of limited duration, and now the opposite appears true. Either Congress no longer embraces the Halt Order, or Congress feels it has served its purpose. The Halt Order will apparently come to its end, as we hope this pandemic is also finally coming to its end; however, if recent history is any guide, additional executive action might occur or is at least capable of repetition.

As the Sixth Circuit has recently said, “[w]hile the law may take periodic naps during the pandemic, we will not let it sleep through one.” *Maryville Baptist Church, Inc., et al. v. Beshear*,

957 F.3d 610, 615 (6th Cir. 2020).<sup>3</sup> Therefore, the Court must adjudicate the request for declaratory relief.

**I. 42 U.S.C. § 264 does not authorize the Halt Order.**

The question has been presented, and it is thus necessary to decide, whether the Court must declare *ultra vires*, and set aside, the Halt Order—the original CDC action at issue. “The Administrative Procedure Act . . . prohibits agencies from taking action ‘in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.’” *Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1037 (6th Cir. 2018) (citing 5 U.S.C. § 706(2)(C)). It is for the Court to determine and declare whether the Halt Order is:

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege or immunity; [or]
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right .

...

5 U.S.C. § 706(2)(A)–(C).

Though much has recently been made by other litigants in other courts concerning similarly alleged constitutional violations or the absence of same, this Court seeks to avoid constitutional entanglement altogether by construing the statute narrowly at the outset as it was written for the

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3. Similarly, in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020), the Supreme Court said, “But even in a pandemic, the Constitution cannot be put away and forgotten.” The *per curiam* opinion went on to explain that relief was warranted because “[i]t is clear that this matter is not moot” and because the applicants remained under “constant threat” that the local government could again reimpose the challenged action. *Id.* at 68–69; *see also id.* at 72 (Gorsuch, J., concurring) (“The parties before us have already shown their entitlement to relief. Saying so now will establish clear legal rules and enable both sides to put their energy to productive use, rather than devoting it to endless emergency litigation. Saying so now will dispel, as well, misconceptions about the role of the Constitution in times of crisis, which have already been permitted to persist for too long.”).

limited purpose for which it was designed. “A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988); *United States v. Green*, 654 F.3d 637, 646 (6th Cir. 2011).

The statute provides:

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. **For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.**

42 U.S.C. § 264(a) (emphasis added).

The regulation promulgated thereunder provides:

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession, **he/she may take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.**

42 C.F.R. § 70.2 (emphasis added).

Defendants contend the statute permits the CDC Director to do whatever is necessary to prevent the spread of communicable disease. (ECF No. 82-1 at PageID 2194–97.) That is not the case. The plain meaning of the statute limits the agency’s authority. If it did not do so, it would likely amount to an unconstitutional delegation of authority by Congress in violation of the non-delegation doctrine under Article 1 Section 1. This Court avoids this constitutional conundrum by construing the statute as written under norms of traditional statutory construction for this reason.

The statute clearly limits the agency’s authority under the context of “Quarantine” set forth in the enabling language of the Public Health Act to those measures enumerated and others like them. *See* 42 U.S.C. § 264(a). These measures do not include moratoria on evictions.

“[The] Court does not revise legislation . . . just because the text as written creates an apparent anomaly[.]” *Michigan v. Bay Mills Indian Cmty.*, 572 U. S. 782, 794 (2014). Here we have an apparent anomaly; not because of the text of the statute as written, but because the CDC has historically confined its actions to those traditionally associated with quarantine as defined by law.<sup>4</sup>

“[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing, but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover.” *Lynch v. Alworth-Stephens Co.*, 267 U.S. 364, 370 (1925) (citation and internal quotations omitted).

The Court does not minimize the gravity of the pandemic nor the exigency of this hard case. It is noteworthy, however, that Congress has neither acted to amend the Public Health Act, the CARES Act, nor provided for an ongoing moratorium on evictions as recently as the adoption of the Rescue Act last week. It is not the Court’s role to revise the Public Health Act nor any subsequent legislation through its own ingenuity when Congress could do so through legislation instead. Judicial restraint is the order of the day. Alexander Hamilton quoted Montesquieu in *Federalist No. 78* for good reason: “There is no liberty if the power of judging be not separated from the legislative and executive powers.” *The Federalist No. 78*, at 379–80 (Alexander Hamilton) (Dover ed., 2014). This Court respects and maintains that separation.

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4. Ironically, the last public health event prompting a response of this magnitude by the CDC was the quarantine imposed during the influenza pandemic of 1918. But the Halt Order is not a quarantine, and it is nothing like anything the CDC has ever undertaken.



Fortunately, traditional rules of statutory interpretation make this possible because to read the language otherwise ignores important canons of statutory construction — *noscitur a sociis*, *ejusdem generis*, Constitutional avoidance, and absurd results — among others. In the recent case of *Donovan v. Firstcredit, Inc.*, 983 F.3d 246 (6th Cir. 2020), construing the Fair Debt Collection Practices Act, the Sixth Circuit once again makes clear, “[t]he traditional canons of statutory interpretation are useful in determining whether the statutory text is susceptible to more than one **reasonable** interpretation.” *Donovan*, 983 F.3d at 256 (emphasis added) (citing *United States v. Miller*, 734 F.3d 530, 541 (6th Cir. 2013)). “[T]he question whether a statute is ambiguous arises after, not before, a court applies traditional canons of interpretation[.]” *OfficeMax, Inc. v. United States*, 428 F.3d 583, 592 (6th Cir. 2005); *Donovan*, 983 F.3d at 256.

Plaintiffs contend the CDC Director is limited to the types of measures to be undertaken. (ECF No. 84-1 at PageID 2265–69.) Defendants contend she is not. (ECF No. 82-1 at PageID 2194–201.) Therein lies the rub. Plaintiffs’ interpretation is the more reasonable. If the Director were not limited in his or her authority, why list any specific examples of measures within that authority? Why not simply provide the Director “is authorized to make and enforce such regulations as in [her] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases.”? In other words, Defendants’ theory renders the limitations of the statute—*e.g.* inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals, or articles to be so infected or contaminated—superfluous or surplusage which must be resisted. *See Yates v. United States*, 574 U.S. 528, 543 (2015).

In *Yates v. United States*, the Supreme Court was confronted with construction of the term “tangible object;” specifically, whether a small fish was a tangible object within the meaning of the Sarbanes-Oxley Act prohibiting tampering with “any record, document, or tangible object” in

an attempt to obstruct a federal investigation. *Yates*, 574 U.S. at 531–32. Did it refer to “something similar to records or documents” or, alternatively, “colonial farmhouses, crocodiles, or fish” instead? Justice Ginsburg wrote:

We resist a reading of §1519 that would render superfluous an entire provision passed in proximity as part of the same Act.

The words immediately surrounding “tangible object” in §1519—“falsifies, or makes a false entry in any record [or] document”—also cabin the contextual meaning of that term. As explained in *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995), we rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.” In *Gustafson*, we interpreted the word “communication” in §2(10) of the Securities Act of 1933 to refer to a public communication, rather than any communication, because the word appeared in a list with other words, notably “notice, circular, [and] advertisement,” making it “apparent that the list refer[red] to documents of wide dissemination.” And we did so even though the list began with the word “any.”

The *noscitur a sociis* canon operates in a similar manner here. “Tangible object” is the last in a list of terms that begins “any record [or] document.” The term is therefore appropriately read to refer, not to any tangible object, but specifically to the subset of tangible objects involving records and documents, *i.e.*, objects used to record or preserve information....

A canon related to *noscitur a sociis*, *eiusdem generis*, counsels: “[W]here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” In *Begay v. United States*, 553 U.S. 137, 142-143 (2008), for example, we relied on this principle to determine what crimes were covered by the statutory phrase “any crime . . . that . . . is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another[.]” The enumeration of specific crimes, we explained, indicates that the “otherwise involves” provision covers “only *similar* crimes, rather than *every* crime that ‘presents a serious potential risk of physical injury to another.’” Had Congress intended the latter “all encompassing” meaning, we observed, “it is hard to see why it would have needed to include the examples at all.” Just so here. Had Congress intended “tangible object” in §1519 to be interpreted so generically as to capture physical objects as dissimilar as documents and fish, Congress would have had no reason to refer specifically to “record” or “document.” The Government’s unbounded reading of “tangible object” would render those words misleading surplusage.

*Id.* at 543–46 (internal citations omitted).

The statute before this Court sets forth a narrow list of measures which may be undertaken to make and enforce regulations necessary to prevent the spread of disease. The statute authorizes the Director to undertake certain specifically enumerated acts “and other measures, as in [her] judgment may be necessary.” 42 U.S.C. § 264(a). But those “other measures” are limited by the specific examples listed. They provide the intelligible principle without which Congress’ delegation of authority in this instance would be too broad to withstand Constitutional scrutiny.<sup>5</sup> To ignore them creates surplusage which is also to be avoided.

It would not be reasonable had Congress delegated such broad authority nor could it constitutionally have done so. The CDC was given broad authority to make and enforce regulations, and the statute specifically identifies the measures to be taken. To hold otherwise would be to construe the statute so broadly as to grant this administrative agency unfettered power to prohibit or mandate anything, which would ignore the separation of powers and violate the non-delegation doctrine. The agency could not only prohibit landlords from evicting tenants (whether occupying federally supported property or not) but any “congregate activity”—*e.g.*, in-person voting, interstate and intra-state travel or mass immigration—even though it has not done so. Under Defendants’ theory, the agency could also mandate the nationwide wearing of masks even though it has not done so.

Once again from Federalist No. 78:

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can

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5. Unfortunately, the regulation does the opposite of what the statute allows. It authorizes the Director to take such measures as she deems reasonably necessary, including those specifically enumerated. 42 C.F.R. § 70.2. This is arguably broader than—or beyond—the statute’s authority. So, too, then is the Halt Order.

be valid. To deny this would be to affirm that the deputy is greater than his principle; . . . that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

The Federalist No. 78, at 380 (Alexander Hamilton) (Dover ed., 2014).

The Sixth Circuit recognizes and upholds this fundamental principle. “Just as the executive and judicial branches may not encroach on the power of Congress, Congress may not abdicate its responsibility to either of these two branches.” *Green*, 654 U.S. at 649. The Supreme Court has emphasized that “the integrity and maintenance of the system of government ordained by the Constitution mandate that Congress generally cannot delegate its legislative power to another Branch.” *Mistretta v. United States*, 488 U.S. 361, 371–72 (1989) (internal quotation marks and citation omitted). The Supreme Court has recognized that “the separation-of-powers principle, and the nondelegation doctrine in particular, do not prevent Congress from obtaining the assistance of its coordinate Branches.” *Id.* at 372. “So long as Congress ‘shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power.’” *Id.* (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)) (alteration in original); *Green*, 654 F.3d at 649.

The Court construes 42 U.S.C. § 264 narrowly in order to uphold the Separation of Powers and avoid violation of the non-delegation doctrine. Congress is vested with the sole authority to legislate. *See* U.S. Const., art. I, §§ 1, 8; *see also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1935). Under the non-delegation doctrine, “Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.” *A.L.A. Schechter Poultry Corp.*, 295 U.S. at 529. However, the non-delegation doctrine does not

keep “Congress from obtaining the assistance of its coordinate Branches.” *Mistretta*, 488 U.S. at 372; *Green* 654 F.3d at 649.

In *J.W. Hampton*, Chief Justice Taft invoked the maxim “*delegata potestas non potest delegari*”—no delegated powers shall be further delegated:

The well-known maxim “*Delegata potestas non potest delegari*,” applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law. The Federal Constitution and State Constitutions of this country divide the governmental power into three branches. The first is the legislative, the second is the executive, and the third is the judicial, and the rule is that in the actual administration of the government Congress or the Legislature should exercise the legislative power, the President or the State executive, the Governor, the executive power, and the Courts or the judiciary the judicial power, and in carrying out that constitutional division into three branches it is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power. This is not to say that the three branches are not co-ordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches in so far as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

*J.W. Hampton*, 276 U.S. at 405–06.

Construing the statute in accord with this maxim guards against the devolution of delegation otherwise lawful into a disintegration of the Separation of Powers altogether. Congress may delegate but not abdicate. Upholding the Halt Order under these circumstances, particularly where criminal sanctions are ultimately ordered by the CDC, goes too far. It would amount to an impermissible delegation by Congress authorizing the CDC to make law. As Chief Justice Taft wrote, “[t]he true distinction . . . is [] between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the

latter no valid objection can be made.” *J.W. Hampton, Jr.*, 276 U.S. at 407 (quoting *Cincinnati, Wilmington & Zanesville R.R. Co. v. Comm’r*, 1 Ohio St. 77, 88–89 (Ohio 1852)).

## **II. Congress did not permanently ratify the Halt Order.**

Defendants argue that, because Congress extended the Halt Order in the Consolidated Appropriations Act, 2021, it ratified the Halt Order. (ECF No. 87-1 at PageID 2516–18.) The Court disagrees. Congress may have done so at one point in time, but not for all time; not to the present.

Congress has “the power to ratify the acts which it might have authorized.” *United States v. Heinszen & Co.*, 206 U.S. 370, 384 (1907). This power of authorization extends to executive orders. *Muller Optical Co. v. EEOC*, 574 F. Supp. 946, 953 (W.D. Tenn. 1983) (“When the President, by executive order, has taken action that he may not have been authorized to take, Congress, in some situations, has the power to ratify the President’s actions and thus legitimize any irregularity.”) In particular, Congress may ratify an executive action where “both Houses of Congress either pass legislation appropriating funds to implement the executive order or make reference to the executive order in subsequently passed legislation.” *Id.*

While the Court makes no determination as to whether Congress could have passed the Halt Order, Defendants’ arguments are moot given the temporal limit that Congress included on the extension at that time. The Consolidated Appropriations Act, 2021 extended the eviction moratorium only through the end of January. H.R. 133, 116th Cong., div. N, tit, V, § 502. Despite the winding history of the Halt Order, it now rests within the Executive Branch, and it would no longer be effective but for executive action. As a result, it makes little sense to find that the Halt Order was permanently ratified by a Congressional extension of limited duration. In addition, a one-month extension of the Halt Order does not remedy the Constitutional infirmities of an open-

ended delegation. For these reasons, Defendants' arguments concerning ratification are unavailing.

**CONCLUSION**

The Halt Order exceeds the statutory authority of the Public Health Act, 42 U.S.C. § 264. The Halt Order is *ultra vires* and unenforceable in the Western District of Tennessee.

**IT IS SO ORDERED**, this 15th day of March 2021.

*s/ Mark S. Norris*  
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MARK S. NORRIS  
UNITED STATES DISTRICT JUDGE