

No. 21-30037

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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CHAMBLESS ENTERPRISES, LLC;  
APARTMENT ASSOCIATION OF LOUISIANA, INCORPORATED,  
Plaintiffs – Appellants,

v.

ROCHELLE WALENSKY; SHERRI BERGER;  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; MERRICK GARLAND, U.S. Attorney General; NORRIS  
COCHRAN, Acting Secretary, U.S. Department of Health and Human  
Services; CENTER FOR DISEASE CONTROL AND PREVENTION,  
Defendants – Appellees.

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On Appeal from the United States District Court  
for the Western District of Louisiana  
Honorable Terry A. Doughty, District Judge

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**PLAINTIFFS-APPELLANTS' MOTION TO EXPEDITE**

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Plaintiffs-Appellants Chambless Enterprises, LLC, and the Apartment Association of Louisiana herein request that this Court expedite the appeal of the District Court's decision denying their motion for preliminary injunction on December 22, 2020.<sup>1</sup> Plaintiffs-Appellants submit that there is good cause to expedite this appeal. In support of this motion, Plaintiffs-Appellants submit:

1. This case concerns quick-moving events that threaten to outpace judicial review unless this Court should grant Plaintiffs-Appellants' motion to expedite this appeal. For such reasons, the Eleventh Circuit recently granted a motion to expedite a pending appeal in a case raising nearly identical issues against the same defendants. *Brown v. Azar*, Case No. 20-14210 (Order granting Plaintiffs-Appellants' Motion to Expedite Appeal) (Apr. 12, 2021).

2. At issue is a national eviction moratorium order issued initially by the Center for Disease Control and Prevention (CDC) in September 2020. Temporary Halt in Residential Evictions To Prevent the

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<sup>1</sup> In conformance with Local Rule 27.4, Plaintiffs-Appellants have conferred with the opposing counsel on this motion. The government generally defers to the Court as to the scheduling of this case, but intends to file a short response to Appellants' motion outlining pertinent considerations.

Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020). The CDC has twice extended its eviction moratorium order since last fall, and the current order is set to expire on June 30, 2021.<sup>2</sup>

3. Plaintiffs-Appellants maintain that this Order exceeds the CDC's statutory and regulatory authority under 42 U.S.C. § 264 and 42 C.F.R. § 70.2 or violates the non-delegation doctrine. Additionally, the Order violates the Administrative Procedure Act because it is arbitrary capricious and because the CDC failed to comply with the APA's notice-and-comment requirements.

4. Plaintiffs-Appellants filed their complaint and motion for preliminary injunction in the Western District of Louisiana on November 12, 2020. Plaintiffs-Appellants requested expedited briefing on their preliminary injunction motion. In response, Judge Terry Doughty shortened the default briefing schedule. *See Chambless Enterprises, LLC, et al. v. Robert Redfield, et al.*, 3:20-cv-01455-TAD-KLH, Doc. No. 17 (Nov.

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<sup>2</sup> See Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19 (Jan. 29, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-01292021.pdf>; Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19 (Mar. 28, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf>.

18, 2020). Thereafter, Judge Doughty issued a decision denying the motion for preliminary injunction on December 22, 2020—just nine days before the September 4, 2020, Order was set to expire on December 31, 2020. Plaintiffs-Appellants initiated this appeal on January 22, 2021, once it became clear that the CDC would be re-issuing its eviction moratorium order.

5. Prompt review is essential given the national importance of the questions presented and the temporary nature of the emergency restrictions at issue, which might otherwise expire before Petitioners have an opportunity to have their case decided on the merits.

6. This case raises important questions concerning the CDC's statutory authority to impose a moratorium on all evictions in the nation, whether Congress unconstitutionally delegated lawmaking power to the agency, and whether the CDC defied the requirements of the APA in adopting the moratorium. Underscoring the seriousness of these questions, three district courts have held the moratorium invalid, and the Sixth Circuit Court of Appeals has signaled that the Government is unlikely to prevail on the merits of its appeal of one of those decisions. *See Terkel v. CDC*, No. 6:20-CV-00564, 2021 WL 742877, at \*2 (E.D. Tex.

Feb. 25, 2021); *Skyworks, Ltd. v. CDC*, No. 5:20-CV-2407, 2021 WL 911720, at \*1 (N.D. Ohio Mar. 10, 2021); *Tiger Lily, LLC v. United States Dep't of Hous. & Urb. Dev.*, No. 2:20-CV-02692-MSN-ATC, 2021 WL 1171887, at \*1 (W.D. Tenn. Mar. 15, 2021); *Tiger Lily, LLC v. United States Dep't of Hous. & Urb. Dev.*, No. 21-5256, 2021 WL 1165170, at \*1 (6th Cir. Mar. 29, 2021).

7. If this case is not expedited there is a significant risk that the important questions in this case will evade judicial review. This result is even more likely in this case given that the District Court issued a decision this week to stay further proceedings on the merits pending resolution of this appeal. *Chambless Enterprises LLC v. Redfield*, No. 3:20-CV-01455-TAD-KDM, Doc. No. 52 (Apr. 19, 2021). Appellants opposed the Government's motion to stay District Court proceedings on the ground that it would "reduce the chances that [the Government] will have to defend the CDC's Order on the merits." Doc. No. 47, (Feb. 26, 2021).

8. Plaintiffs-Appellants submit that it is in the interest of all parties to have a decision in this matter as soon as practicable to provide

clarity as to whether the CDC can further extend its moratorium orders through the course of the pandemic.

9. Finally, so long as the moratorium remains in place, Appellants are suffering irreparable harm because they face the prospect of \$200,000 in fines and potential jail time if they should violate CDC's unconstitutional order by exercising their rights (protected by Louisiana law) to evict non-paying tenants. AOB at 56-63.

For the foregoing reasons, Plaintiffs-Appellants ask this Court to expedite their appeal and to schedule this case for oral argument as soon as practicable following conclusion of the current briefing schedule.

DATED: April 23, 2021.

Respectfully submitted,

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DATED: April 23, 2021.

s/ Luke A. Wake  
LUKE A. WAKE

*Attorney for Plaintiffs – Appellants*

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