

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

LAUREN TERKEL; PINEYWOODS ARCADIA  
HOME TEAM, LIMITED; LUFKIN CREEKSIDE  
APARTMENTS, LIMITED; LUFKIN  
CREEKSIDE APARTMENTS II, LIMITED;  
LAKERIDGE APARTMENTS, LIMITED;  
WEATHERFORD MEADOW VISTA  
APARTMENTS, L.P.; MACDONALD PROPERTY  
MANAGEMENT, L.L.C.,

Plaintiffs-Appellees,

v.

CENTERS FOR DISEASE CONTROL AND  
PREVENTION; ROCHELLE P. WALENSKY, in  
her official capacity as Director of the Centers for  
Disease Control and Prevention; SHERRI A.  
BERGER, in her official capacity as Acting Chief of  
Staff for the Centers for Disease Control and  
Prevention; UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES; XAVIER  
BECERRA, Secretary, U.S. Department of Health  
and Human Services; UNITED STATES OF  
AMERICA,

Defendants-Appellants.

No. 21-40137

**APPELLANTS' MOTION TO DISMISS APPEAL VOLUNTARILY**

Pursuant to Federal Rule of Appellate Procedure 42(b), the government respectfully moves to dismiss its appeal in this case. The government also asks that the case be removed from the October 6 calendar.

1. Plaintiffs challenged a temporary moratorium on certain residential evictions that was issued and extended by the Centers for Disease Control and Prevention (CDC) to curb the interstate spread of COVID-19. In separate litigation, the eviction moratorium has been vacated nationwide. The moratorium is thus no longer in effect, and the government is moving to dismiss its appeal in this case voluntarily.

The separate litigation is *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.* (*AAR*). In that case, the district court held that the CDC lacked statutory authority to impose the eviction moratorium and vacated the moratorium on a nationwide basis, *AAR*, 2021 WL 1779282 (D.D.C. May 5, 2021), but stayed its judgment pending appeal, *AAR*, 2021 WL 1946376 (D.D.C. May 14, 2021). After multiple rounds of motion practice before the D.C. Circuit and Supreme Court, the Supreme Court granted the plaintiffs' application to vacate the stay of the district court's judgment. *AAR*, 2021 WL 3783142, at \*1 (U.S. Aug. 26, 2021). As a consequence of the Supreme Court's order, the district court's judgment vacating the eviction moratorium nationwide took effect.

In light of the Supreme Court's ruling, the CDC moved unopposed to voluntarily dismiss its D.C. Circuit appeal. *See AAR*, No. 21-5093, Doc. No. 1912554 (D.C. Cir. Sept. 2, 2021). The D.C. Circuit granted the government's motion, dismissed the appeal, and issued the mandate. *See AAR*, No. 21-5093, Doc. Nos. 1912768, 1912769 (D.C. Cir. Sept. 3, 2021). Thus, the district court's judgment in *AAR* is final and binding on the CDC. Because the CDC is bound by the final

judgment in *AAR* vacating the challenged eviction moratorium on a nationwide basis, there is no longer a moratorium for the plaintiffs here to challenge. *See, e.g., Moore v. Louisiana Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014) (dismissing as moot challenge to statutory provision where another court invalidated the provision in another case brought by different plaintiffs). Indeed, the plaintiffs in *Chambless Enterprises, LLC v. Walensky*, No. 21-30037 (5th Cir.), moved to voluntarily dismiss their appeal, which challenged the same eviction moratorium (and which, like this case, was calendared for October 6).

2. Plaintiffs asked the government to state their position as follows:

Appellees oppose the terms of Appellants' Fed. R. App. P. 42(b) dismissal motion because the federal government refuses to be bound by the trial court's final judgment should dismissal be granted. As Appellees will further explain in their response in opposition, the federal government declined to agree to not seek to vacate the judgment below or in any way attack the finality of the trial court final judgment despite Appellees unequivocally prevailing at the lower court. Additionally, Appellees do not agree that both sides should bear their own costs on appeal.

In light of plaintiffs' concerns, we are making clear that the government is seeking here only to dismiss its own appeal. We are not asking this Court to vacate the district court's judgment. However, we reserve the right to make such a request of the district court, because the district court relied on a theory that Congress lacked Article I power to impose an eviction moratorium, but the Supreme Court's reasoning in *AAR* assumed that Congress has the authority to impose an eviction moratorium through specific legislation. *See AAR*, 2021 WL 3783142, at \*4 ("If a federally

imposed eviction moratorium is to continue, Congress must specifically authorize it.”).

Respectfully submitted,

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ALISA B. KLEIN

*s/ Brian J. Springer*  
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September 2021

### **CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 609 words. This motion also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

*s/ Brian J. Springer*  
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Brian J. Springer

**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2021, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Fifth 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*  
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Brian J. Springer