

## The CDC's Eviction Moratorium: The Government Responds

Articles, COVID 19: Answers to Business Challenges, News August 24, 2021

Aaron J. Walayat, Esq., [awalayat@tuckerlaw.com](mailto:awalayat@tuckerlaw.com), (412) 594-3935

Yesterday, I wrote that Chief Justice John Roberts required the government to respond to Plaintiffs' application to vacate (that is, remove) the stay on the District Court's order which found the Centers for Disease Control and Prevention's (CDC) eviction moratorium unlawful. The Chief Justice's deadline was August 23, 2021 by noon.

The government filed its response brief. There's nothing in the response that's particularly unexpected. Notably, however, the government stated that "[t]he August Order is more targeted than the original order and its extensions, but rests on the same statutory authority to 'make and enforce such regulations as in [the agency's] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases \*\*\* from one State or possession into any other State or possession.'" [1] As I wrote here, the new moratorium suffers from the same problems as the previous moratorium in the sense that it relied on the same interpretation of the Public Health Service Act, so it is interesting to see the government acknowledge that the newer, and purportedly narrower, August moratorium, relies on the same statutory interpretation as the previous moratorium.

The government's brief focuses its argument on Plaintiffs' inability to meet the admittedly high bar to vacate a stay. Namely, the Plaintiffs bear the burden of proof to show 1) a likelihood of success on the merits; 2) that the Plaintiffs will be irreparably injured unless they get the stay; 3) whether removing the stay will substantially injure other interested parties; and 4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 425-426 (2009). The government's argues that the Plaintiffs have not shown a likelihood of success on the merits and that the balance of equities (that the stay harms Plaintiffs more than removing the stay would harm other interested parties) is not in Plaintiffs' favor.

Finally, I noted in my last article that it would be interesting to see how the government would respond to Plaintiffs' argument that the moratorium was "political gamesmanship," based on certain statements made by President Biden. The government does not respond to this argument at length, but it did respond by stating that:

The Executive Branch does not defy 'the rule of law,' by adopting a policy that it reasonably believes to be a lawful and urgently needed response to an unprecedented public emergency, even if there are indications that this Court may ultimately disagree. That is especially true where, as here, those indications are found in a short concurring opinion and four unexplained dissenting votes that were case in a preliminary posture — and in a decision that preceded material changes to the order itself and a dramatic worsening of the pandemic conditions to which it responds.[2]

This response does not spend much time refuting the Plaintiffs' accusations, but this is to be expected as the weight of the argument will focus mainly on the four factor test that Plaintiff bears the burden of showing in order to vacate the stay. For more information on the Eviction Moratorium and other COVID-19 business solution topics, contact Aaron Walayat at [awalayat@tuckerlaw.com](mailto:awalayat@tuckerlaw.com). You can also access Tucker Arensberg's recent articles regarding pandemic business solutions at <https://www.tuckerlaw.com/category/covid-19-answers-to-business-challenges>

---

[1] Response in Opposition to Applicants' Emergency Application to Vacate the Stay Pending Appeal Issued by the United States District Court for the District of Columbia at pg. 2.

[2] Id. at pg. 34.