

LEGAL ALERT

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RECENT FEDERAL COURT OPINIONS CALL INTO QUESTION THE LEGALITY OF THE CDC'S FEDERAL EVICTION MORATORIUM

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The Centers for Disease Control and Prevention's (CDC's) federal moratorium for residential evictions, which was set to expire on March 31st, was just extended through the end of June. A recent trend in federal cases may put an end to this moratorium on the basis that the CDC exceeded its authority by extending the eviction moratorium.

The federal eviction moratorium was first implemented legislatively through the CARES Act in March 2020. Since then, it has been extended both by Congress and the CDC. Congress clearly has the authority to issue a national eviction moratorium, but the last two extensions were implemented by the CDC. This begs the question, does the CDC have the authority to implement a national eviction moratorium? At least two district courts say no.

The Northern District of Ohio analyzed whether the CDC had this authority in the context of the moratorium that was set to expire at the end of March. In *Skyworks, LTD., et al v. Centers for Disease Control and Prevention, et al*, a collection of landlords, property managers, and a trade association brought various challenges to the authority of the CDC to issue the moratorium. No. 5:20-cv-02407 (N.D. Ohio Mar. 10, 2021). The court held that by issuing a national eviction moratorium, the CDC exceeded the authority Congress gave it in the Public Health Service Act and found the action unlawful. Notably, the court denied the Plaintiffs' request for injunctive relief because it viewed their harm as being redressable through monetary damages.

The Western District of Tennessee faced a similar challenge in *Tiger Lily, LLC, et al v. United States Department of Housing and Urban Development, et al*, No. 2:20-cv-02692 (W.D. Tenn. March 15, 2021). Here, the court also held that the CDC's moratorium exceeded its statutory authority under the Public Health Service Act and rendered it unenforceable in the Western District of Tennessee. Defendants filed an Emergency Motion for Stay Pending Appeal and Immediate Administrative Stay with the Sixth Circuit. The Sixth Circuit denied this motion on the basis that the government is unlikely to succeed on the merits of the case. No. 21-5256 (6th Cir. March 29, 2021). In dicta, the Sixth Circuit made it clear that it believed the CDC was acting beyond its authority.

As of yet, the *Skyworks* decision has not been appealed. The Defendants' in *Tiger Lily* can still, and presumably will, move forward with their appeal of the district court opinion. This will be heard by the Sixth Circuit Court of Appeals. The Defendants also have the option of appealing the denial of the Emergency Motion to Stay to the U.S. Supreme Court. At this point, no such appeal has been taken.

WHAT TO EXPECT:

While these two district court opinions are a win for landlords, their practical application may be more limited than expected. Federal case law is typically non-binding on state courts. At this point, it will be left to state courts to decide whether to follow suit. This is especially true, considering recent Department of Justice guidance stating that the *Skyworks* opinion only applies to the parties of the case. The Toledo Housing Court, for example, announced it would be restarting eviction proceedings in light of the *Tiger Lily* decision. Akron and Mansfield have also announced that they will be restarting evictions, but Cleveland is continuing to follow the CDC moratorium.

Expect more cases challenging the CDC's authority to issue a national eviction moratorium and stay alert as these district court cases move through the appellate process.

Remember that Congress does have the authority to issue a national eviction moratorium. As the CDC-issued moratorium works its way through the courts, Congress may choose to act rendering this discussion moot.

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