

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APARTMENT ASSOCIATION OF
LOS ANGELES COUNTY, INC., d/b/a/
“APARTMENT ASSOCIATION OF
GREATER LOS ANGELES,”

No. 20-56251

v.

CITY OF LOS ANGELES, et al

Defendants

ALLIANCE OF CALIFORNIANS FOR
COMMUNITY EMPOWERMENT
ACTION

Intervenors

**AMICUS CURIAE NATIONAL HOUSING LAW PROJECT’S
MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

I. Relief Requested

Amicus Curiae National Housing Law Project (NHLP) requests leave to file a brief of amicus curiae in support of the Defendants/Appellees and Intervenors, seeking an order to affirm the denial of a preliminary injunction in this matter. All parties have consented to the filing of the proposed amicus brief.

II. Identity & Interest of Amicus Curiae NHLP

The National Housing Law Project (NHLP) is a nonprofit organization that works to advance tenants’ rights, increase housing opportunities for underserved communities, and preserve and expand the nation’s supply of safe and affordable

1 homes. NHLP pursues these goals primarily through technical assistance and
2 support to legal aid attorneys and other housing advocates. NHLP coordinates the
3 Housing Justice Network, a collection of more than 1,600 legal services attorneys,
4 advocates, and organizers from around the country that has shared resources and
5 collaborated on significant housing law issues for over 40 years. Since 1981 NHLP
6 has published *HUD Housing Programs: Tenants' Rights*; commonly known as the
7 “Greenbook,” it is seminal authority on the rights of HUD tenants and program
8 participants. NHLP also plays a key role in California as an IOLTA-funded
9 support center, providing technical assistance to attorneys at legal services
10 organizations throughout the state.
11

12 **III. Statement of Reasons the Amicus Brief Would Be Desirable**

14 Since the onset of the Covid-19 emergency, NHLP has been at the forefront
15 of efforts across the United States to protect tenants against eviction and
16 displacement related to the pandemic and its economic fallout. NHLP staff have
17 advocated for state and federal eviction restrictions and other housing protections,
18 as well as for funding to support both tenants and landlords, created resources to
19 help tenants and advocates exercise rights and protections, supplied training to a
20 broad constellation of stakeholders, and organized advocates both to seek judicial
21 enforcement of restrictions on behalf of tenants and to respond effectively and
22 defend against challenges to tenant protections.
23
24

1 Through its extensive work on these issues at the national level, NHLP has
2 gained perspective into both the national scope of the eviction crisis and its relative
3 magnitude with respect to California. Covid-19 and its economic fallout threatens
4 mass evictions everywhere—but with the high costs of housing in California and
5 the difficulties households faced with rent burden even before the pandemic
6 arrived, mass evictions could truly drive tenants into encampment settings where
7 the risk of communicable disease transmission is dire. Amicus NHLP believes this
8 is a significant factor relevant to the public interest at stake in the pending motion
9 for preliminary injunction, which no party fully addresses.
10

11 NHLP’s national work has provided insights on the significant differences in
12 outcomes that have resulted from seemingly minor variations in coverage,
13 terminology, procedural requirements, or other specific details of eviction
14 restrictions and moratoriums. NHLP has also observed the kinds of practical
15 difficulties Covid-19 and the attendant social distancing requirements, as well as
16 the myriad new procedures and substantive tenant protections have raised for
17 hearing and deciding residential eviction cases in a fair and meaningful manner
18 that reliably affords procedural due process.
19

20
21 The real world consequences of eviction rules, and the ways in which
22 pandemic conditions threaten due process in housing court, are relevant
23 considerations the parties have not been able to fully present. Amicus NHLP
24

1 believes the Court would benefit from its unique perspectives and information on
2 the matters above, and therefore respectfully requests that the Court approve this
3 request to submit an amicus brief setting forth these concerns in detail.

4 **IV. Conclusion**

5
6 For the foregoing reasons, the Court should grant leave for Amicus National
7 Housing Law Project to file its proposed Brief of Amicus Curiae.

8
9 Respectfully submitted this 21st day of January, 2021, by:

10 /s/Eric Dunn

11 Eric Dunn

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No. 20-56251

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC.,
d/b/a “APARTMENT ASSOCIATION OF GREATER LOS ANGELES
Plaintiff-Appellant

v.

CITY OF LOS ANGELES, ERIC GARCETTI in his official capacity as Mayor of
Los Angeles, CITY COUNCIL OF THE CITY OF LOS ANGELES in its official
capacity; DOES 1 through 25 inclusive
Defendants-Appellees

ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT
ACTION and STRATEGIC ACTIONS FOR A JUST ECONOMY,
Intervenors

On appeal from the U.S. District Court for the Central District of California,
Hon. Dean D. Pregerson, U.S. District Judge,
Cause No. 2:20-CV-05193-DDP-JEM

**BRIEF OF AMICUS CURIAE NATIONAL HOUSING LAW PROJECT
IN SUPPORT OF APPELEES AND INTERVENORS**

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CORPORATE DISCLOSURE STATEMENT

The National Housing Law Project (NHLP) is a nonprofit organization; NHLP has no parent corporation or any publicly held corporation that owns 10% or more of its stock. NHLP is not aware of any publicly traded corporation that has an interest in the outcome of this case.

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CERTIFICATIONS UNDER RAP 29(a)(4)(E)

Amicus NHLP certifies, based on Rule of Appellate Procedure 29(a)(4)(E), that:

1. No party or party's counsel authored this brief in whole or in part.
2. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief.
3. No person or entity other than Amicus NHLP, its staff, and its counsel contributed money that was intended to fund the preparation or submission.

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The National Housing Law Project (NHLP) is a nonprofit organization that advances housing justice for poor people and communities, predominantly through technical assistance and training to legal aid attorneys and through co-counseling on important litigation. NHLP works with organizers and other advocacy and service organizations to strengthen and enforce tenants' rights, increase housing opportunities for underserved communities, and preserve and expand the nation's supply of safe and affordable homes.

NHLP coordinates the Housing Justice Network, a collection of more than 1,600 legal services attorneys, advocates, and organizers from around the country. The network has actively shared resources and collaborated on significant housing law issues for over 40 years, including through a dynamic listserv, working groups, and a periodic national conference. The procedural due process rights of tenants facing eviction from rental housing is a fundamental concern of NHLP and of the HJN network, and a fixture in professional discussions and training workshops.

In addition to various other publications and training materials, since 1981 NHLP has published *HUD Housing Programs: Tenants' Rights*. Commonly known as the "Greenbook," this volume—now on its fifth edition and regularly supplemented between editions—is known as the seminal authority on HUD tenants and program participants' rights by tenant advocates and other housing

professionals throughout the country. The procedural rights and protections due to tenants facing eviction are a central focus of the Greenbook, as well as the Housing Justice Network and its member advocates.

NHLP plays a key role in California as an IOLTA-funded support center, providing technical assistance to attorneys at legal services organizations throughout the state.

Since the arrival of Covid-19, NHLP has been a leader in the fight against pandemic-related evictions, including by seeking imposition of state and federal eviction restrictions and funding for rental assistance, creating resources to help enforce tenant protections, and providing training to a broad constellation of stakeholders.

This brief is submitted pursuant to leave requested by accompanying motion.

II. SUMMARY OF ARGUMENT

While the Covid-19 pandemic has taken over 394,400 lives in the United States¹ and over 32,960 in California,² the related economic disruption has left millions of renters behind in rent and fearing eviction. An estimated 16.9 million California households (more than half the state's 29.9 million households) have

¹ See Centers for Diseases Control & Prevention, CDC Covid Data Tracker, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days, last visit Jan. 19, 2021

² See CDC Covid Data Tracker, *supra* note 1.

lost employment income since March 13.³ Over 1.9 million are behind in rent,⁴ with more than 1 million expecting (between Dec. 9-21) to face eviction within two months.⁵

Evictions on such a large scale would mean devastating consequences not only for those tenants but also their employers, schools, and communities. During a pandemic, when social distancing and vigilant hygiene are imperative, such a wave of evictions would be ruinous. Los Angeles Ordinance No. 186585, which temporarily restricts certain residential evictions during the local emergency period, is a direct and practical response to this threat; the district court properly denied Appellant's motion to preliminarily enjoin it.

Importantly, Ordinance No. 186585 does not require struggling tenants to submit sworn declarations, pay partial rent, or meet complicated criteria to avoid eviction. Appellants argue the omission of such provisions unreasonably interferes with landlords' contract rights. But rent requirements and procedural burdens would deter households from invoking the protection, force tenants to defend against eviction in circumstances that stress the ability of courts to reliably afford

³ U.S. Census Bureau, Week 21 Household Pulse Survey (Jan. 6, 2021), Employment Table 1; all tables at: <https://www.census.gov/data/tables/2020/demo/hhp/hhp21.html>

⁴ Week 21 Household Pulse Survey, Housing Table 1b.

⁵ Week 21 Household Pulse Survey, Housing Table 3b.

procedural due process, and simply leave other tenants behind. A simple eviction moratorium free of such obstacles and impediments is critical to preventing displacements, and thereby protecting the public health broadly throughout L.A. and beyond.

III. ARGUMENT

Los Angeles Ordinance No. 186585 is a practical and rational measure to assure tenants will not be evicted for financial causes, minor lease violations, or without fault during a public health emergency, particularly when full and fair access to the judicial system cannot be consistently assured.

A. Los Angeles has a compelling interest in preventing mass evictions.

Of the many economic threats from the Covid-19 pandemic, perhaps none would be more devastating than widespread evictions. A single eviction can inflict serious and long-term consequences on a family—not only loss of their home but also disrupting employment and child care arrangements, impacting children’s education, threatening or resulting in family separation, causing toxic stress and

other health effects, and often resulting in prolonged housing insecurity.⁶ These consequences then radiate further harms into the surrounding communities.⁷

In a typical year, approximately 900,000 of the roughly 43 million U.S. renter-occupied households experience judicial eviction.⁸ But the pandemic could produce evictions on an incomprehensible scale. An Aspen Institute study last summer predicted the U.S. could ultimately see between 19-23 million evictions in 2020.⁹ The U.S. Census Bureau reported on January 6, 2021, that almost 8 million tenants had no confidence in being able to make their next rent payment, with another 9.7 million having only “slight confidence.”¹⁰

In California, over 1.3 million renter households had no confidence in being able to pay their January rent, with over 1.7 million others having just slight

⁶ See Dyvonne Body et al., “A Glimpse into the Eviction Crisis: Why Housing Stability Deserves Greater Attention,” Aspen Institute (July 24, 2019), <https://www.aspeninstitute.org/blog-posts/a-glimpse-into-the-eviction-crisis-why-housing-stability-deserves-greater-attention/>

⁷ See Rilwan Babajide et al., “Effects of Eviction on Individuals and Communities in Middlesex County” (May 12, 2016), https://www.pschohousing.org/sites/default/files/2016_EvictionStudyFinalDraft.pdf

⁸ See Eviction Lab, “National Estimates: Eviction in America” (May 11, 2018), <https://evictionlab.org/national-estimates/>

⁹ See Katherine Lucas McKay, Zach Neumann & Sam Gilman, “20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship,” The Aspen Institute (Jun. 19, 2020) (predicting 19-23 million U.S. evictions by Sept. 30, 2020), <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>

¹⁰ See Week 21 Household Pulse Survey, Housing Table 2b.

confidence.¹¹ These alarming numbers mean California, like the rest of the U.S., would be experiencing an eviction crisis almost beyond description if not for the various moratoria now in place. The global consulting firm Stout estimates from 707,000 to nearly 1.5 million California renter households are at risk of eviction for nonpayment of rent.¹² According to Eviction Lab, about 77,400 evictions take place in California in a typical year;¹³ the pandemic eviction wave threatens ten or twenty times as many evictions in just a matter of weeks.¹⁴

Evictions on such a grand scale could destabilize entire neighborhoods and communities: from high absenteeism and declining test scores that threaten school

¹¹ See Week 21 Household Pulse Survey, Housing Table 2b.

¹² Stout Risius Ross, LLC, Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction, California Figures, <https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTI0TMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>, last visited Oct. 6, 2020

¹³ See Eviction Lab, California spreadsheet, <https://evictionlab.org/map/#/2016?geography=states&bounds=-138.158,25.541,-98.707,45.225&type=efr&locations=06,-117.899,35.497>

¹⁴ See Katherine Lucas McKay, Zach Neumann & Sam Gilman, “20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship,” The Aspen Institute (Jun. 19, 2020) (predicting 19-23 million U.S. evictions by Sept. 30, 2020), <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>

accreditation¹⁵ to reduced employee performance and turnover in workplaces¹⁶ to a marked increase emergency room use.¹⁷ High concentrations of housing loss during the Great Recession were shown to inflict community harms including “declining property values and physical deterioration; crime, social disorder, and population turnover; and local government fiscal stress and deterioration of services.”¹⁸ There is little reason to expect milder results from Covid-related evictions; on the contrary, the size and speed of the present crisis portends even harsher impacts. While nearly 7.8 million U.S. homeowners lost their homes to

¹⁵ See Kathryn Howell, “Eviction and Educational Instability in Richmond, Virginia,” p. 4 on-line at: <https://cura.vcu.edu/media/cura/pdfs/cura-documents/EvictionandEducationalInstabilityinRichmond.pdf>;

¹⁶ Matthew Desmond and Carl Gershenson, “Housing and Employment Insecurity among the Working Poor,” *Social Problems* at 14 (Jan. 11, 2016), on-line at: <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>;

¹⁷ Robert Collinson and Davin Reed, “The Effects of Evictions on Low-Income Households,” at 25-26 (Dec. 2018).

¹⁸ G. Thomas Kingsley, Robin Smith, and David Price, “The Impacts of Foreclosures on Families and Communities,” Urban Institute, p. 13 (May 2009), on-line at: <https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF>; see also Ingrid Gould Ellen, Ph.D., and Johanna Lacoé, “The Impact of Foreclosures on Neighborhood Crime,” p. 6 (Feb. 2015) (concentrated housing loss “increases crime (especially violent and public order crime) in the micro-neighborhoods immediately surrounding the property[.]”), on-line at: <https://www.ncjrs.gov/pdffiles1/nij/grants/248653.pdf>

foreclosure between 2007-2016,¹⁹ mass evictions could displace up to three times as many households within a matter of weeks. Schools, businesses, and other community organizations could not realistically weather such enormous, sudden displacement of their students, workers, customers, or members.

A sudden surge of mass evictions would also significantly increase local homelessness. A UCLA study predicted evictions could make about 120,000 families—including 184,000 children—homeless in L.A. County.²⁰ An increase even a fraction of that size would instantly multiply the area homeless population, counted at 66,436 persons (in greater Los Angeles) in January 2020.²¹ With even pre-pandemic homeless numbers already outstripping available shelter resources,²² considerable numbers of California’s homeless persons have resorted to living

¹⁹ See Corelogic, “United States Residential Foreclosure Crisis: Ten Years Later,” p. 3 (Mar. 2017), <https://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-10-year.pdf>

²⁰ See Gary Blasi, “UD Day: Impending Evictions and Homelessness in Los Angeles,” Luskin Center on Inequality and Democracy, pp. 18-20 (May 28, 2020), <https://escholarship.org/uc/item/2gz6c8cv>

²¹ See Los Angeles Homeless Services Authority, 2020 Greater Los Angeles Homeless Count Results (June 2020), <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results&ref=hc>

²² See Los Angeles Homeless Services Authority, 2020 Housing Inventory Count, <https://www.lahsa.org/documents?id=4659-2020-housing-inventory-count.xlsx&ref=hc>

informal encampments.²³ Many such encampments have over 100 residents and have been in place for at least one year, with over one-fourth existing longer than six years.²⁴ As the CDC recently warned, encampment settings present “inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of Covid-19.” 85 Fed. Reg. at 55292, 55295 (Sept. 4, 2020).

Indeed, residential evictions increase the transmission of Covid-19 in many different ways, including by forcing displaced tenants to double-up with extended family, float between multiple sources of emergency shelter, or live in vehicles or outdoors. *See* 85 Fed. Reg. at 55294-96. This is why “[i]n the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease.” 85 Fed. Reg. at 55294.

Recent research has confirmed that “evictions have a measurable impact on the spread of COVID-19, and . . . that policies to prevent evictions are an important component of epidemic control.”²⁵ One study compared 26 states that lifted their

²³ National Law Center on Homelessness & Poverty, “Tent City USA,” 19-21, 24 (Oct. 2018), https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf

²⁴ *Id.* at 21.

²⁵ Justin Sheen et al., Covid-19 Eviction Simulations,

local eviction moratoria to another 18 that did not; after controlling for mask orders, stay-at-home orders, school closures, testing rates, and other factors, the researchers found lifting eviction moratoria was associated with a 1.5-times higher incidence of Covid-19 after eighteen weeks.²⁶ The same study found lifting eviction moratoria was associated with higher Covid-19 mortality rates as well: 1.4 times higher after seven weeks, and 2.1 times higher after eighteen weeks.²⁷

B. Superficially modest limitations and procedural requirements can significantly reduce the efficacy of an eviction moratorium and thereby lessen its impact in protecting the public health.

Since the Covid-19 pandemic first reached the U.S., state, local, and federal governments have established eviction moratoria that have varied extensively in types of tenancies covered, types of cases restricted, specific eviction procedures affected, conditions or requirements to receive protection, clarity of terms, and means of enforcement.²⁸ Those differences have led to significant variation in the efficacy and outcomes for these moratoria. For example, Minnesota, which has had a statewide eviction moratorium that Eviction Lab rates as the most-protective

<https://github.com/alsnhll/COVID19EvictionSimulations>, last visited Oct. 22, 2020

²⁶ See Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (Nov. 30, 2020),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576

²⁷ *Id.*

²⁸ See Eviction Lab, *Covid-19 Housing Policy Scorecard*,

<https://evictionlab.org/covid-policy-scorecard/>

in the U.S.,²⁹ has seen fewer than 1,000 evictions since March 15, 2020.³⁰ In that same time period, Connecticut, with a less-protective state moratorium, has had over 2,500 evictions despite a significantly smaller renter population.³¹

At the federal level, the CARES Act imposed an eviction moratorium from March 27 and July 24, 2020. *See* 15 U.S.C. § 9058. That moratorium prevented new eviction lawsuits from being filed, but did not affect cases already pending at the time of enactment. *See* 15 U.S.C. § 9058(b). The moratorium also applied only to properties either having federal financing or participating in certain federal programs. *See Id.* Tenants often did not know and could not easily find out whether they were covered, for which reason many (but not all) states adopted court rules requiring landlords to disclose coverage or plead non-coverage before filing eviction lawsuits.³²

²⁹ *See Id.*; *see* Minnesota Executive Order 20-79 (July 14, 2020).

³⁰ *See* Eviction Lab, Eviction Tracking System, <https://evictionlab.org/eviction-tracking/>, last visited Jan. 13, 2021.

³¹ *See Id.*

³² These states were Arkansas, Georgia, Idaho, Iowa, Illinois, Michigan, New Jersey, Pennsylvania, South Carolina, Texas, and Vermont. For links to specific orders visit: <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>

For these and other reasons, significant numbers of evictions still occurred while the CARES Act moratorium was in effect.³³ Many of those evicted were tenants whom the CARES Act should have protected, but who did not know they were covered or did not have legal representation to effectively assert protection.³⁴ Those evictions likely contributed to the spread of Covid-19, as well as inflicting the other usual community harms associated with eviction.

Currently, a public health order from the Centers for Disease Control and Prevention restricts evictions for nonpayment of rent against “covered tenants.” *See* 85 Fed. Reg. at 55296. Like the CARES Act moratorium, however, only some tenants qualify; tenants must sign a sworn declaration making five key averments (such as meeting an income limit, having had a substantial loss of household income or extraordinary medical expenses, and being likely to become homeless or forced to live in “close quarters” if evicted). *See* 85 Fed. Reg. at 55297. Evictions

³³ *See, e.g.*, Jeff Ernsthausen et al., “Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic,” *Pro Publica* (Apr. 16, 2020), <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic>

³⁴ *See, e.g.*, Annie Nova, “How the CARES Act failed to protect tenants from eviction,” *CNBC.com* (Aug. 29, 2020), [https://www.cnbc.com/2020/08/29/how-the-cares-act-failed-to-protect-tenants-from-eviction.html#:~:text=The%20%242%20trillion%20CARES%20Act,Fannie%20Mae%20and%20Freddie%20Mac.](https://www.cnbc.com/2020/08/29/how-the-cares-act-failed-to-protect-tenants-from-eviction.html#:~:text=The%20%242%20trillion%20CARES%20Act,Fannie%20Mae%20and%20Freddie%20Mac.;); Rebecca Burns, “Landlords Illegally Evicting Tenants, Despite Federal Restrictions,” *The American Prospect* (Apr. 23, 2020), <https://prospect.org/coronavirus/landlords-illegal-evictions-tenants-cares-act/>

for certain reasons other than non-payment of rent are still allowed. *See* 85 Fed. Reg. at 55294. Pending eviction lawsuits are covered, but an accompanying CDC guidance document suggests its order does not prevent landlords from filing new eviction cases, either to contest a tenant's coverage or to tee-up eviction writs for rapid execution when the restriction expires.³⁵

Accordingly, evictions have still continued in substantial numbers across the U.S. even with the CDC order in effect.³⁶ Eviction Lab reported 3,675 evictions filed in the week preceding January 9, 2021, in just the five states and 27 cities for which they have data.³⁷ Indiana, with no state-level eviction restrictions, has seen more than 26,500 evictions filed even despite the CARES Act and CDC eviction moratoria.³⁸ Houston alone has had more than 20,700.³⁹

³⁵ U.S. Dept. of Health & Human Services and Centers for Disease Control and Prevention, Frequently Asked Questions re: Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19, p. 1, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>

³⁶ See Peter Hepburn and Renee Louis, "Preliminary Analysis: Shifts in Eviction Filings from the CARES Act to the CDC Order," Eviction Lab (Sept. 22, 2020), <https://evictionlab.org/shifts-in-eviction-filings-from-cares-act-to-cdc-order/>

³⁷ See Eviction Lab, Eviction Tracking System (Jan. 13, 2021), <https://evictionlab.org/eviction-tracking/>

³⁸ *See Id.*

³⁹ Eviction Lab, Houston, Texas, <https://evictionlab.org/eviction-tracking/houston-tx/>

Apart from those who fall outside the established protections, some of those evictions affect tenants who qualify but don't learn about the CDC order or how to invoke the protection.⁴⁰ Others move out to avoid acquiring eviction records that may drastically limit their access to rental housing in the future.⁴¹ Still other tenants may be erroneously denied protection, especially when they do not have legal representation.⁴² With community transmission rates now much higher than during the CARES Act moratorium,⁴³ these evictions are even more likely to contribute to the spread of Covid-19.

⁴⁰ See, e.g., Chris Arnold, "Despite A New Federal Ban, Many Renters Are Still Getting Evicted," NPR (Sept. 14, 2020), <https://www.npr.org/2020/09/14/911939055/despite-a-new-federal-ban-many-renters-are-still-getting-evicted>

⁴¹ See Allyson E. Gold, "No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants," 24 Geo. J. on Poverty L. & Pol'y 59, 66 (2016) ("One of the greatest, most debilitating consequences of a record of an eviction proceeding is the inability to secure decent, affordable housing," explaining how the creation of electronic eviction record drastically impairs a person's ability to rent future housing, irrespective of case outcome).

⁴² See, e.g., Gretchen Morgenson et al., "The CDC banned evictions for those affected by Covid. Why are tenants being thrown out on the street?" NBC News (Dec. 17, 2020) (discussing Pensacola, FL, judge who ordered multiple evictions upon finding the CDC order was an unconstitutional taking), <https://www.nbcnews.com/news/us-news/cdc-banned-evictions-those-affected-covid-why-are-tenants-being-n1251439>

⁴³ See CDC Covid Data Tracker, *supra* note 1.

California enacted a statewide eviction restriction in its Tenant, Homeowner, and Small Landlord Relief and Stabilization Act (AB 3088).⁴⁴ Like the federal moratoria discussed above, however, the California law does not protect all (or nearly all) residential tenants and contains procedural requirements will deny protection to some intended by the substantive criteria to be covered. Specifically, the California moratorium covers only tenants who failed to pay rent for reasons directly related to Covid-19. *See* CA Civ Code Sec. 1179.03. Tenants who owe rent between September 1, 2020 and January 31, 2021, must also pay at least 25% of their rent for that time period. *See* CA Civ Code 1179.03(c). The California act also requires a declaration attesting to Covid-related economic impacts, which a (unlike the CDC declaration) tenant must provide within 15 days of a landlord's notice to vacate. *See* CA Civ Code 1179.03(g). Though AB 3088 also offers a web of eviction prevention tools (including a restriction on lease termination without just cause and credit protections), without legal representation few tenants will likely know about these rights or how to exercise them. Every eviction that slips through the cracks in this moratorium risks furthering the spread of Covid-19.

Los Angeles Ordinance No. 186585 avoids many of the shortcomings found in these other eviction moratoria. The ordinance covers substantially all tenants and evictions for non-payment of rent, "no fault," or certain minor lease violations.

⁴⁴ Ch. 37, Statutes of 2020 (Aug. 31, 2020).

See LAMC 49.99.2. It applies to both pending and future cases and does not require declarations or impose other procedural obstacles upon tenants seeking protection. *See* LAMC 49.99.5. Indeed, landlords must notify tenants of the ordinance. *See* LAMC 49.99.2(E). The only provision likely to disqualify tenants is a requirement that nonpayment of rent arise from “circumstances related to the Covid-19 pandemic.” *See* LAMC 49.99.2(A).

Accordingly, far fewer tenants will forego protection under Ordinance No. 186585 because they were unaware of it, failed to comply with procedures, or failed to effectively litigate ambiguous defenses. Fewer evictions will occur, and hence the ordinance will better protect public health in Los Angeles—as well as help avoid many of the other community problems associated with mass evictions.

C. Complexities and procedural requirements in eviction moratoria exacerbate the difficulties of consistently affording due process of law to eviction defendants under pandemic conditions.

Even outside pandemic conditions, summary unlawful detainer proceedings generally provide only the minimal procedural safeguards necessary to fulfill due process requirements for tenants facing eviction from their homes. *See Lindsey v. Normet*, 405 U.S. 56, 74 (1972). Summary eviction hearings, which date back to the *actio spolii* of Roman law,⁴⁵ are characterized by their speed and efficiency—

⁴⁵ See Dr. Eric Descheemaeker, “The Consequences of Possession,” Univ. of Edinburgh School of Law, 22-23 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2302273

formal discovery limited if available at all, trials held within weeks if not days of filing, and certain defenses commonly excluded. See *Lindsey* at 85 (Douglas, J., dissenting) (“[T]his kind of summary procedure usually will mean in actuality no opportunity to be heard. Finding a lawyer in two days, acquainting him with the facts, and getting necessary witnesses make the theoretical opportunity to be heard and interpose a defense a promise of empty words.”).

California’s summary eviction procedure, which provides for some formal discovery, allows tenants at least five days to appear and up to 20 days for trial, and permits defenses such as retaliation or uninhabitable conditions, affords more procedural safeguards than most. See Cal. Civ. Proc. Code §§ 1170.5(a), 1170.7, 1174.2; Cal. Civ. Code § 1942.5; *Green v. Superior Court*, 517 P.2d 1168, 1182 (Cal. 1974); compare with *Lindsey* at 65-66 (trial within four days of suit, no discovery, and certain defenses excluded). Yet pandemic conditions alter the procedural due process calculus considerably.

The longstanding test for evaluating whether procedural due process has been afforded in a particular instance considers the importance of the interest at stake, the risk of an erroneous deprivation (of that interest), probable value of additional safeguards as well as the costs and burdens of providing them, and the governmental interests involved. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). During Covid-19, the need for a safe home in which to quarantine from

others and practice good hygiene and social distancing heightens the importance of housing. Pandemic conditions amplify the risk of erroneous eviction, both by raising impediments to preparing and presenting defenses in a hearing and by complicating the substantive law to be applied. At the same time, the ordinary governmental interest in quickly and efficiently adjudicating the present right of possession comes into tension with overriding public health considerations.

Looking more closely, the risk of infection may chill tenants or witnesses from appearing in court during a pandemic. Closures of businesses and offices may interfere with the investigation claims or gathering evidence—a particular concern where formal discovery is limited. These deterrents would be further exacerbated by a large case volume; social distancing may not be possible in a court with a large docket, crowded with parties, witnesses, and attorneys.

Rules adopted to protect public health may also impede tenants from defending. For example, currently any persons “displaying symptoms consistent with Covid-19 are prohibited from entering any [Los Angeles] court facility.” Los Angeles Superior Court Covid-19 Social Distancing Protocol (June 15, 2020). Protocols such as these may lessen fears of appearing in court, but could result in tenants, witnesses, or attorneys being denied admission to court—especially if they do not receive sufficient notice of the policies. *See Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (notice must be “reasonably calculated,

under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

Remote hearings overcome some of these difficulties, but raise other issues, such as the inability to confront and cross-examine adverse witnesses in telephonic or audio-only appearances. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (“In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”); *see* L.A. Court Connect, User Guide, 28 (Oc. 1, 2020) (“User Guide”) (allowing audio-only appearances). Even video hearings may not adequately enable a court to assess the credibility of witnesses. *See* National Center for State Courts, *Call to Action: Achieving Civil Justice for All*, Appx G, p. 3 (Jul. 15, 2020)⁴⁶ (“Examples of inappropriate situations [for video hearings] include where there are poor connections, a hearing requires reference to multiple documents, the subject matter is complex, or issues of witness credibility are involved.”). Remote hearings pose further challenges for tenants who may lack proper devices, reliable internet access, or struggle with technology. *See* User Guide, 85-89 (technical specifications for remote access).⁴⁷ L.A. Superior Court also charges litigants fees

⁴⁶ On-line at: https://www.ncsc.org/_data/assets/pdf_file/0022/25726/ncsc-cji-appendices-g.pdf

⁴⁷ On-line at: <https://www.lacourt.org/lacc/guides/laccug>

(\$15 for audio and \$23 for video) to appear remotely, which must be paid by debit or credit card. *See* User Guide at 10. The court uses a “share screen” function for presenting exhibits, which requires video and may be problematic for items not easily converted to digital files. *See* User Guide at 73.

Beyond these very real and significant practical and logistical impediments, eviction cases are substantively more complicated during Covid-19. Though the CARES Act eviction moratorium expired on July 24, 2020, that Act still requires 30 days’ written notice to evict and blocks some evictions in properties receiving forbearances on federally-backed loans. *See* 15 U.S.C. §§ 9057-58. Congress extended the CDC eviction halt order through January 31, 2021,⁴⁸ and further extensions or replacements are possible.⁴⁹ Tenants may have defenses to eviction based on relief funds their landlords have applied for or received.⁵⁰ California tenants may also have eviction protections under AB 3088. Particularly for tenants without counsel, the challenge of identifying and effectively asserting defenses to

⁴⁸ *See* Pub.L. 116-260, Sec. 502 (Dec. 27, 2020).

⁴⁹ *See* BuildBackBetter.gov, “President-elect Biden Announces American Rescue Plan,” p. 11 (Jan. 15, 2021) (“The president-elect is calling on Congress to extend the eviction and foreclosure moratoriums and continue applications for forbearance on federally-guaranteed mortgages until September 30, 2021.”)

⁵⁰ *See generally* City of Los Angeles Emergency Renters Assistance Program, <https://hcidla.lacity.org/>

eviction with such myriad emergency laws and programs being so rapidly enacted, extended, allowed to expire, or replaced, is scarcely realistic.

The *Lindsey* court relied heavily on the relative simplicity of most eviction cases in holding that summary proceedings afford procedural due process. *See Lindsey* at 65 (“Tenants would appear to have as much access to relevant facts as their landlord, and they can be expected to know the terms of their lease, whether they have paid their rent, whether they are in possession of the premises, and whether they have received a proper notice to quit....”). But few tenants would be able to effectively defend against eviction without counsel during Covid-19. Even for tenants with counsel, the various logistical challenges related to the pandemic and the vastly increased complexity of eviction matters calls into question whether due process can be consistently afforded through traditional summary proceedings.

D. A more complex eviction moratorium would neither advance public health objectives nor provide any clear net benefit to landlords.

The conditions Appellants insist must appear in an eviction moratorium, such as protecting only tenants able to pay “‘reasonable rent’ concurrent with occupancy,” or allowing evictions for violations of pet policies or unapproved guests, would lead to more evictions and thus directly undermine its public health impact. Requiring tenants to navigate procedural obstacles, such as submitting declarations or meeting deadlines, would further exacerbate the pressing due process challenges and increase the risk of tenants being evicted erroneously. With

respect to laws affecting private contracts, “courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.” *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 23 (1977), *citing East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945). Such deference is appropriate here, where Los Angeles rightly and reasonably prioritized the public health and the protection of the community over the interests of individual landlords in evicting tenants.

Allowing more evictions will not even produce any clear net economic benefit to the landlords who undertake them. The City of Los Angeles has already dispensed over \$100 million to residential landlords through its Emergency Renters Assistance Program.⁵¹ While that program had exhausted its funds, Congress recently appropriated \$25 billion in new rental relief, up to \$2.65 billion of which is allocated to California.⁵² This appropriation covers most or all of the state’s rent shortfall currently estimated at between \$1.86 and \$3.69 billion.⁵³ Because the Los Angeles program targets this assistance to families at or below 80% of the area median income,⁵⁴ households who have been unable to pay rent because of Covid-

⁵¹ See note 49, *supra*.

⁵² See Pub. L. 116-260, Sec. 501; *see also* U.S. Dept. of Treasury, Emergency Rental Assistance Program: Data and Methodology for State, Local Government, and Territory Allocations, p. 2 (Jan. 11, 2021).

⁵³ See Stout, fn 12 *supra*.

⁵⁴ See note 49, *supra*.

related financial hardships are highly likely to qualify. The availability of such substantial relief funds makes whatever economic interest landlords might have in evicting tenants during the pandemic minimal and uncertain.

IV. CONCLUSION

For all of the foregoing reasons, the Court should AFFIRM the order of the district court denying Plaintiff/Appellant's motion for preliminary injunction.

Respectfully submitted this 21st day of January 2021,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

The undersigned hereby certifies that this brief contains fewer than 6,500 words, as permitted by FRAP 32(a)(7)(B), exclusive of items exempt under FRAP 32(f). An electronic word count performed on the final version of the text reported 5,690 words.