



February 8, 2021

Matthew Colangelo
Acting Associate Attorney General
U.S. Department of Justice
Washington, D.C.

Rochelle Walensky
Director
Centers for Disease Control and Prevention
Washington, D.C.

Re: Federal Eviction Moratorium

Dear Mr. Colangelo and Dr. Walensky:

Our organizations – the American Civil Liberties Union and the National Housing Law Project – have been working to address the mass eviction crisis faced by millions of tenants through litigation and policy advocacy at the federal, state, and local levels. We write to the U.S. Department of Justice and the U.S. Department of Health and Human Services regarding alarming developments in some parts of the country that frustrate the implementation of the federal eviction moratorium, which was first issued by the Centers for Disease Control and Prevention on September 4, extended by Congress until January 31, and again extended by the CDC until March 31.¹

In the past few months, a number of small, local state courts have issued orders in eviction cases declaring that the federal moratorium is unconstitutional or otherwise invalid in their jurisdictions. We are aware of orders in Arkansas, Florida, and Georgia.² Notably, the courts

¹ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Ctrs. for Disease Control & Prevention Sept. 4, 2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Div. N., § 502 (2020); Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8,020 (Ctrs. for Disease Control & Prevention Feb. 3, 2021).

² See *Spicliff, Inc. v. Cowley*, No. 2020 CC 03778 (Fla. Escambia Cty. Ct. filed Nov. 24, 2020); *Ray v. Woodall*, No. 12CV-20-175 (Ark. Cir. Ct. Cleburne Cty. filed Dec. 8, 2020); *Stonecrest Apartments, LLC v. Cobbs*, No. 60CV-20-6613 (Ark. Cir. Ct. Pulaski Cty. filed Jan. 25, 2021); Stephanie Stokes, *'The CDC As Far As I Know Has No Control Over Georgia Courts,'* WABE, Feb. 2, 2021, <https://www.wabe.org/georgia-judges-still-grant-evictions-despite-moratorium/>. The orders and article are attached.

declared the moratorium invalid in cases involving *pro se* tenants or where landlords had not even raised constitutional arguments. There are already multiple barriers for tenants seeking the protections of the moratorium,³ and few will be able to appeal these decisions. The United States was not a party in these suits, and it does not appear that any notice was given to the United States that the legality of the moratorium would be at issue. Other similar orders most likely have been entered, but because the vast majority of tenants are unrepresented in eviction cases and eviction orders typically are not published in searchable databases like Westlaw or Lexis, it is difficult for housing advocates to track them.

These orders are deeply harmful, as they withhold the protections of the federal moratorium to vulnerable tenants during the pandemic. As described by the CDC, evictions pose a grave threat to communities, increasing the spread of COVID-19 on top of other public health harms.⁴ Evictions also disproportionately affect people of color, particularly Black and Latina women, exacerbating racial and gender disparities in the devastating effects of the pandemics.⁵ The refusals of some local courts to abide by the moratorium heighten the risk, at a particularly precarious time for many families. For example, in January, the number of new COVID-19 cases reached an all-time high in Arkansas, Florida, and Georgia.⁶

To our knowledge, the United States has not participated in any of these cases or communicated with the courts involved, despite DOJ's designation as the federal agency charged with enforcement of the moratorium and HHS' role in cooperating with state and local officials regarding enforcement of the moratorium.⁷ We anticipate that, without further federal action, these courts will continue to flout the CDC moratorium, depriving tenants in

³ Some of the barriers for tenants are described in a separate letter sent to President Biden, Director Rochelle Walensky, and Secretary Designate Marcia Fudge by our organizations and many others on January 15, urging the federal government to strengthen the moratorium through expanding its scope and strengthening enforcement, <https://nlihc.org/sites/default/files/Recommended-Eviction-Moratorium-Letter-FINAL.pdf>.

⁴ 86 Fed. Reg. at 8,023-24; 85 Fed. Reg. at 55,292.

⁵ Emily Lemmerman et al., *Preliminary Analysis: Who is being filed against during the pandemic?*, The Eviction Lab, Dec. 21, 2020, <https://evictionlab.org/pandemic-filing-demographics/>; Chabelli Carazana & Ko Bragg, *Americans were told to stay home. Black women are most at risk of losing theirs.*, Dec. 21, 2020, <https://19thnews.org/2020/12/eviction-moratorium-black-women-housing/>.

⁶ See Covid Tracking Project, *Arkansas Coronavirus Map and Case Count*, NEW YORK TIMES (Updated February 1, 2021), <https://www.nytimes.com/interactive/2020/us/arkansas-coronavirus-cases.html>; Paola Perez, *COVID-19 in Florida: January marks deadliest month*, ORLANDO SENTINEL (Jan 31, 2021), <https://www.orlandosentinel.com/coronavirus/os-ne-florida-coronavirus-sunday-january-31-20210131-25ykfxla6vcl5io6veiv6vmuyq-story.html>; Covid Tracking Project, *Georgia Coronavirus Map and Case Count*, NEW YORK TIMES (Updated February 4, 2021), <https://www.nytimes.com/interactive/2020/us/georgia-coronavirus-cases.html>.

⁷ 86 Fed. Reg. at 8,025; 85 Fed. Reg. at 55,296-97. The United States is actively defending against suits brought in federal courts challenging the constitutionality of the moratorium. See, e.g., *Brown v. Azar*, No. 20-cv-03702 (N.D. Ga.); *Tiger Lily LLC v. HUD*, No. 2:20-cv-02692 (W.D. Tenn.); *Chambliss Enterprises LLC v. CDC*, No. 20-cv-01455 (E.D. La.).

their jurisdictions of these federal protections. Additional local courts, seeing the lack of enforcement, may issue similar orders.

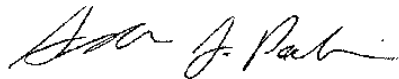
We therefore request that DOJ and HHS take the following actions:

- 1) Issue guidance regarding the constitutionality of the federal eviction moratorium and calling for notice to be provided to DOJ in any state and federal court cases where its validity will be examined;
- 2) Investigate situations where courts appear to question the validity of the moratorium, including through communicating with the particular courts, outreach to the relevant state supreme courts, and submitting statements of interest or intervening as appropriate in cases where the legality of the moratorium is under consideration or has been declared invalid;
- 3) Monitor for state and federal court cases that may weigh in on the validity of the moratorium and designate and publicize a point of contact at DOJ to receive information about such cases; and
- 4) Take other enforcement actions as may be necessary to fully implement the moratorium.

Given the ongoing crisis, the current moratorium may be extended by Congress or the CDC. It is imperative that the DOJ and HHS actively engage with state courts regarding its implementation and ensure that qualified tenants are not unfairly deprived of its protections.

Thank you for your consideration. We would welcome further discussion and ask that you act quickly.

Sincerely yours,



Sandra S. Park
Senior Staff Attorney
ACLU Women's Rights Project
spark@aclu.org



Eric Dunn
Director of Litigation
National Housing Law Project
edunn@nhlp.org

**IN THE COUNTY COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA**

SPICLIFF, INC.

nka Morguard Woodcliff Apartments, Inc.

dba Woodcliff Apartments

4301 Creighton Rd.

Pensacola, FL 32504

Plaintiff,

vs.

Case No.

2020 CC 003778

Division

5

STEVEN COWLEY

4301 Creighton Rd., Apt 81

Pensacola, FL 32504

Defendant

ORDER GRANTING PLAINTIFF'S MOTION TO LIFT CDC STAY

At a Zoom hearing on plaintiff's Motion to Lift the CDC Stay in this eviction case, both parties were represented by counsel. The relevant and material facts in this case are not in dispute. Plaintiff/landlord leased a residential property to defendant in exchange for \$825.00 per month. Defendant/tenant failed to pay the rent as agreed and is now more than \$5,000.00 in arrears.

Defendant was given Notice pursuant to §83.56(3), Florida Statutes, to either bring the rent current within three days or move out by September 21, 2020. Defendant did not pay, nor did he move. Plaintiff filed this eviction case October 8, 2020, when defendant continued to violate his lease by failing to pay the October rent. Plaintiff/landlord seeks return of his property based on non-payment of rent.

Defendant/tenant was personally served with the Complaint and Summons on October 13, 2020. The Summons contained clear and unambiguous language that the tenant must file a written Answer with the Clerk of Court within five business days or "you may be evicted without a hearing or further notice." Again, defendant/tenant did nothing.

On October 21, 2020, the Clerk of Court issued a Default and the court entered Final Judgment returning possession to the landlord. A Writ of Possession was issued to the Escambia County Sheriff's Office on October 23, 2020, instructing law enforcement to notify the tenant he had 24 hours to vacate the premises.

It was not until a Deputy Sheriff served the Writ of Possession giving defendant/tenant 24 hours to move that defendant finally filed a response. He sent an email to the court and plaintiff's attorney with a copy of the CDC Agency Order Declaration Affidavit attached stating, "I emailed the this (sic) to management early this morning."

In summary, defendant failed to take advantage of the safe harbor created by the plaintiff/landlord's Three Day Notice to bring the rent current or move to avoid eviction. After being personally served with the Complaint and Summons he failed to respond to the eviction lawsuit by filing a written Answer in which he could raise any legally sufficient defense to eviction. He did nothing until given 24 hours to move when the sheriff served the Writ of Possession.

Upon receiving tenant's email the court, as required by the CDC Agency Order 4163-18-P "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," immediately entered a Stay of Eviction to the Sheriff's Office to stop tenant's removal. The plaintiff/landlord responded by filing a motion to lift the Stay.

Plaintiff alleges the CDC Agency Order violates the Fifth Amendment of the United States Constitution. The Fifth Amendment protects persons from being deprived of property without due process of law and just compensation. The Fourteenth Amendment applies this provision to the States. Plaintiff argues the landlord "has not been afforded any due process of law with respect to the CDC Stay and that the Order is confusing, vague and unenforceable."

If the federal government forces landlords to house tenants during the COVID-19 pandemic because tenants are allegedly unable to pay rent, the government must do so within Constitutional restraints. Permitting tenants to avoid eviction by merely signing a pre-printed form, which is then notarized and delivered their landlord deprives landlords of due process as landlords have no re-

course but to “house” tenants without compensation until at least January 1, 2021, or until further Notice.

A lawful alternative would have had tenants sign the pre-printed forms which, after notarization, would have been submitted to the CDC. The CDC would have then had the rent paid by the federal government directly to landlords. Absent payments to landlords, landlords have had their property “taken” without just compensation, which is prohibited by the Fifth Amendment.

The time-honored right of a person to be protected from a government *taking* without due process and just compensation goes back to the Colonists’ protestations against being forced to “house” British soldiers under the Quartering Act of 1765. The British government required Colonists to provide housing to soldiers in privately owned public inns or barracks that the Colonists were required to build at their own expense.

As punishment for the Boston Tea Party, the Quartering Act of 1774 expanded this requirement to include unoccupied private homes. Not only was there no “compensation” for the takings, Colonists were not afforded a process in which they could contest the takings. Obviously, this was an important consideration for our Founders because they included protection against such a “taking” in our Constitution.

There is no dispute over whether or not the CDC Agency Order constitutes an action in the “public interest.” No one wants to make any citizen homeless or create a burden on their extended families or shelters during a pandemic. However, neither the federal government nor state governments have the authority to force private citizens to “house” persons in their private property without just compensation or due process of law.

Perhaps most striking in the Agency Order is the simplicity of the “taking.” Tenants need only print the form, sign the form in front of a Notary, and give it to the landlord to receive instant protection from an eviction for non-payment of rent.

There is no requirement in the Agency Order for a finding that the tenant qualifies for CDC Agency Order protection. . . the only action required is that the

tenant sign the pre-printed form in front of a notary and hand it to the landlord. The form does not require details or factual information from the tenant, only a signature. The mere signing of the “form” deprives landlords of their property and the economic benefits therefrom without due process and without just compensation.

Landlords typically try to work with tenants before initiating eviction proceedings. As a result of the Florida Governor’s Moratorium on evictions, which was extended by the CDC Agency Order, many landlords have been forced to house tenants without due process or just compensation for a year or more. With spikes in COVID-19 cases nationwide, it is not unreasonable to foresee an extension on the CDC Agency restriction on evictions beyond January 1, 2021.

Assuming that the Agency Order will, at some point in the future be rescinded, some may argue this is a *temporary* taking and therefore not a violation of the Fifth Amendment to the United States Constitution and Article X, Section 6(a) of the Florida Statute Constitution. However, it is well-established that even a temporary taking can rise to the level of requiring due process and just compensation based on the “severity of the burden that the government imposes upon private property rights.” See Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005). Even when a regulation, as here, is not a *permanent* physical taking by the government, the scope of the regulation can so deprive a property owner of the economically beneficial use of their property that it rises to the level of a compensable taking.

It is instructive to consider that if a person seeks financial benefits for VA benefits or Social Security disability, it is not unusual for the citizen to wait months, if not years, while completing a “mountain of paperwork” and probably having to hire an attorney to actually complete the process before seeing a benefit from the federal government.

In contrast, landlords are deprived of their property when a tenant signs a simple two-page form that has already been completed by the government. The delinquent tenant simply prints the form from the Internet and signs the form in front of a Notary to obtain full benefits under the Agency Order. No hearing is required and there is no due process or just compensation for the landlord.

The court also finds no merit in the argument that this is not a “taking” because past due rent continues to accrue and can later be collected by the landlord with late fees and other charges. It is not reasonable to believe tenants who are so affected by the pandemic that they cannot pay rent will be financially able to pay landlords thousands of dollars of past due rent once the Agency Order is rescinded.

In this case the past due rent is almost \$6,000.00. Assuming the Agency Order is rescinded in January, defendant will be more than \$7,000.00 in arrears by the time plaintiff is able to reclaim possession of its property. It is inconceivable tenants will be able to resume paying monthly rent while also repaying large amounts of past due rent.

Landlords affected by the Agency Order risk losing their properties permanently through foreclosure unless they are able to continue paying their mortgages while they are forced to house tenants without due process or just compensation. This rises to the level of a regulatory deprivation of substantial economic benefits deserving of protection under the Fifth Amendment of the United States Constitution and Article X of the Florida Constitution. This is especially true when the unconstitutionality could have been so easily avoided by having the Agency Order require the tenant serve the CDC with the Declaration Affidavit and the federal government then provide just compensation (the rent) directly to the landlord.

While the court is mindful of the plight of tenants who have truly been adversely affected by the COVID-19 pandemic, this Agency Order is not a legally appropriate solution to their financial problems. Citizens enjoy the fundamental right that neither federal nor state governments can take property from them without due process and just compensation. Governments, regardless of how well-intentioned, cannot force landlords to house persons in their properties due to the pandemic without due process and just compensation. Therefore, it is:

ORDERED AND ADJUDGED that the Agency Order violates the Fifth Amendment to the United States Constitution and Article X of the Florida Constitution and as a result, plaintiff’s motion to lift the CDC Agency Stay imposed on this eviction case is granted.

DONE AND ORDERED in chambers, Pensacola, Escambia County, Florida.



esign by COUNTY COURT JUDGE PAT KINSEY
on 11/24/2020 17:24:14 gS+pT PV

cc: Stephen M. Guttmann, Attorney for Plaintiff
Christine A. Kelly-Fausel, Attorney for Defendant

IN THE CIRCUIT COURT OF CLEBURNE COUNTY, ARKANSAS

AARON G. RAY and SERENA D. RAY

PLAINTIFFS

VS.

Case No. 12CV-20-175

CINDY WOODALL, a/k/a CINDY BELLEW, a/k/a CINDY N. TOOMBS

and WILLIAM CHAICE WOODALL

DEFENDANTS

JUDGMENT

On this day comes on for consideration the evidentiary hearings in this matter on November 19, 2020, and December 2, 2020. Plaintiffs, Aaron G. Ray and Serena D. Ray, hereby receive a Judgment and Judgment should be rendered against Defendants, Cindy Woodall, a/k/a Cindy Bellew, a/k/a Cindy N. Toombs and William Chaice Woodall, in favor of the Plaintiffs, Aaron G. Ray and Serena D. Ray. The Plaintiffs, Aaron G. Ray and Serena D. Ray, appear by and through their attorney, Albert J. Thomas III, and the Defendants appeared *pro se*. From the pleadings filed herein, statements of counsel, and other proof, facts and matters before the Court, the Court finds:

1. This Court has jurisdiction over the persons and subject matter of this action.
2. The Plaintiff's offered and agreed that this matter should be taken under advisement for a period of time as an accommodation to the Defendants. The Court approved this and rescheduled until Dec. 2, 2020 to provide the parties an opportunity to resolve this impasse without judicial intervention.
3. Only one of the Defendants has offered an affidavit asserting eligibility under the CDC Covid-19 moratorium order. This Court is not unmindful of the many hardships presented by the Covid -19 pandemic.
4. Defendants failed to pay any indebtedness upon answering the Petition herein. Defendants did pay \$200 in rent as directed by the Court's order of Nov. 19, 2020 before Dec. 2, 2020 and conceded at final hearing that if instructed they would have paid more.

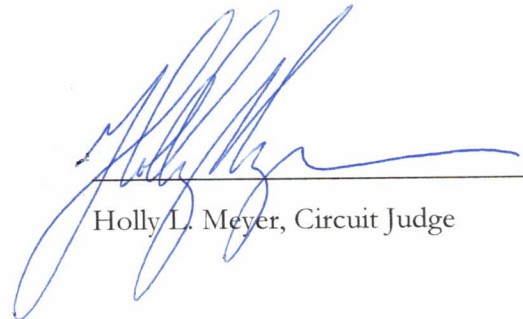
5. Defendants did not present an accounting of their financial condition at the December 2, 2020 hearing. One Defendant made a statement that he attempted to seek state and federal assistance but presented no proof and no specifics from which the Court, in assessing the Defendant's credibility, concludes that no reasonable effort has been made. Both Defendants are presently employed.
6. Centers for Disease Control and Health and Human Services Covid-19 Order temporarily halting residential evictions is unconstitutional as applied to this matter.
7. The United States Constitution and Arkansas Constitution principally entrust the safety and health of the people of Arkansas to the elected officials of the state of Arkansas. Judges typically show deference to state elected officials acting under police powers in emergency circumstances like the Covid-19 Pandemic. Arkansas officials, unlike Massachusetts, New York, and Pennsylvania, for example, have determined not to act regarding residential evictions although there has been other state action addressing Covid-19.
8. This matter is distinguished from cases and circumstances where Plaintiffs challenge state law enacted by state leaders. In this case the question before the Court is the authority of the Centers for Disease Control and Prevention (CDC) and U.S. Department of Health (HHS), federal agencies, to regulate residential evictions in Arkansas and the nation with the broad stroke of federal agency order. Stated another way, is the Covid-19 Pandemic a blank check for federal agencies to regulate under police powers, especially where there is no federal nexus to the subject matter like residential eviction and so tenuous a connection to Covid-19 prevention.
9. These issues were discussed at length in *Brown v. Azar* 2020 WL 6364310 which concluded that the same CDC Order was constitutional. This Court disagrees with *Brown*. Under the rationale in *Brown* there is practically no limit to the CDC's jurisdiction and one can easily imagine scenarios, like this one, which cause affront to liberty. To find that every single residential eviction, under the terms of the CDC order, in the entire nation, whether in Alaska or Arkansas, whether urban or rural, measuring income uniformly across the nation, regardless of the myriad of circumstances that all these residential evictions present, should be covered by this order is arbitrary and capricious.

Further, the rational is too far removed to find that this Order is reasonably necessary or likely to prevent the spread of Covid-19 in this matter. (Not getting out of bed also prevents the spread of Covid-19.) If this federal agency wishes to infringe on property rights in Arkansas it must specifically evaluate its regulations and narrowly tailor them to respect Arkansas property owners' constitutional rights and the legitimate ends desired. If the agency or federal government intended a welfare program, rental assistance for example, which this closely resembles, it should be funded not masqueraded.

10. The substitution of a money judgment for real property rights, as contemplated in the CDC Order, is not de minimis or temporary.
11. Article 2 of the Arkansas Constitution Section 22 states "The right of property is before and higher than any constitutional sanction..." This Court can imagine no clearer statement of property law in Arkansas. In addition to finding the Order arbitrary and capricious, this Court finds the CDC Order in violation of the Arkansas Constitution Art. 2, Section 22, the contracts clause, due process, and an affront to liberty. In short, this Court is offended that a federal agency with such overreach and dubious statutory authority, attempts to regulate Arkansas residential evictions and override Arkansas law.
12. The Plaintiffs are entitled to a Writ of Possession, Such Writ shall issue forthwith.
13. The Plaintiffs, Aaron G. Ray and Serena D. Ray, are hereby awarded Judgment against the Defendants, Cindy Woodall, a/k/a Cindy Bellew, a/k/a Cindy N. Toombs and William Chace Woodall, in favor of Plaintiffs, Aaron G. Ray and Serena D. Ray, in the amount of One Thousand Eight Hundred and 00/100 Dollars (\$ 1,800.00) and post judgment interest at the rate of ten (10%) percent per annum pursuant to Arkansas Code Annotated § 16-65-114.
14. In accordance with Arkansas Code Annotated § 16-66-221, as amended, the Defendants shall prepare a schedule of assets, verified by affidavit, of all their property, both real and personal, including, without limitation, monies, bank accounts, rights, credits and choses in action held by him and specify the particular property which Defendants claim as exempt under the provisions of the law. Said schedule shall be filed with the Clerk of this Court within forty-five (45) days of entry of this Judgment.

IT IS THEREFORE, BY THE COURT, CONSIDERED, ORDERED AND ADJUDGED, that the Plaintiffs, Aaron G. Ray and Serena D. Ray, have and recover of and from the Defendants, Cindy Woodall, a/k/a Cindy Bellew, a/k/a Cindy N. Toombs and William Chaice Woodall, the sum of \$ 1,800.00, plus post-judgment interest as set out above, until paid, for all of which garnishment and execution may issue forthwith.

IT IS SO ORDERED.



Holly L. Meyer, Circuit Judge

Date: Dec 8, 2020

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

STONECREST APARTMENTS, LLC

PLAINTIFF

VS.

CASE NO. 60CV-20-6613

CASSAUNDRA M. COBBS , *ET AL*

DEFENDANTS

ORDER

On the 25th day of January, 2021 came on for consideration the pleadings in the subject case and from the pleadings filed herein the court doth find and rule as follows:

1. The original and facially unconstitutional CDC *Order* concerning affirmative defenses in eviction proceedings, cited in the defendants' pleadings, expired on December 31, 2020 and any arguments, motions, or relief based upon the validity of the original facially unconstitutional CDC *Order* are denied.

2. On or after January 20, 2021 the President issued an *Executive Order* declaring a national emergency and ordering all restrictions enunciated in the original CDC *Order* to be reinstated. The constitutionality of such *Executive Order* is also suspect.

3. The present *Executive Order* expires on March 31, 2021.

4. It is clear from the pleadings filed in this matter that the defendants have violated the terms and conditions of the subject lease agreement and that absent the *Executive Order* that the plaintiff would otherwise be entitled to immediate possession of the subject premises.

5. The *Executive Order* does not seek to preclude the filing or maintenance of unlawful detainer proceedings, only the actual eviction of individuals who have met the requirements of an affirmative defense under the *Executive Order*.

6. The Circuit Clerk is hereby ordered and directed, subject to further order of this court, to issue a *Writ of Possession* in this matter on April 1, 2021, immediately following the expiration of the *Executive Order* on March 31, 2021.

IT IS SO ORDERED AND DECREED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE

1/25/21
DATE

'The CDC As Far As I Know Has No Control Over Georgia Courts': Judges Continue Evictions Despite Moratorium

 wabe.org/georgia-judges-still-grant-evictions-despite-moratorium/

Stephannie Stokes

February 2, 2021



Katie Duren and her family attempted to claim protections under the CDC eviction ban in Carroll County court. The judge told them he does not honor the federal order.

Credit Stephannie Stokes / WABE

[Audio version of this story here.](#)

An order from the Centers for Disease Control and Prevention is supposed to protect most tenants from eviction. The public health agency argues that forcing tenants from their homes could make the virus outbreak even worse.

But as President Joe Biden extends the eviction ban until the end of March, WABE has found a couple of Georgia judges are refusing to acknowledge the federal order in court. That's left some tenants in those counties with no option but to move.

The experience in eviction court changed Katie Duren's view of Carroll County.

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She and her family moved into a townhome community south of Villa Rica a couple of years ago after a long stretch in West Virginia. Duren originally grew up in a rural environment in Georgia and wanted the same for her kids.

“That’s what I like, walking down a dirt road to get on the school bus,” she said.

She said her family enjoyed living in Carroll County at first. Duren worked at the mall. Her husband was a mechanic. When the pandemic began, they both lost work.

She said the state never approved their unemployment.

“So we fell behind,” she said. “We had to find a new job. And it went downhill fast from there.”

After several months, Duren’s landlord filed for eviction.

That’s when her husband learned about the order from the CDC that bans landlords from evicting tenants who are behind on rent during the pandemic. Duren’s family filled out the CDC form claiming they qualified.

“We even went and got the paper notarized. That way, the judge knew that we did everything we were supposed to in a timely manner,” she said.

They showed up to the small brick courthouse in Carroll County feeling confident, she said.

But then they approached the judge. According to Duren, he didn’t even look at the CDC paper. He told them Carroll County doesn’t honor that.

“He should have just ripped it up and threw it in the trash because that’s how I felt when he said that,” Duren said.

That judge was Carroll County Chief Magistrate Alton Johnson. He and the Chief Magistrate of Coweta County represent a minority of judges who are not allowing the CDC eviction moratorium to disrupt the dispossession process.

Johnson has no problem sharing his logic.

“The CDC, as far as I know, has no control over Georgia courts,” he said.



Carroll County Chief Magistrate Judge Alton Johnson said he didn't believe the CDC eviction moratorium applied to Carroll County. "I think that if the federal government wanted to do this correctly, they would have done it by passing a law," he said. (Stephannie Stokes/WABE)

As Johnson recognizes, the CDC claims it has the authority to stop evictions because there is a public health emergency. But he said he doesn't believe that authority is greater than the state's.

Asked why most other magistrate courts in Georgia have come to a different conclusion, Johnson said he didn't know.

"I think that if the federal government wanted to do this correctly, they would have done it by passing a law," Johnson said, "and properly compensate those that are out of resources or money."

He said the current eviction moratorium seems to violate landlords' rights. He acknowledged that Congress passed \$25 billion in rental assistance at the end of December, responding that the funding was not available yet.

"When you have somebody who owes a mortgage, is it fair for that individual to bear the burden of what should be a government's responsibility?" Johnson asked. "That's the way I look at it."

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Johnson said he could be wrong in his reasoning—he said that multiple times. He said he wishes the state would send down more instructions.

Under the first federal moratorium, put in place by the CARES Act, the Georgia Supreme Court issued a rule for magistrate courts to follow. Landlords had to swear that the eviction ban, which only covered those with government-subsidized loans, did not affect them.

The state Supreme Court said it would be improper to weigh in on magistrate courts' interpretation of the CDC order unless a case arrived on appeal. Carroll County's Judge Johnson said he has invited tenants to challenge his decision to a higher court.

But that can be harder than it sounds, according to Susan Reif, who leads the Eviction Prevention Project at Georgia Legal Services. She said state law requires tenants pay the rent they owe while the appeal is pending, or they could still be evicted.

“Most of our clients, when they realize they’re not going to be able to remain in possession, have to focus their energies on finding housing and alternative arrangements for their family,” she said.



At least two Georgia magistrate courts in Carroll County and Coweta County have allowed evictions to continue when tenants provide the CDC declaration. Georgia Legal Services said the judges' interpretation of the federal rule put them in the minority. (Stephannie Stokes/WABE)

Tenants who must leave their properties despite the CDC protections have little other recourse at the federal level.

They could wait to see if the U.S. Justice Department will enforce the CDC moratorium. The order said those who violate it could face a hundred thousand dollar fine.

Coweta County Chief Magistrate Judge James Stripling has argued that, while the CDC order does not prevent courts from approving evictions, landlords could face penalties for following through with those evictions.

“But that doesn’t keep someone housed that doesn’t prevent someone from going into a shelter, and it doesn’t prevent the spread of the virus,” said Reif, which is the point of the CDC moratorium.

If any story illustrates that point, it might be Katie Duren’s.

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Judge Johnson ordered her family leave the property and pay back \$5,000 in rent. A few days after Duren left the Carroll County courthouse, she and her husband tested positive for COVID-19.

Because of the diagnosis, her landlord, who did not want to comment for this story, allowed them to remain in their townhome for another two weeks. Duren said they were still sick when the six of them moved into their SUV. It was two nights before they got enough money for the Villa Rica hotel, where they’ve now stayed for a month.

Duren said her experience in the county’s court system confused her.

“The CDC, which is federal, said that if we did all of these things that we couldn’t be evicted,” she said. “But this one county decided that they could make their own rules.”

For now, her family has come to this conclusion: to get out of Carroll County as soon as they can.

“I don’t advise anybody to move to Carroll County,” Duren said. “Move to another county.”

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