

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

KC TENANTS,

Plaintiff,

-against-

No. 20-cv-784

DAVID M. BYRN, in his official capacity as the  
Presiding Judge for the 16th Judicial Circuit Court,  
Jackson County, Missouri; and MARY A. MARQUEZ,  
in her official capacity as the Court Administrator for  
Jackson County, Missouri,

Defendants.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff KC Tenants hereby allege for this complaint for declaratory and injunctive relief,  
as follows:

**PRELIMINARY STATEMENT**

1. This action challenges Administrative Order No. 2020-154 (“Administrative Order”), issued by the 16th Judicial Circuit Court for Jackson County, Missouri, under the Supremacy Clause and core civil rights and civil liberties guaranteed by the U.S. Constitution, including the Due Process Clause of the Fourteenth Amendment. In an effort to prevent severe and far-reaching public health consequences caused by evictions during a global health pandemic, the Centers for Disease Prevention and Control (“CDC”) issued a temporary nationwide moratorium on evictions for nonpayment of rent, effective September 4, 2020 until December 31, 2020 (“Moratorium”). The federal Moratorium broadly prohibits *any action* to remove or cause the

removal of a tenant from a residential property for nonpayment of rent where the tenant has submitted a declaration under penalty of perjury that they satisfy certain eligibility requirements. Despite the Moratorium's broad prohibitions and stated purpose of preventing further spread of COVID-19, the Administrative Order overrides the Moratorium's grant of temporary immunity from evictions by expressly permitting landlords to file and pursue eviction actions, regardless of whether tenants submitted declarations pursuant to the federal Moratorium; creating a system of eviction-related evidentiary hearings to allow landlords to challenge tenants' declarations in any and all cases and continue to pursue eviction actions; and allowing landlords to pursue writs of execution for evictions by simply submitting a "verification" to the Court that the Moratorium does not apply at any point prior to the issuance of the writ. The Administrative Order, and Defendants' implementation thereof, directly conflicts with the express provisions of the federal Moratorium, is impossible to reconcile, and serves as an obstacle to the full purposes and objectives of the Moratorium as well as the statute and regulation that authorize it. Moreover, Defendants' implementation of the Administrative Order denies tenants, including Plaintiff's members, of adequate notice and opportunity to be heard prior to depriving them of their right to temporary immunity from eviction actions for nonpayment of rent under the federal Moratorium.

## **PARTIES**

2. Plaintiff KC Tenants is a Missouri nonprofit corporation led by and comprised of tenants in Kansas City, Missouri. The mission of KC Tenants is to ensure that everyone in Kansas City has safe and accessible housing through organizing, direct support, and community outreach and education. KC Tenants also staffs and manages a tenant hotline for Kansas City renters seeking assistance with evictions and other housing-related concerns.

3. Defendant David M. Byrn is the Presiding Judge of the 16th Judicial Circuit Court, Jackson County, Missouri. Defendant Byrn is sued in his official capacity. In his role as Presiding Judge, Defendant Byrn has general administrative authority over all judicial personnel and court officials anywhere in the Circuit. Mo. Rev. Stat. § 478.240(2). Defendant Byrn also has administrative authority over the dockets of the Court and administrative authority regarding the manner in which any hearings are conducted in the Court. *Id.* Defendant Byrn's actions, as alleged in this Complaint, are under the color of Missouri state law and constitute state action within the meaning of the U.S. Constitution and 42 U.S.C. § 1983.

4. Defendant Mary A. Marquez is the Court Administrator for Jackson County, Missouri. Defendant Marquez is sued in her official capacity. The Court Administrator for Jackson County exercises all of the powers and duties of the circuit clerk. Mo. Rev. Stat. § 483.015(2). In her role as Court Administrator, Defendant Marquez performs the administrative functions of the Court and the circuit clerk functions regarding civil process. *Id.* §§ 483.240, 483.241, 483.245. Defendant Marquez's actions, as alleged in this Complaint, are under the color of Missouri state law and constitute state action within the meaning of the U.S. Constitution and 42 U.S.C. § 1983.

### **JURISDICTION AND VENUE**

5. This action arises under the U.S. Constitution and the provisions of 42 U.S.C. § 1983.

6. This case presents a federal question within this Court's jurisdiction under Article III, § 2, of the U.S. Constitution, and 28 U.S.C. §§ 1331 (federal question) and 1343(a) (civil rights).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because it is the District in which Defendants maintain offices and exercise their authority in their official

capacities, and the District in which substantially all of the events or omissions giving rise to these claims occurred.

8. Venue is proper in the Western Division of this Court pursuant to W.D. Mo. Local Rule 3.2(a)(1)(A).

## FACTS

### The COVID-19 Pandemic

9. Since the United States declared a national emergency, the COVID-19 pandemic has inflicted widespread and unprecedented public health and economic harms for hundreds of millions of Americans. As of September 24, 2020, about 13 million Americans remain unemployed due to the pandemic, and the number of initial unemployment claims in the United States has begun to rise again as mass layoffs persist and fiscal stimulus benefits expire. Ben Casselman, *Job Rebound Is 'Losing Steam' as Crisis Passes Six-Month Mark*, N.Y. Times, Sept. 24, 2020, <https://www.nytimes.com/2020/09/24/business/economy/unemployment-claims.html>; *see also* News Release, U.S. Dep't of Labor, *Unemployment Insurance Weekly Claims* (Sept. 24, 2020), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/ui-claims/20201814.pdf>. Over 7.2 million Americans have contracted COVID-19, and at least 205,650 have died. N.Y. Times, *Covid in the U.S.: Latest Map and Case Count* (Sept. 29, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

10. The severe public health and economic consequences of the COVID-19 pandemic have also reached Missouri. The unemployment rate in Missouri remains a staggering 7.0%, with more than 829,600 initial claims filed in the 28 weeks since Governor Parsons declared a state of emergency. Mo. Dep't of Labor & Indus. Relations, *Data and Statistics* (Sept. 27, 2020), <https://labor.mo.gov/data>. Over 128,000 Missourians have contracted COVID-19, and at least

2,130 have died. N.Y. Times, *Missouri Covid Map and Case Count* (Sept. 29, 2020), <https://www.nytimes.com/interactive/2020/us/missouri-coronavirus-cases.html>.

11. Despite these staggering numbers and ongoing economic fallout, Missouri remains one of the few states in the nation that has not issued a statewide eviction moratorium to protect tenants from being forced out of their homes during a global health pandemic. Annie Gowen, *Thousands have been evicted in the pandemic. Housing experts say Trump's new ban is a temporary fix.*, Wash. Post, Sept. 3, 2020, [https://www.washingtonpost.com/national/thousands-were-evicted-during-the-pandemic-housing-advocates-say-trumps-new-ban-is-a-temporary-fix/2020/09/03/f0f9bd2e-e5a2-11ea-970a-64c73a1c2392\\_story.html](https://www.washingtonpost.com/national/thousands-were-evicted-during-the-pandemic-housing-advocates-say-trumps-new-ban-is-a-temporary-fix/2020/09/03/f0f9bd2e-e5a2-11ea-970a-64c73a1c2392_story.html).

12. At the beginning of the pandemic, the 16th Judicial Circuit Court of Jackson County issued a temporary moratorium on issuing and enforcing writs of execution, which expired on May 31, 2020. *In re: Extension of Suspension of Issuance and Enforcement of Writs of Restitution, Writs of Replevin, Writs of Attachment, Writs of Garnishment and any other Writs of Execution*, Administrative Order No. 2020-082 (May 7, 2020). Since May 31, 2020, however, the 16th Judicial Circuit Court has aggressively processed new eviction actions and conducted eviction hearings, despite federal, state, and local advocates' persistent efforts to call attention to the public health consequences of evictions and the grave constitutional issues with such proceedings. *See, e.g., Gowen, supra* ¶ 11; Phillip Sitter, *Missouri housing advocates: Halt evictions for now*, Jefferson City News Tribune, Aug. 21, 2020, <https://www.newstribune.com/news/local/story/2020/aug/21/missouri-housing-advocates-halt-evictions-for-now/838380/>.

13. The severe public health consequences of eviction are well documented. People facing eviction, even before they lose their homes, are “more likely to report poor health, high

blood pressure, depression, anxiety, and psychological distress.” Allison Bovell-Ammo & Megan Sandel, *The Hidden Health Crisis of Eviction*, Boston Univ. Sch. of Pub. Health, Oct. 5, 2018, <https://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>. Eviction also “often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which [are] associated with negative health among adults and children.” *Id.*

14. Children who experience eviction and housing instability are especially vulnerable to short- and long-term health issues, including asthma, frequent ear infections and other physical illnesses, chronic health conditions, delayed development, behavioral issues, and anxiety. See Bridge Fund of N.Y., Inc., *Eviction Hits Children Hardest*, <https://thebridgefund.org/2016/06/05/eviction-hits-children-most/>; see also Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 *Pediatrics* 2 (2018), <https://childrenshealthwatch.org/wp-content/uploads/Unstable-Housing-and-Caregiver-and-Child-Health-in-Renter-Families.pdf>.

15. During a global pandemic, the public health consequences of eviction and housing instability are even greater. Displaced tenants face a heightened risk of contracting, spreading, and suffering complications from COVID-19. Michelle Conlin, *U.S. eviction bans are ending. That could worsen the spread of coronavirus*, Reuters, July 23, 2020, <https://www.reuters.com/article/us-health-coronavirus-evictions-insight/u-s-eviction-bans-are-ending-that-could-worsen-the-spread-of-coronavirus-idUSKCN24O1EK>. Some jurisdictions have observed a spike in COVID-19 cases following the expiration of eviction moratoria. *Id.*

16. Importantly, eviction disproportionately burdens tenants of color and, in particular, Black women. The American Civil Liberties Union (“ACLU”) analyzed national eviction data from 2012 to 2016, provided by the Eviction Lab at Princeton University, and found that Black

women renters, on average, had evictions filed against them at twice the rate of white renters (or higher) in 17 of 26 states—including Missouri. Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU News & Commentary, Jan. 10, 2020, <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

17. Given these stark race and gender disparities, Black women renters and other tenants of color will suffer the greatest hardship due to the current eviction crisis—worsening the existing racial disparities that have emerged in the impact of the COVID-19 pandemic. See Samantha Artiga et al., *Racial Disparities in COVID-19: Key Findings from Available Data and Analysis*, Kaiser Family Foundation, Aug. 17, 2020, <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-covid-19-key-findings-available-data-analysis/>.

18. To combat these consequences and an impending housing crisis, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which included a federal eviction moratorium. Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136, § 4024 (2020). The CARES Act’s eviction moratorium prohibited the filing of new eviction actions against tenants living in certain federally assisted or financed properties. *Id.* The CARES Act’s protections expired on July 24, 2020. *Id.*

19. That same month, a study found that more than 40 percent of renter households in the United States—and over one-third of renter households in Missouri—were unable to pay rent and at imminent risk of eviction by the end of the year. Stout, *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction* (July 2020), <https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjF>

mOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsI  
mMiOjN9.

20. In the face of a looming eviction crisis and its certain impact on the further spread of COVID-19, President Donald J. Trump issued an Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners (“Executive Order”) on August 8, 2020. Exec. Order No. 13945, 85 Fed. Reg. 49,935 (Aug. 8, 2020). The Executive Order cited the CDC’s conclusion that the pandemic’s economic fallout “may lead to greater risk of eviction and homelessness or sharing of housing,” particularly for certain racial and ethnic minority groups. *Id.* The Executive Order also recognized the CDC’s observation that increased homelessness and shared housing could, in turn, “exacerbate and amplify the spread of COVID-19,” place those who are older or have underlying medical conditions at “higher risk for severe COVID-19-associated illness,” and “result[] in increased in-person interactions between older, higher-risk individuals and their younger relatives or friends.” *Id.* The Executive Order further found that African-American and Latinx individuals disproportionately experience eviction and, therefore, are most at risk of its short- and long-term consequences. *Id.* at 49,936.

21. Given these public health risks, the Executive Order found that the prevention of evictions is critical to reducing the spread of COVID-19, and directed the Secretary of the Health and Human Services (“HHS”) and the Director of CDC to consider measures to temporarily halt residential evictions for nonpayment of rent. *Id.*

22. Since the issuance of the Executive Order, the numbers of reported cases and deaths due to COVID-19 have continued to rise at an alarming rate across the country—including in Jackson County. *See* Katie Moore, *Kansas City metro adds more than 500 COVID-19 cases, most in more than a month*, Kansas City Star, Sept. 25, 2020,

<https://www.kansascity.com/news/coronavirus/article246003905.html>; *see also* Annika Merrilees, *Missouri reports record numbers of COVID-19 hospitalizations*, St. Louis Post-Dispatch, Sept. 26, 2020, [https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/missouri-reports-record-number-of-covid-19-hospitalizations/article\\_f52b9d40-f8dd-53ef-9aaf-ba9f1cddd367.html](https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/missouri-reports-record-number-of-covid-19-hospitalizations/article_f52b9d40-f8dd-53ef-9aaf-ba9f1cddd367.html); Austin Huguelet, *Missouri in top five for COVID*, Examiner, Sept. 23, 2020, <https://www.examiner.net/story/news/2020/09/23/missouri-covid-19-gov-parson-white-house-coronavirus-task-force/3506612001/>.

23. As COVID-19 cases continued to rise in Jackson County, Plaintiff KC Tenants joined other state and local organizations in sending Defendant Byrn a public letter to demand a reinstatement of an eviction moratorium on August 13, 2020. Jodi Fortino, *Kansas City Housing Advocates Ask Judge, Mayor For An End to Evictions Amid Pandemic*, KBIA, Aug. 13, 2020, <https://www.kbia.org/post/kansas-city-housing-advocates-ask-judge-mayor-end-evictions-amid-pandemic#stream/0>. The public letter underscored the severe public health consequences of proceeding with evictions in the midst of a global pandemic. *Id.*

24. On August 13, 2020, Defendants issued a statement in response to Plaintiff's public letter, in which Defendants declined to reinstate the temporary eviction moratorium. *See* Circuit Ct. for Jackson Cty., Mo., *Court Statement in Response to Request to Reinstate Eviction Moratorium for At Least 6 Months* (Aug. 13, 2020), [https://www.16thcircuit.org/Data/Sites/1/media/news/news\\_releases/court-statement-in-reponse-to-request-to-reinstate-eviction-moratorium--8-13-20.pdf](https://www.16thcircuit.org/Data/Sites/1/media/news/news_releases/court-statement-in-reponse-to-request-to-reinstate-eviction-moratorium--8-13-20.pdf). In doing so, Defendants stated: "If the Executive Branch of government (either the President or the Missouri Governor) executes a valid Executive Order creating a moratorium on evictions, the Court will enforce and give effect to such valid Order." *Id.*

25. Despite the rapidly growing number of COVID-19 cases in Jackson County and throughout Missouri, the 16th Judicial Circuit Court has continued to process the filing of new eviction actions, hold eviction proceedings, and issue eviction judgments and writs of execution. Casey Tolan & Kyung Lah, *Neighborhoods at risk for Covid see disproportionately high eviction rates*, CNN, Sept. 29, 2020, <https://www.cnn.com/2020/09/29/us/covid-evictions-cdc-moratorium-invs/index.html>; *see also* Jodi Fortino, *supra* ¶ 23.

### **The CDC's Nationwide Eviction Moratorium**

26. In recognition of the severe public health consequences of evictions during a pandemic, and in response to the Executive Order, the CDC, located within HHS, issued a nationwide moratorium on evictions for nonpayment of rent (“Moratorium”), pursuant to its authority under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and its implementing regulations (42 C.F.R. § 70.2). Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292–97 (Sept. 4, 2020). The Moratorium is attached hereto as Exhibit 1. The Moratorium is effective from September 4, 2020 through December 31, 2020. *Id.*

27. The CDC issued the Moratorium for the express purpose of preventing the further spread of COVID-19. *Id.* at 55,292–94.

28. In the Moratorium, the CDC recognized that eviction moratoria serve as “effective public health measure[s] . . . to prevent the spread of communicable disease” in several ways. *Id.* at 55,292, 55,294. First, the Moratorium “facilitate[s] self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition.” *Id.* The Moratorium also “allow[s] State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19.” *Id.* The CDC

further recognized that “housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19” and makes it difficult for these settings to adhere to best practices. *Id.* Additionally, the CDC noted that “[u]nsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.” *Id.* at 55,292, 55,296.

29. The Moratorium prohibits landlords, residential property owners, and other persons with a legal right to pursue eviction or possessory action from “evict[ing] any covered person from any residential property in any jurisdiction to which this Order applies during the effective period” of September 4, 2020 through December 31, 2020. *Id.* at 55,292–93, 55,296. A person violating the Moratorium may be subject to criminal penalties. *Id.* at 55,296.

30. The Moratorium applies to all jurisdictions in the United States, except for: (1) any state, local, territorial, or tribal area with an eviction moratorium that provides the same or greater level of protections; and (2) American Samoa. *Id.* at 55,293. The Moratorium is clear that it reaches only those areas that have less protections from eviction than it provides and “does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this [Moratorium].” *Id.* at 55,294.

31. Jackson County has no eviction moratorium of any kind. Missouri also has no statewide eviction moratorium. Accordingly, the Moratorium applies to Jackson County, Missouri.

32. The Moratorium defines a “covered person” as any tenant, lessee, or resident of a residential property that provides their landlord or property owner with a declaration under penalty of perjury indicating that they meet the following five requirements:

- The individual “has used best efforts” to obtain all available rental or housing government assistance, *id.* at 55,293;
- The individual either: (i) “expects to earn no more than \$99,000 in annual income” in 2020, (ii) “was not required to report any income in 2019 to the U.S. Internal Revenue Service,” or (iii) received a stimulus check pursuant to the CARES Act, *id.*;
- The individual is “unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses,” *id.*;
- The individual is “using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit, taking into account other nondiscretionary expenses,” *id.*; and
- If evicted, the tenant would likely become homeless or move into and live in close quarters in a new congregate or shared living situation, *id.*

33. The Moratorium provides that a tenant may use the CDC-provided declaration form, *see* Exhibit 2, or a “similar declaration under penalty of perjury.” *Id.* The Moratorium does not specify a time by which a tenant must provide the information, and thus allows for its protections to be invoked at any point by the tenant.

34. The Moratorium defines an “eviction” as “*any action . . . to remove or cause the removal of a covered person from a residential property.*” *Id.* The Moratorium’s prohibitions include all stages of an eviction action, including giving a notice to vacate, filing an eviction action, pursuing eviction-related hearings and proceedings, and obtaining and executing a final eviction judgment. *Id.*

35. To achieve its purpose of preventing the spread of COVID-19, the Moratorium mandates that it be interpreted and implemented to achieve three distinct objectives: (1) “[m]itigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness,” (2) “mitigating the further spread of COVID-19 from one U.S. State or U.S. territory,” and (3) “supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.” *Id.* at 55,293.

36. To comply with the federal Moratorium, state and local court officials must not facilitate or process *any stage* of an eviction for nonpayment of rent—e.g., filing new eviction actions, conducting eviction proceedings, or issuing and executing eviction judgments—where the tenant submitted a declaration under penalty of perjury that they are eligible for the Moratorium’s protections.

37. The Moratorium limits state and local court officials’ discretion in implementing and enforcing its provisions, and mandates that it be interpreted and implemented to achieve its named objectives to mitigate the spread of COVID-19 and support response efforts by the federal, state, and local governments.

38. Many courts across the country have applied the federal Moratorium and halted eviction filings and cases or imposed meaningful procedural mechanisms prior to the filing of new evictions, eviction proceedings, and issuance of eviction judgments and writs of execution.

#### **The 16th Judicial Circuit Court’s Administrative Order**

39. In a purported response to the CDC’s Moratorium, Defendant Byrn issued Administrative Order No. 2020-154 for the 16th Judicial Circuit Court (“Administrative Order” or “Order”), effective as of September 4, 2020. *In re: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 in Response to Centers for Disease Control and Prevention Order Published on September 4, 2020*, Administrative Order No. 2020-154 (Sept. 4,

2020). The Administrative Order is attached hereto as Exhibit 3. The 16th Judicial Circuit Court's Administrative Order purports to enforce the federal Moratorium in Jackson County courts.

40. Defendant Byrn has “general administrative authority over all judicial personnel and court officials in the [16th Judicial] Circuit as well as administrative authority over dockets of the Court and the administrative and discretionary authority regarding the manner in which any hearings are conducted in the Court.” *In Re: Updated Court Operations under Supreme Court Operational Directives – Effective September 25, 2020*, Administrative Order No. 2020-166 (Sept. 25, 2020), at 2.

41. Defendant Marquez is responsible for carrying out and enforcing circuit clerk and administrative functions, such as those directed by the Administrative Order. Defendant Marquez also performs the sheriff functions regarding civil process.

42. The Administrative Order expressly recognized the CDC's statutory authority to issue a federal eviction moratorium pursuant to 42 U.S.C. § 264(a) and 42 C.F.R. § 70.2. Administrative Order, at 1.

43. The Administrative Order is not required by state law or regulation, and conflicts with the CDC's exercise of federal authority pursuant to 42 U.S.C. § 264(a) and 42 C.F.R. § 70.2.

44. In direct conflict with the Moratorium's broad prohibition against *any action* removing or causing the removal of tenants for nonpayment of rent, the Administrative Order expressly allows landlords to file new eviction actions and pursue eviction actions to judgment, regardless of whether a tenant submitted a declaration. *Id.* ¶ 4.

45. Defendant Marquez, in her capacity as Court Administrator, establishes, administers, and oversees procedures for litigants to deliver and/or file pleadings and other documents with the Court—including for eviction actions. *See In Re: Court Operations During*

*COVID-19 Stay At Home/Shelter In Place Order*, Administrative Order No. 2020-073 (Apr. 16, 2020), ¶ 4.

46. Upon information and belief, Defendant Marquez has accepted, or facilitated the acceptance of, new eviction filings for nonpayment of rent without asking or confirming that the tenant-defendant had not submitted a declaration pursuant to the Moratorium, in direct conflict with the Moratorium's mandates.

47. The Administrative Order creates a system permitting landlords or property owners to "challenge the accuracy or veracity of any statements in the Declaration Form" by requesting an evidentiary hearing with the Court. Administrative Order, ¶ 7. Pursuant to this Administrative Order, Defendants authorized the Court to hold evidentiary hearings where the landlord or property owner may demand tenants' tax records, bank statements, and other personal or sensitive information. There is no minimum threshold or showing that is required of the landlord before requesting a hearing to challenge a tenant's declaration. In many cases, these evidentiary hearings will be far more intrusive than eviction proceedings and, in some cases, retaliatory against a tenant for exercising their rights under the federal Moratorium.

48. These evidentiary proceedings will allow landlords or property owners to harass or retaliate against tenants who seek protection under the Moratorium, thereby discouraging tenants from exercising their federal rights.

49. In direct conflict with the Moratorium's broad mandate, the Administrative Order allows landlords or property owners to pursue writs of execution against tenants for nonpayment of rent by simply submitting a "verification" form that the Moratorium does not apply at any point before the issuance and/or service of any existing, pending, previously filed, or newly filed writs of execution. *Id.* ¶ 1. While the Administrative Order permits tenants to challenge landlords'

verifications by requesting an evidentiary hearing, *see id.* ¶¶ 2–3, this provision will force tenants to be brought into court for an eviction-related proceeding to defend their protections under the Moratorium, in direct conflict with the Moratorium’s purpose and language.

50. Defendants are authorized to issue, or facilitate the issuance of, such writs of execution against tenants, as set forth by the Administrative Order.

51. Upon information and belief, due to Defendants’ Administrative Order and its implementation, landlords and property owners have requested evidentiary hearings in nearly all pending eviction actions, where they have demanded tenants’ payroll records, tax records, bank roll records, and documentation that tenants have sought government aid.

52. The Administrative Order, by its name and terms, governs the administrative operation of the Court. It is not an order issued to carry out the judicial function, as it was not issued by a judge in individual eviction cases, and no parties appeared before Defendant Byrn prior to his entry of the Administrative Order.

53. In addition to public health concerns, these evidentiary hearings raise grave due process concerns. Tenants who are ill, disabled, or medically vulnerable, and who would have faced difficulty in court proceedings before the pandemic, may now be entirely unable to respond to complaints or notices, seek legal help, file documents, appear for hearings, or otherwise participate in their defense under the current conditions.

54. Many tenants in Jackson County lack the ability to present documentary evidence, witness testimony, or other forms of evidence in remote hearings. Low-income tenants, in particular, often rely on outdated or damaged mobile devices, lack consistent Internet access (if they have it at all), have pay-as-you-go mobile plans, or otherwise face data constraints, and may experience utility or account shut-offs for nonpayment. Moreover, public resources, such as library

computers or free WiFi hotspots, often have time limits and force tenants to present their cases and disclose sensitive information in public settings.

55. Remote proceedings in Jackson County have also obstructed the ability of tenants who are fortunate enough to have counsel to speak with their attorneys privately during a hearing. These proceedings are also particularly difficult for tenants who require language translation services or have other accessibility needs.

56. These due process concerns are especially concerning with respect to the evidentiary hearings permitted by the Administrative Order—and may be even more consequential, as tenants could be subject to criminal perjury charges if they are unable to establish the accuracy or veracity of their declarations.

#### **INJURY TO PLAINTIFF KC TENANTS**

57. Founded in 2019, Plaintiff KC Tenants is a grassroots organization that provides direct outreach, community education, and support services to poor and working-class tenants facing eviction and other housing-related issues in Kansas City. KC Tenants is led by and comprised of a broad base of around 350 members. To achieve its objections, KC Tenants relies on its three paid staff members and volunteers.

58. Prior to the COVID-19 pandemic, KC Tenants sought to ensure that everyone in Kansas City had a safe, accessible, and truly affordable home. In particular, KC Tenants dedicated its resources toward strategic campaigns to win a housing trust fund for Kansas City, organize tenant unions, and advance tenants' rights and protections.

59. Since the declaration of a national emergency, KC Tenants has been on the frontlines of supporting Jackson County renters to avoid eviction and maintain stable housing during the pandemic. These efforts have included organizing direct actions and mobilizations,

advocating with local officials for tenants' protections, and providing direct support and referrals to tenants facing eviction.

60. KC Tenants also launched a tenant hotline, where tenants facing eviction may seek information and referrals. The hotline is entirely managed and run by volunteers.

61. After the CDC announced its Moratorium on September 2, 2020, KC Tenants staff and volunteers developed informational materials about the Moratorium's scope and requirements to share with Kansas City renters.

62. When Defendants issued the Administrative Order on September 4, 2020, KC Tenants staff and volunteers were forced to halt distribution of these informational materials due to the apparent conflicts between the local Administrative Order and the federal Moratorium. The original informational materials, for example, advised that the Moratorium prohibited the filing of new evictions for nonpayment of rent where tenants submitted Declarations. Because the Administrative Order expressly allows landlords to file new evictions in any case, the original informational guide, based on the federal Moratorium, conflicted with Defendants' procedures and, therefore, risked providing tenants with misinformation.

63. Since the beginning of the pandemic, KC Tenants has monitored Jackson County eviction filing data, which revealed that rent and possession eviction filings began to increase upon the Administrative Order's issuance after initially dropping following the CDC's announcement of the Moratorium.

64. Because of the Administrative Order, KC Tenants has diverted significant resources—including staff time, volunteers, and financial resources—from its existing activities in order to mitigate the Administrative Order's harmful effects.

65. As a direct result of the Administrative Order, KC Tenants has devoted increased resources toward weekly community outreach events, where staff members and volunteers canvass various neighborhoods to provide information and answer questions about the local Order. Moreover, after observing Defendants' implementation of the Administrative Order, KC Tenants has been forced to increase the number of shifts, hours, and volunteers dedicated to these canvassing efforts to ensure that tenants fully understand the Order and its harmful consequences—including the possibility of being called into court for intrusive and potentially retaliatory evidentiary hearings.

66. KC Tenants has also spent additional resources on revising its Moratorium-related informational materials to account for the Administrative Order's conflicting provisions, procedures, and harmful consequences. KC Tenants was forced to expend resources on revising the informational guide to reflect the Defendants' actual enforcement of the Administrative Order and its conflicting provisions, and to include information and guidance regarding the risks that landlords may challenge or sue tenants who seek protection under the federal Moratorium.

67. Due to the harmful consequences and added complexities of the Administrative Order, KC Tenants has organized and hosted several community workshops to share information about the Administrative Order and its implementation. KC Tenants also dedicated significant resources toward organizing a virtual program with local attorneys to fully explain, and answer questions regarding, the Order and its implementation for Jackson County tenants facing eviction. As a result of these urgent efforts related to the Administrative Order, KC Tenants diverted resources away from previously scheduled programs and activities.

68. The Administrative Order has required KC Tenants to divert greater resources toward its tenant hotline to accommodate an increase in calls due to the Order. KC Tenants also

devoted staff time toward additional training for hotline volunteers on the added complexities and risks associated with the Administrative Order.

69. The Administrative Order has forced, and will continue to force, KC Tenants to divert already scant resources away from its planned activities toward mitigating the Order's harmful consequences on Jackson County residents.

70. The Administrative Order has discouraged tenants from seeking relief under the federal Moratorium out of fear that their landlords will bring them into court for invasive and unlawful evidentiary hearings. As a result, the Administrative Order has resulted in a chilling effect on tenants' exercise of their federal rights.

71. Under the Administrative Order, Defendants have facilitated, and will continue to facilitate, the filing of new evictions for nonpayment of rent in violation of the Moratorium's language and intent against KC Tenants members who submitted declarations. In doing so, Defendants have denied, and will continue to deny, KC Tenants members and other tenants with their rights under federal law and the U.S. Constitution.

72. Under the Administrative Order, Defendants have subjected, and will continue to subject, KC Tenants members to unnecessarily intrusive eviction and eviction-related evidentiary hearings for exercising their rights in violation of the Moratorium's language and intent. In doing so, Defendants have denied, and will continue to deny, KC Tenants members and other tenants with their rights under federal law and the U.S. Constitution.

73. Under the Administrative Order, Defendants have issued, and will continue to issue, final judgments and writs of execution in eviction actions for nonpayment of rent in violation of the Moratorium's language and intent against KC Tenants members who submitted declarations.

In doing so, Defendants have denied, and will continue to deny, KC Tenants members and other tenants with their rights under federal law and the U.S. Constitution.

## CAUSES OF ACTION

### **First Cause of Action: Federal Preemption**

74. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

75. The Supremacy Clause, Article VI, Section 2, of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, § 2.

76. Pursuant to the Supremacy Clause, federal law preempts state law in any area where state law conflicts or interferes with federal law or federal agency action.

77. Pursuant to statutory and regulatory authority, the CDC issued a federal agency action prohibiting evictions for nonpayment of rent against tenants who have submitted a Declaration pursuant to the Moratorium. The CDC's Moratorium broadly grants these tenants immunity from *any action* that removes or attempts to remove them from a residential property, which includes the filing of new evictions and all proceedings related to, or arising from, eviction actions.

78. The CDC's Moratorium further mandates that courts interpret and implement the moratorium in a manner as to achieve its objectives of (i) preventing further spread of COVID-19

through congregate or shared living settings or unsheltered homelessness, and (ii) supporting COVID-19 response efforts at the federal, state, and local levels.

79. Through Administrative Order No. 2020-154, Defendants have expressly permitted the very activities that the CDC's Moratorium intended to prevent, including the filing of new eviction actions and eviction-related hearings, against the very persons the CDC's Moratorium is intended to protect. Defendants also have created a new, intrusive system of "eviction-plus" proceedings, where tenants may be brought into court for invasive evidentiary hearings regarding their personal finances, tax records, potential homelessness or housing insecurity, and other sensitive information—simply for seeking to exercise their rights under the CDC's Moratorium.

80. These hearings effectively function as "eviction-plus" proceedings, because an unfavorable judgment will not only lead to the tenant's imminent eviction, but also the risk of criminal liability for perjury under federal law.

81. The Administrative Order and its implementation directly and fundamentally conflict with federal agency action and the statute and regulation that authorize it, in violation of the Supremacy Clause. Accordingly, Defendants' Order is preempted by federal law.

### **Second Cause of Action: Procedural Due Process**

82. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

83. The Fourteenth Amendment to the U.S. Constitution protects against the deprivation of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 2. The Fourteenth Amendment's protections apply to both property and liberty interests.

84. A state-created liberty interest arises when a state imposes "substantive limitations on official discretion." *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). A statute or regulation may

create a liberty interest where it contains “explicitly mandatory language, *i.e.*, specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow.” *Ky. Dep’t of Corrs. v. Thompson*, 490 U.S. 454, 463 (1989) (internal quotation marks omitted).

85. The CDC’s Moratorium recognizes the importance of maintaining tenants’ interests in their leaseholds and places substantive limitations on the exercise of state and local courts’ official discretion related to eviction actions for nonpayment of rent, using explicitly mandatory language in connection with substantive predicates.

86. The CDC’s Moratorium makes clear that a tenant “shall not” face eviction—*i.e.*, *any action to remove or cause the removal of a tenant* from a residential property— if they submit the required declaration under penalty of perjury. The Moratorium further provides that a violation of these protections may result in criminal prosecution under federal criminal statute.

87. Plaintiff KC Tenants and its members have a state-created liberty interest in temporary immunity from any action to remove or cause the removal of a tenant from a residential property—including the filing of a new eviction action, being subject to eviction or eviction-related proceedings, or receiving a judgment leading to a tenant’s eviction—that the CDC extends when the tenant has submitted a declaration under penalty of perjury claiming protection under the CDC’s moratorium.

88. The Administrative Order and its implementation deprive Plaintiff and its members of this temporary immunity from eviction actions without adequate procedural due process protections. Specifically, Defendants do not provide KC Tenants and its members with adequate notice and opportunity to be heard prior to Defendants’ acceptance of eviction filings in violation of the Moratorium’s language and purpose. Defendants also fail to provide KC Tenants and its

members with adequate notice and opportunity to be heard prior to and during evidentiary hearings regarding the contents of their Declarations.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief authorized by 42 U.S.C. § 1983 and as a federal court of equity:

- a) Enter a declaratory judgment that Administrative Order No. 2020-154 and its implementation by Defendants violates the Supremacy Clause and Fourteenth Amendment to the United States Constitution as well as federal law;
- b) Issue preliminary and permanent injunctions prohibiting violation of the CDC's nationwide eviction moratorium or Plaintiff's right to due process;
- c) Awarding attorneys' fees and costs to Plaintiff, and
- d) Entering such other and further relief as is proper under the circumstances.

Date: September 30, 2020

Respectfully submitted,

/s/ Anthony E. Rothert  
Anthony Rothert, #44827  
ACLU OF MISSOURI FOUNDATION  
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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

**The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s):****First Listed Plaintiff:**

KC Tenants ;

**County of Residence:** Jackson County**Defendant(s):****First Listed Defendant:**

David M. Bryn ;

**County of Residence:** Jackson County**Additional Defendants(s):**

Mary A. Marquez ;

**County Where Claim For Relief Arose:** Jackson County**Plaintiff's Attorney(s):**

ANTHONY E ROTHERT ( KC Tenants)

906 Olive Street, Suite 1130

St. Louis, Illinois 63101

**Phone:** 3146693420**Fax:****Email:** AROTHERT@ACLU-MO.ORG**Defendant's Attorney(s):****Basis of Jurisdiction:** 3. Federal Question (U.S. not a party)**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 440 All Other Civil Rights**Cause of Action:** 28 U.S.C. § 1331 - challenge to administrative order establishing procedure for eviction actions in conflict with CDC order granting temporary immunity from such actions**Requested in Complaint****Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):** 0**Jury Demand:** No

**Related Cases:** Is NOT a refiling of a previously dismissed action

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**Signature:** /s/ Anthony E. Rothert

**Date:** 9/30/2020

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Agency Order.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19.

**DATES:** This Order is effective September 4, 2020 through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Nina Witkofsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, GA 30329; Telephone: 404-639-7000; Email: [cdcregulations@cdc.gov](mailto:cdcregulations@cdc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

There is currently a pandemic of a respiratory disease (“COVID-19”) caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.<sup>1</sup>

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.<sup>2</sup> During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these best efforts, COVID-19 continues to spread and further action is needed.

In 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. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

##### Applicability

Under this Order, a landlord, owner of a residential property, or other person<sup>3</sup> with a legal right to pursue

<sup>1</sup> CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

<sup>2</sup> Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

<sup>3</sup> For purposes of this Order, “person” includes corporations, companies, associations, firms,

eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order. This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Nor does this order apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

##### Renter’s or Homeowner’s Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC’s order temporarily halting residential evictions to prevent the further spread of COVID-19 may use. To invoke the CDC’s order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing partnerships, societies, and joint stock companies, as well as individuals.

payment. Executed declarations should not be returned to the Federal Government.

### Centers for Disease Control and Prevention, Department of Health and Human Services

#### Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2

#### Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

##### Summary

Notice and Order; and subject to the limitations under “Applicability”: Under 42 CFR 70.2, a landlord, owner of a residential property, or other person<sup>4</sup> with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

##### Definitions

“Available government assistance” means any governmental rental or housing payment benefits available to the individual or any household member.

“Available housing” means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

“Covered person”<sup>5</sup> means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or

<sup>4</sup> For purposes of this Order, “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

<sup>5</sup> This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., *Who gets evicted? Assessing individual, neighborhood, and network factors*, Social Science Research 62 (2017), 366–377. <http://dx.doi.org/10.1016/j.ssresearch.2016.08.017>, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: [https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport\\_SanFrancisco\\_FinalDraft-1.pdf](https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf).

other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),<sup>6</sup> (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary<sup>7</sup> out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

“Evict” and “Eviction” means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage.

“Residential property” means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or

<sup>6</sup> According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two bedroom house without spending more than 30% of one’s income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,621 annually). See National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

<sup>7</sup> An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one’s adjusted gross income for the year.

similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

“State” shall have the same definition as under 42 CFR 70.1, meaning “any of the 50 states, plus the District of Columbia.”

“U.S. territory” shall have the same definition as under 42 CFR 70.1, meaning “any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.”

##### Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness;
- mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and
- supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.

##### Background

There is currently a pandemic of a respiratory disease (“COVID-19”) caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.<sup>8</sup>

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.<sup>9</sup> During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

In 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. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

#### Applicability

This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more

<sup>8</sup> CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

<sup>9</sup> Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

restrictive than the requirements in this Order.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;<sup>10</sup> (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

#### Eviction and Risk of COVID-19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.<sup>11</sup> Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an

<sup>10</sup> Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick*, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

<sup>11</sup> United States Census Bureau. American Housing Survey, 2017. <https://www.census.gov/programs-surveys/ahs.html>.

index case of COVID-19 than other close contacts.<sup>12</sup>

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.<sup>13</sup> Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.<sup>14</sup> The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.<sup>15</sup>

<sup>12</sup> Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study*. *Lancet Infect Dis* 2020. [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

<sup>13</sup> See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

<sup>14</sup> Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

<sup>15</sup> See Congressional Research Service. *CARES Act Eviction Moratorium*, (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.<sup>16</sup>

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30–40 million people in America could be at risk of eviction.<sup>17</sup> A wave of evictions on that scale would be unprecedented in modern times.<sup>18</sup> A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID–19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID–19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.<sup>19</sup> Approximately 15% of moves are interstate.<sup>20</sup>

#### Eviction, Homelessness, and Risk of Severe Disease From COVID–19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID–19 than the general population.<sup>21</sup> In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.<sup>22</sup> Additionally,

some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.<sup>23</sup>

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID–19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID–19 have been identified in homeless shelters.<sup>24</sup> In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.<sup>25</sup> In Boston, Massachusetts, universal COVID–19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.<sup>26</sup> COVID–19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).<sup>27</sup> Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.<sup>28</sup>

CDC guidance recommends increasing physical distance between beds in homeless shelters.<sup>29</sup> To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to

individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID–19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID–19. Neither consequence is in the interest of the public health.

The risk of COVID–19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.<sup>30</sup> The unsheltered homeless are at higher risk for infection when there is community spread of COVID–19. The risks associated with sleeping and living outdoors or in an encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID–19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID–19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID–19.<sup>31</sup> Also, the homeless

<sup>30</sup> In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. See, Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

<sup>31</sup> Hugo Vasquez-Vera, et al. *The threat of home eviction and its effects on health through the equity*  
Continued

<sup>16</sup> See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: <https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html>.

<sup>17</sup> See Emily Benfer, et al., *The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk*, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

<sup>18</sup> As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. <https://evictionlab.org/national-estimates/>.

<sup>19</sup> See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html>.

<sup>20</sup> *Id.*

<sup>21</sup> See CDC, Coronavirus Disease 2019 (COVID–19), People Who Are at Increased Risk for Severe Illness, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

<sup>22</sup> Seattle-King County. Point in Time Count. [https://regionalhomelessnessystem.org/wp-content/](https://regionalhomelessnessystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final-7.29.2020.pdf)

[uploads/2020/07/Count-Us-In-2020-Final-7.29.2020.pdf](https://regionalhomelessnessystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final-7.29.2020.pdf)

<sup>23</sup> United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>

<sup>24</sup> Mosites E, et al, *Assessment of SARS-CoV–2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27–April 15, 2020*. MMWR 2020 May 1;69(17):521–522.

<sup>25</sup> Tobolowsky FA, et al. *COVID–19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020*. MMWR 2020 May 1;69(17):523–526.

<sup>26</sup> Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV–2 Infection in Residents of a Large Homeless Shelter in Boston*. JAMA. 2020 Apr 27;323(21):2191–2. Online ahead of print.

<sup>27</sup> Imbert E, et al. *Coronavirus Disease 2019 (COVID–19) Outbreak in a San Francisco Homeless Shelter*. Clin Infect Dis. 2020 Aug 3.

<sup>28</sup> National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: <https://nhchc.org/cdc-covid-dashboard/>.

<sup>29</sup> Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID–19. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

often have underlying conditions that increase their risk of severe outcomes of COVID-19.<sup>32</sup> Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.<sup>33</sup>

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.<sup>34</sup> At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,<sup>35</sup> which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

#### Findings and Action

Therefore, I have determined the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or U.S. territories that

lens: A systematic review. *Social Science and Medicine*. 175 (2017) 199e208.

<sup>32</sup> Fazel S, Geddes JR, Kushel M. *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations*. *Lancet*. 2014;384(9953):1529–1540.

<sup>33</sup> Hsu HE, et al. *Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020*. *MMWR* 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

<sup>34</sup> See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

<sup>35</sup> Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys. *Clin Microbiol Infect*. 2019; 25(2):249.e1–249.e6.

do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.<sup>36</sup>

Based on the convergence of COVID-19, seasonal influenza, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as fall and winter approach, I have determined that a temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the “Applicability” section, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act (“APA”) but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID-19. Another potential consequence would be if evicted individuals become

homeless and unsheltered, and further contribute to the spread of COVID-19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

#### Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

#### Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid State and local authorities in the enforcement of their quarantine and

<sup>36</sup> In the United States, public health measures are implemented at all levels of government, including the Federal, State, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

other health regulations and to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

#### Notice of Available Federal Resources

While this order to prevent eviction is effectuated to protect the public health, the States and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG—CV and ESG—CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit [www.hudexchange.info/program-support](http://www.hudexchange.info/program-support). For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, State and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy->

*issues/cares/state-and-local-governments* for more information.

#### Effective Date

This Order is effective upon publication in the **Federal Register** and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

#### Attachment

#### Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;<sup>37</sup>
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or

<sup>37</sup> "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

wages, lay-offs, or extraordinary<sup>38</sup> out-of-pocket medical expenses;

- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.<sup>39</sup>

- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant Date

#### Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

**Nina B. Witkofsky,**

*Acting Chief of Staff, Centers for Disease Control and Prevention.*

[FR Doc. 2020-19654 Filed 9-1-20; 4:15 pm]

**BILLING CODE 4163-18-P**

<sup>38</sup> An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

<sup>39</sup> "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR  
THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY  
HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;<sup>1</sup>
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary<sup>2</sup> out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

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<sup>1</sup> "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

<sup>2</sup> An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

Public reporting burden of this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ATSDR Reports Clearance Officer; 1600 Clifton Road NE, MS D-74, Atlanta, Georgia 30333; Attn: OMB-PRA (0920-1303)

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.<sup>3</sup>
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

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Signature of Declarant

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Date

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<sup>3</sup> “Available housing” means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to you.

Public reporting burden of this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ATSDR Reports Clearance Officer; 1600 Clifton Road NE, MS D-74, Atlanta, Georgia 30333; Attn: OMB-PRA (0920-1303)

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
16TH JUDICIAL CIRCUIT, STATE OF MISSOURI**

**In re: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 in Response to Centers for Disease Control and Prevention Order Published on September 4, 2020**

**Administrative Order No. 2020-154**

**ORDER**

**WHEREAS**, the 16th Judicial Circuit of the State of Missouri, located in Jackson County, Missouri has an interest in protecting the public health of the citizens of Jackson County and Court staff; and

**WHEREAS**, the Centers for Disease Control and Prevention (“CDC”) has declared the spread of COVID-19 as a worldwide pandemic; and

**WHEREAS**, the CDC seeks to mitigate the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness; and

**WHEREAS**, 42 U.S.C. § 264(a) authorizes the Surgeon General—with approval of the Secretary of Health and Human Services—to make and enforce such regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from one State or United States Possession into any other State or United States Possession; and

**WHEREAS**, 42 C.F.R. § 70.2 authorizes the Director of the CDC to implement necessary measures in the event of inadequate local control; and

**WHEREAS**, the CDC and the Department of Health and Human Services (“HHS”) issued an order titled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” (“CDC Order”) for publication in the Federal Register on September 4, 2020; and

**WHEREAS**, the CDC Order is effective from September 4, 2020 through December 31, 2020; and

**WHEREAS**, the CDC Order further provides that it is a “temporary eviction moratorium to prevent the further spread of COVID-19;” and

**WHEREAS**, the CDC Order defines “Covered Persons” who are entitled to protections under the Order; and

**WHEREAS**, the CDC Order contains an Attachment A, which is a Declaration Form (“Declaration” or “Declaration Form”) for use by tenants, lessees, or residents of residential properties according to the provisions of the CDC Order; and

**WHEREAS**, the CDC Order further provides that to invoke the protections of that Order, Covered Persons must provide an executed copy of the Declaration Form (or a similar declaration) under penalty of perjury to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live; and

**WHEREAS** the CDC Order further provides that it “does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease or similar contract” and that “nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract;” and

**WHEREAS**, the CDC Order further provides that “a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19;” and

**WHEREAS**, the CDC Order defines “Evict” and “Eviction” as meaning “any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage”; and

**WHEREAS**, the CDC Order further provides that “[n]othing in this Order precludes evictions based on a tenant, lessee, or resident:

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties or interest); and

**WHEREAS**, the CDC Order does not contain specific language preventing the filing of or processing of legal actions in the Missouri State Courts or in any other jurisdiction.

**IT IS THEREFORE ORDERED THAT:**

1. Beginning on September 4, 2020 and continuing until December 31, 2020, unless modified by any subsequent Administrative Order, prior to the issuance and/or service of any existing, pending, previously filed or newly filed writ of execution seeking to remove or cause the removal of a person from a residential property, or seeking to recover possession of any residential property for the nonpayment of rent, the party seeking the writ of execution shall file a “Verification” with the Court in substantially the same form/format as Exhibit A attached hereto and incorporated herein, under penalty of perjury, which verifies that the party seeking the writ of execution has not been provided with an executed copy of a Declaration Form from the persons

against whom the eviction is sought, or that the party seeking the writ of execution is evicting the persons on grounds not precluded by the CDC Order.

2. Any Verification filed with the Court as described in paragraph 1 above, shall contain a certification, under penalty of perjury, that the party filing the Verification and who is seeking the writ of execution has provided an executed copy of the Verification to the persons against whom the eviction is sought. The Verification shall include a notification to the persons against whom the eviction is sought, that if he/she/they contest or challenge the accuracy or veracity of the statements in the Verification, the persons against whom eviction is sought shall file with the Court, in the case number in which the writ of execution is being sought, within seven (7) days of receiving the Verification, a notice or request for a hearing on the accuracy or veracity of the statements in the Verification.

3. No writ of execution to remove or cause the removal of a person from a residential property or to recover possession of any residential property for the nonpayment of rent will be served and/or executed unless and until a properly completed Verification is filed as set forth in paragraph 1 above. If the persons against whom eviction is being sought challenge the accuracy or veracity of the statements in the Verification *and* file a notice or request with the Court seeking a hearing on the accuracy or veracity of the statements in the Verification as set forth in paragraph 2 above, a hearing shall occur and a finding/Order/Judgment by the Court will be entered and, under said circumstances, no writ of execution to remove or cause the removal of a person from a residential property or to recover possession of any residential property for the nonpayment of rent will be served and/or executed unless and until a finding/Order/Judgment is entered by the Court determining if the writ may be served and/or executed.

4. This Administrative Order does not preclude a landlord, owner of a residential property, or other person or entity with a legal right to pursue eviction or a possessory action from filing a rent and possession action and pursuing that action to judgment.

5. The Declaration in the CDC Order is required to be provided to the landlord, owner of residential property or other person or entity with a legal right to pursue eviction or a possessory action and may be provided at any time - this Administrative Order does not prevent or preclude the Declaration from being provided at any time.

6. In any judgment entered in a rent and possession action during the pendency of this Administrative Order, the Judge entering said judgment shall state in the judgment the grounds for the judgment and whether those grounds are subject to the provisions of the Order or are outside the parameters of the Order.

7. If a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action has been provided with an executed Declaration Form from person(s) against whom an eviction is sought, and wishes to challenge the accuracy or veracity of any statements in the Declaration Form, said landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action may request an evidentiary hearing before the Court. If a judgment in the case has not been entered or the Court retains jurisdiction over the case, judgment and/or writ being sought, then the request for evidentiary

hearing may be filed in the pending case and heard by the judge assigned to the case. If pursuant to Supreme Court Rule 75.01 or any other applicable rule or statute, the judge who entered the judgment no longer retains jurisdiction or control over the case, judgment or writ being sought, then the party entitled to enforcement of the judgment may seek other legal remedies as deemed appropriate.

8. This Administrative Order shall be effective as of 8:00 am on September 4, 2020.

**IT IS SO ORDERED.**

03-Sep-2020  
Date

  
\_\_\_\_\_  
David M. Byrn, Presiding Judge

cc: Court Administrator  
All 16th Circuit Judges and Commissioners  
Deputy Court Administrator - Family Court  
Deputy Court Administrator – Circuit Court/Jury Supervisor  
Director, Civil Process  
Director, Civil Records  
Legal Counsel  
County Executive  
County Legislators  
County Administrator

*Michelle Morgan*

**EXHIBIT A TO ADMINISTRATIVE ORDER 2020-154  
IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI**

<b>Plaintiff</b>	<b>Defendant</b>	<b>Case Number</b>

<b>Attorney Name, Address, Bar#</b>

**VERIFICATION OF COMPLIANCE WITH CENTERS FOR DISEASE CONTROL AND PREVENTION  
ORDER TITLED “TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE  
FURTHER SPREAD OF COVID-19**

NOW COMES the Plaintiff and states as follows:

The plaintiff is seeking to recover possession of the following described premises:

--

The undersigned has reviewed the Order titled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” issued by the Centers for Disease Control under Section 361 of the Public Health Service Act and hereby certifies:

- I have not received an executed copy of a Declaration Form from any of the tenants, lessees, or residents that I am seeking to remove; OR
- The Order authorizing eviction in this case is based on the tenant, lessee, or resident engaging in criminal activity while on the premises; OR
- The Order authorizing eviction in this case is based on the tenant, lessee, or resident threatening the health or safety of other residents; OR
- The Order authorizing eviction in this case is based on the tenant, lessee, or resident damaging or posing an immediate and significant risk of damage to property; OR
- The Order authorizing eviction in this case is based on the tenant, lessee, or resident violating an applicable building code, health ordinance, or similar regulation relating to health and safety; OR
- The Order authorizing eviction in this case is based on the tenant, lessee, or resident violating another contractual obligation other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest.
- I declare under the penalties of perjury that this verification has been examined by me and that its contents are true to the best of my information, knowledge, and belief. **I FURTHER DECLARE, UNDER PENALTIES OF PERJURY, THAT I HAVE PROVIDED AN EXECUTED COPY OF THIS VERIFICATION TO ALL TENANTS, LESSEES OR RESIDENTS THAT I AM SEEKING TO REMOVE.**

**NOTICE TO TENANTS, LESSEES OR RESIDENTS – IF YOU CONTEST THE ACCURACY OF THE STATEMENTS IN THIS VERIFICATION, YOU MUST FILE A MOTION/NOTICE WITH THE COURT, IN THE CASE NUMBER STATED ABOVE, WITHIN SEVEN (7) DAYS OF RECEIVING THIS VERIFICATION. IF NO MOTION/NOTICE IS FILED, THE COURT MAY PROCEED WITH EVICTION BASED ON THE STATEMENTS IN THIS VERIFICATION.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Plaintiff/Attorney