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## **NCLA Challenges Unlawful CDC Order that Leaves Landlords Powerless to Evict Delinquent Tenants**

*Rick Brown v. Secretary Alex Azar, et al.*

**Washington, DC (September 8, 2020)** – Today the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [complaint](#) and request for a [temporary restraining order](#) or preliminary injunction in the U.S. District Court for the Northern District of Georgia challenging the authority of the Centers for Disease Control and Prevention (CDC) to impose a nationwide “eviction moratorium.” In an unprecedented overreach, CDC issued a [“Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19”](#) order, effective September 4, 2020, “to temporarily halt residential evictions to prevent the further spread of COVID-19.”

NCLA’s complaint, *Rick Brown v. Secretary Alex Azar, et al.*, asks the court to stop the agency from enforcing the unlawful order that—among other problems—violates the right to access the courts, exceeds limits on the Supremacy Clause, raises serious non-delegation doctrine concerns, and implicates anti-commandeering principles and precedents.

NCLA client, Rick Brown of Winchester, Virginia, is suffering significant economic damages, including \$8,092 in unpaid rent, as well as monthly maintenance costs, damages to his property, and the lost opportunity to use the property or rent it to someone else who would be able to pay the fair market value of at least \$925 per month. Incredibly, under the unlawful CDC order, Mr. Brown also faces up to \$100,000 and a year in prison if he evicts the delinquent tenant using legal processes under Virginia state law.

The Supreme Court of Virginia on Friday did not extend its moratorium issued on August 7, 2020 suspending eviction proceedings across the commonwealth in response to COVID-19 emergency at the request of Virginia Governor Ralph Northam. But the CDC, a federal agency, has now issued a sweeping unilateral order purporting to suspend *state* law under the premise that it was “necessary” to control the pandemic. The order denies Mr. Brown his right to access the courts to obtain a writ of eviction to take possession of his own property by the only lawful means available to him to evict a delinquent tenant. Agencies have no inherent power to make law, and nothing in the relevant statutes or regulations gives CDC the power or authority to issue an eviction-moratorium order.

The complaint also argues that the order violates the U.S. Constitution because the CDC has not identified any act of Congress that confers upon it the power to halt evictions or preempt state landlord-tenant law. CDC’s order also impermissibly commandeers state courts and state officers to apply, enforce, and implement an unconstitutional federal law. Because CDC cannot lawfully waive the application of Virginia’s laws governing evictions, the order is void and must fail.

**NCLA released the following statements:**

“CDC’s order is an unprecedented power grab that hurts hardworking people who have done nothing more than try to earn a living renting out their property. An administrative agency has no authority to overrule duly enacted state laws across the country that protect landlords from delinquent tenants when a contract is in place. If CDC can get away with such a brazen abuse, then federal power has no limits.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

“These are perilous times, and the rule of law is a fragile thing. As sympathetic as many tenants are, the CDC has no power to stop landlords from using state court eviction processes. Left unchecked, this abuse of power would set a horrible precedent that would destabilize rental markets for tenants and landlords alike. Aside from future rental market impacts, CDC’s order purports to exercise authority Congress has not and could not give to the agency. Once again the Administrative State is running amok. If Congress wants to prevent evictions, it could pass an emergency rental subsidy, but it cannot force landlords to let tenants occupy their property.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

**ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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