

 New Civil Liberties Alliance

May 5, 2021

Via CM/ECF

David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth St. NW
Atlanta, GA 30303

Re: Brown, et al. v. Azar, et al., No. 20-14210-H

Dear Mr. Smith:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellants write to inform the panel of pertinent authority that was decided after briefing concluded. On May 5, 2021, the United States District Court for the District of Columbia “set aside the CDC Order” challenged here, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55,292 (Sept. 4, 2020), “[b]ecause the plain language of the Public Health Service Act, 42 U.S.C. § 264(a), unambiguously forecloses the nationwide eviction moratorium.” *Alabama Assoc. of Realtors v. HUD*, No. 1:20-cv-3377, Slip Op. at *19-20 (D.D.C. May 5, 2021).

Plaintiff-Appellants have argued to this Court that the Order exceeded the agency’s authority under 42 U.S.C. § 264. *See* Appellants’ Br. at 16. In *Alabama Assoc. of Realtors*, the Court concluded that the “national eviction moratorium satisfies none of the[] textual limits” in Section 264. Slip Op. at *12. This holding was reached because “imposing a moratorium on evictions is different in nature than ‘inspect[ing], fumigat[ing], disinfect[ing], sanit[izing], ... exterminat[ing] [or] destr[oying],’ a potential source of infection.” *Id.* (citing 42 U.S.C. § 264(a)). “Moreover, interpreting the term ‘articles’ to include evictions would stretch the term beyond its plain meaning. ... And even if the meaning of the term ‘articles’ could be stretched that far, the statute instructs that they must be ‘found to be so infected or contaminated as to be sources of dangerous infection to human beings.’ The Secretary has made no such findings here.” *Id.* (citation omitted).

The Court further cautioned, “Accepting the Department’s expansive interpretation of the Act would mean that Congress delegated to the Secretary the authority to resolve not only this important question, but endless others that are also subject to earnest and profound debate across

the country.” *Id.* at *15 (citation omitted). Thus, while “the Public Health Service Act authorizes the Department to combat the spread of disease through a range of measures,” “these measures plainly do not encompass the nationwide eviction moratorium set forth in the CDC Order.” *Id.* at *17.

Respectfully,

/s/ Caleb Kruckenberg

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CERTIFICATE OF SERVICE

I hereby certify that this document was electronically filed using the Eleventh Circuit's CM/ECF system, which sent notification of such filing to all counsel of record.

CERTIFICATE OF COMPLIANCE

I hereby certify that this letter complies with the word limitations of Fed. R. App. P. 28(j) because it contains 337 words.

Respectfully,

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