

 New Civil Liberties Alliance

August 27, 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. Becerra, et al., No. 20-14210-H

Dear Mr. Smith:

Pursuant to FRAP 28(j), Plaintiff-Appellants write to inform the Court of pertinent authority that was decided after Plaintiff-Appellants filed their August 13, 2021 petition for rehearing. On August 26, 2021, the Supreme Court reinstated an order setting aside CDC's eviction moratorium order. *See Alabama Assoc. of Realtors v. HUD*, No. 21A23, 594 U.S. ---- (2021), *available at* https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf. Specifically, on May 5, 2021, the 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 ... 42 U.S.C. § 264(a), unambiguously forecloses the nationwide eviction moratorium.” *Alabama Assoc. of Realtors v. HUD*, No. 1:20-cv-3377, 2021 WL 1779282 at *19-20 (D.D.C. May 5, 2021). The district court stayed that decision pending appeal, but after a series of stops, the Supreme Court vacated the stay because it was “no longer justified.” *Alabama Assoc. of Realtors*, Slip op. at 5.

Plaintiff-Appellants have argued that the Order exceeded the agency's authority under 42 U.S.C. § 264 and have asked for rehearing because they are not only certain to prevail on the merits but have been suffering irreparable injury. *See* Appellants' Pet. at 2-3. The Supreme Court has now resolved both issues in Plaintiff-Appellants' favor. The Court said, “The applicants not only have a substantial likelihood of success on the merits—it is difficult to imagine them losing.” *Alabama*

Assoc. of Realtors, Slip op. at 5. Section 264 was a “wafer-thin reed on which” CDC rested a “sweeping” and “breathtaking amount of authority.” *Id.* at 6-7. Turning to irreparable harm, the Court said, “The moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery. ... And preventing them from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude.” *Id.* at 7. Accordingly, the panel decision here has been overruled by the Supreme Court.

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 350 words.

Respectfully,

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