



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** [Judy Pino](#), 202-869-5218

## **NCLA Seeks *En Banc* Review in 11th Circuit as CDC Eviction Moratorium Extended to Early October**

*Rick Brown, et al. v. Centers for Disease Control and Prevention, et al.*

**Washington, DC (August 13, 2021)** – Rick Brown, Sonya Jones, and Richard Krausz are among the thousands of mom-and-pop housing providers whose tenants owe them thousands or tens of thousands of dollars in back rent due to the eviction moratorium issued by the Centers for Disease Control and Prevention (CDC). That moratorium forbids property owners from retaking possession of their properties away from delinquent tenants, even if owners comply with state landlord-tenant laws. Today, the New Civil Liberties Alliance filed a [petition](#) with the U.S. Court of Appeals for the Eleventh Circuit to rehear *en banc* the *Brown, et al. v. CDC, et al.* case.

NCLA argues the Eleventh Circuit panel [erred](#) in its decision to affirm the lower court’s refusal to enjoin CDC’s unlawful eviction moratorium, which exceeded the agency’s authority. The majority did not reach the statutory authority question, instead deciding the case on the theory that NCLA’s clients did not demonstrate irreparable harm. Supreme Court precedent and the Eleventh Circuit’s own precedent compel the Court to conclude that its equitable powers allow it to enjoin governmental abuses like the CDC moratorium. The unlawful moratorium forces NCLA’s clients to incur substantial costs in providing free housing to tenants who refuse to pay rent.

The eviction moratorium issued by CDC in March 2020 has now been [extended](#) until October 3, 2021. Despite the Eleventh Circuit panel’s 2-1 ruling, CDC’s ongoing and deliberate violation of the housing providers’ constitutional rights does constitute irreparable harm. Petitioners have no means to seek damages from CDC and will have no redress for CDC’s now-deliberate effort to violate their constitutional property rights and rights to access state court procedures because the panel’s rule *limited* which constitutional rights merit injunctive relief.

President Biden has conceded *repeatedly* that CDC lacks the power to issue the eviction moratorium. On August 3, the day CDC extended its moratorium, President Biden [spoke](#) candidly about the issue, saying, “the courts made it clear that the existing moratorium was not constitutional; it wouldn’t stand.” The Supreme Court has also weighed in against the CDC eviction moratorium. After denying the application to vacate a stay in another lawsuit, *five* members of the Court espoused the view that the CDC Order was unlawful. Justices Thomas, Alito, Gorsuch, and Barrett would have granted the application. Justice Kavanaugh concurred in the denial of temporary relief but explained that he agreed that the CDC “exceeded its existing statutory authority” and that any further extension would require Congressional action. Congress tried and failed to extend the moratorium, so CDC extended it anyway—once again without statutory authorization.

The Eleventh Circuit should vacate the panel opinion, grant rehearing *en banc*, and enjoin the moratorium.

### **NCLA released the following statement:**

“No one, not even the President who oversees the CDC, thinks that the agency has the power to keep property owners from retaking possession of their own homes. Yet the Eleventh Circuit passed the buck because of the

limited term of the moratorium. This hesitance only emboldened the agency and the President to extend the order yet again. The rule of law must prevail, and the Court must put a stop to the agency’s abuse of power.”

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

For more information visit the case page [here](#).

## **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.

###