****IF YOU ARE NOT SPEAKING, WE ASK THAT YOU MUTE YOUR LINE; THIS WILL ENSURE THE BEST SOUND QUALITY FOR THIS PRESENTATION****

BROWN BAG DISCUSSION ON THE STATE OF MORTGAGE FORECLOSURES, EVICTION ACTIONS AND GENERAL UPDATES AFFECTING THE CONSUMER PRACTICE

MONDAY, SEPTEMBER 13, 2021 at 8:30 A.M.-10:00 A.M.

HONORABLE ALAN S. TRUST,
CHIEF UNITED STATES BANKRUPTCY JUDGE, EASTERN DISTRICT OF NEW YORK
Welcome Remarks – Update on Court Operations and COVID-19 precautions.

MELANIE A. FITZGERALD, ESQ.,
LAMONICA HERBST & MANISCALCO, LLP
Introduction of Panelists.

CHRISTINE H. BLACK, ESQ.,
ASSISTANT U.S. TRUSTEE, OFFICE OF THE UNITED STATES TRUSTEE

- Update from the United States Trustee's office re: statistical information on chapter 7 and 13 filings; UST office staffing; impact of COVID-19 on 341 meetings, including protocols and precautionary measures under consideration.

HONORABLE ROBERT F. QUINLAN,
SUPREME COURT JUSTICE, NEW YORK SUPREME COURT, SUFFOLK COUNTY

- Update on Mortgage Foreclosures- COVID Conferences and moving forward with a foreclosure action.
- Moratoriums in New York extended through January 15, 2022.

HONORABLE WILLIAM A. HOHAUSER,
DISTRICT COURT JUDGE, NASSAU COUNTY DISTRICT COURT

- Update on evictions in Landlord/Tenant proceedings and moving forward after the Supreme Court's ruling in *Pantelis Chrysafis, et al., v. Lawrence K. Marks*, 594 U.S. ___ (2021) and *Alabama Assoc of Realtors v. Dep't of Health and Human Services*, 594 U.S. ___ (2021).
- Emergency Rental Assistance Program (ERAP).

SHARI BARAK, ESQ.,
LOGS LEGAL GROUP

- Consumer Financial Protection Bureau's ("CFPB") COVID-19 Mortgage Servicing Final Rule.

ALAN NISSELSON, ESQ.,
WINDELS MARX LANE & MITTENDORF, LLP

- Chapter 7 Trustee's practices during the pandemic- view from both sides of the River- SDNY & EDNY.
- Expectations from practitioners.

QUESTIONS AND ANSWERS 10 MINUTES

ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and as required by Chapter 147 of the Laws of 2021 which relates to residential and commercial foreclosures, I hereby direct that, effective immediately, the following procedures and restrictions shall apply to the conduct of foreclosure matters before the New York State Unified Court System:

1. Filings:
    a. No court shall accept for filing commencement papers to foreclose a mortgage related to residential real property as defined by L. 2021, c. 147 (Part C, Subpart B, § 1) unless those papers include affidavits as required by Part C, Subpart B, § 4.
    b. No court shall accept for filing commencement papers to foreclose a mortgage relating to commercial real property as defined by Part B, Subpart B, § 1 unless those papers include affidavits as required by Part B, Subpart B, § 4.
    c. Filing and service of process in all foreclosure proceedings shall continue as set forth in Administrative Order 267/20.
2. Stay of Actions in Which the Mortgagor Provides a Hardship Declaration: In any covered action in which a judgment of sale has not been issued and a covered mortgagor or owner has already submitted or hereafter submits a Hardship Declaration to the foreclosing party, the foreclosing party's agent, or the court, the action shall be stayed (or commencement tolled) until at least January 15, 2022 (Part B, Subpart B, § 5; Part C, Subpart B, § 5).
3. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: If a judgment of sale has been issued in any covered action but has not yet been executed, execution of the judgment shall be stayed until the court has held a conference with the parties. If a mortgagor or owner has submitted or hereafter submits a Hardship Declaration to the foreclosing party, the foreclosing party's agent, or the court prior to the execution of the judgment, the action shall be stayed until at least January 15, 2022 (Part B, Subpart B, § 6; Part C, Subpart B, § 6).
4. Challenging a Hardship Declaration:
    a. New Action – In a new filing, if the foreclosing party submits a detailed affidavit attesting that the foreclosing party has received a Hardship Declaration from the mortgagor or owner, but the foreclosing party believes in good faith that the hardship certified in the Hardship Declaration does not exist, the matter should be scheduled for a hearing. If, after the hearing, the court finds the Hardship Declaration to be valid, the matter should be stayed

through January 15, 2022. If the court finds that the Declaration is invalid, the matter may proceed in the normal course.

b. Pending Action - Upon motion by the plaintiff on notice to the defendant, a court must schedule a hearing to determine the validity of the Hardship Declaration. If, after the hearing, the court finds the Hardship Declaration to be valid, the stay shall continue. If the court finds that the Declaration is invalid, the matter may proceed in the normal course (Part B, Subpart B, § 9; Part C, Subpart B, § 9).

5. Case Conferencing – Regardless of whether a Hardship Declaration is on file, courts should continue to actively manage their foreclosure cases and conduct conferences as needed, including settlement conferences in residential mortgage foreclosure matters as required by CPLR 3408. Courts should also continue to determine whether a matter is subject to a government moratorium or forbearance program, refer unrepresented parties to local civil legal service providers and housing counseling agencies, provide unrepresented parties with contact information for the Homeowner Assistance Fund, and use best efforts to resolve any outstanding issues. Where possible, settlements, loan modifications, and other loss mitigation options should be encouraged.

6. Other Provisions – All covered actions shall be conducted as otherwise required by the remaining provisions of L. 2021, c. 147.

7. Auctions: Auctions may resume but shall be permanently conducted in accordance with district/county auction plans. Such plans should be reviewed and updated periodically. If it is anticipated that an auction cannot be held in compliance with the UCS' COVID-19 related protocols, in particular regarding social distancing, the auction shall be relocated, and if necessary, postponed.

8. Resumption of other Residential, Commercial, and Tax Lien Foreclosure Matters: Any residential, commercial, or tax lien foreclosure matter not covered by L. 2021, c. 147 may resume in the normal course, subject to government programs affecting the commencement and prosecution of such matters.

9. Paragraphs 1, 2, 3, 4, and 6 of this order shall expire on January 15, 2022.

This order supersedes Administrative Orders 157/20, 232/20, 341/20, and 159/21. This order further supersedes the provisions of any other Administrative Order inconsistent with its terms and provisions.

Dated: September 9, 2021

Chief Administrative Judge of the Courts

AO/262/21

N.Y.S. SUPREME COURT, COUNTY OF NASSAU
COVID-19 FORECLOSURE MOTION STATUS CONFERENCE

INSTRUCTIONS AND PROCEDURES

Pursuant to the Administrative Order of the Chief Administrative Judge, AO/157/20, effective July 27, 2020, prior to any further proceedings in a foreclosure matter, the court must initiate a status or settlement conference to address a range of subjects related to the case and COVID-19 concerns. The purpose of the COVID-19 Foreclosure Motion Status Conference is *not* to restore a matter to the Foreclosure Settlement Conference Part for an another CPLR § 3408 mandatory foreclosure settlement conference.

You must follow these instructions in completing the COVID-19 Foreclosure Motion Status Conference Form (hereinafter "COVID Motion SCF")

INSTRUCTIONS FOR PLAINTIFF

- Following the filing of a motion and only after receiving a request from the Court, Plaintiff shall complete Part A of the COVID-19 Foreclosure Motion Status Conference Form and review it for accuracy and completeness before signing. Plaintiff shall then serve the executed COVID Motion SCF, in its entirety, upon all Defendant homeowners and such Defendant's attorney, if Defendant is represented by an attorney. Please note, a motion must be filed to initiate this process.
- Plaintiff's counsel shall file with the NYSCEF System the entire COVID Motion SCF, together with an affidavit of service, within 30 days of receiving a request from the Court, with either (1) Parts A and B completed or (2) Part A, Question 11 completed indicating that Defendant/ Defendant's counsel has *not responded* to the COVID Motion SCF. Following filing, Plaintiff shall also email a courtesy copy to NCCOVIDmotionSCF@nycourts.gov .
- An *incomplete and/or otherwise insufficient* COVID Motion SCF will be rejected by the Clerk and the parties will be directed to appear for a further COVID-19 Foreclosure Motion Status Conference.
- If a COVID Motion SCF indicates that Defendant and/or Defense counsel have *not responded* to the COVID Motion SCF, the Court will schedule an a virtual/in-person Status Conference.
- If Plaintiff's counsel fails to submit a completed COVID Motion SCF to the Court within 30 days of being noticed, the Court will place the matter on its Non-Compliance Calendar for further conferencing and notify the parties of the date on which to appear before the Court.
- Upon receipt and review of the completed COVID Motion SCF, the Court will render an order and upload it to the NYSCEF System or notify the parties of a conference date, if necessary.

INSTRUCTIONS FOR DEFENDANT

- You are receiving this COVID-19 Foreclosure Motion Status Conference Form ("COVID Motion SCF") because you are a named Defendant homeowner in a pending foreclosure proceeding and there is an open motion related to the foreclosure action before the Court. The Court has directed the attorney for Plaintiff (servicer/lender) to complete Part A of this Form and then serve it upon the Defendant(s) and Defendant's attorney, if Defendant is represented by an attorney.
- **Within five (5) business days of receipt of the COVID Motion SCF**, Defendant or Defendant's attorney is required to:
    - (1) read the contents of Part A of the COVID Motion SCF;
    - (2) read all instructions and notices, and complete Part B of the COVID Motion SCF; and
    - (3) return the completed COVID Motion SCF by either (a) returning to the Plaintiff; (b) uploading to the NYSCEF System; (c) mailing to Supreme Court Nassau County, 100 Supreme Court Drive, ATTN: Foreclosure Motion Status Conference Part, 2nd Floor, Room 226 Mineola, NY 11501; or (d) emailing to NCCovidMotionSCF@nycourts.gov . If a copy is mailed or emailed to the Court, the defendant must simultaneously provide a completed copy of the COVID Motion SCF to the Plaintiff.
- If defendant does not respond within five (5) business days of receipt, the plaintiff will proceed as stated in Part A, Question 11, and an in-person conference will be scheduled.

NOTICES FOR DEFENDANT

- **This is not a HARDSHIP DECLARATION form. A separate inquiry will be made at the time of the conference if appropriate.** For more information on foreclosure procedures visit: http://ww2.nycourts.gov/admin/OPP/foreclosures.shtml or http://ww2.nycourts.gov/COURTS/10JD/nassau/foreclosure.shtml

SPECIAL RELIEF UNDER STATE/FEDERAL LAW FOR HOMEOWNERS:

NY Banking Law § 9-x: Requires that lender make forbearance applications to qualified mortgagor who is in arrears, on a trial period, or who has applied for loss mitigation. Mortgagor must demonstrate financial hardship as a result of COVID-19 during the covered period (commencing 3/7/2020) and encumbered property must be primary residence. For more information visit:
https://www.dfs.ny.gov/apps_and_licensing/mortgage_companies/mortgage_forbearance_statute_sect9x_faqs

CARES Act: During covered period, borrower with a federally backed mortgage experiencing a financial hardship due, directly or indirectly, to COVID may request forbearance regardless of delinquency status. To assist you in determining whether your loan is federally backed visit and for more information visit:
https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief-do-i-qualify/

REFERRAL OF SELF-REPRESENTED DEFENANTS TO SERVICES:

If you are in need of housing/foreclosure assistance you are encouraged to contact one of the following entities for free/low cost legal/housing counseling assistance.

- **Nassau Suffolk Law Services** Website: https://www.nslawservices.org/; Telephone: 516-292-8100 ext. Foreclosure Prevention Project.
- **Long Island Housing Partnership** Website: http://www.lihp.org/ ; Telephone: 631-435-4710; Email: info@lihp.org
- **New York Legal Assistance Group (NYLAG)** Website: https://www.nylag.org/ or www.nylag.org/hotline/; Telephone: 212-613-5000; NYLAG NY Covid-19 Legal Resource Hotline: 929-356-9582
- **Services for the Underserved - Supportive Services for Veterans Families (S:US), Long Island Division- Housing Crisis Services** Website: www.sus.org; Telephone: 631-227-0777
- **Nassau County Bar Association – Lawyer Referral Service** Website: https://www.nassaubar.org/need-a-lawyer/; Telephone: (516) 747-4832; Email: lawyerreferral@nassaubar.org

N.Y.S. SUPREME COURT, COUNTY OF NASSAU

COVID-19 FORECLOSURE MOTION STATUS CONFERENCE FORM

PART A

(to be completed by Plaintiff)

CASE INFORMATION:

INDEX NUMBER: _____

PLAINTIFF: _____

DEFENDANT: _____

APPEARANCES:

	PLAINTIFF'S ATTORNEY	**DEFENDANT / DEFENDANT'S ATTORNEY**
NAME:	_____	_____
ADDRESS:	_____	_____
TELEPHONE:	_____	_____
EMAIL:	*_____	*_____

***required information, if known**

REVIEW OF PROCEDURAL HISTORY:

1. Date Complaint filed: _____
   Date Answer filed/served: _____ ☐ No Answer filed
2. Prior Court directives:
   _____

INQUIRY REGARDING COVID-19 RELIEF:

3. Has the Defendant, homeowner/borrower, sought and was he/she granted COVID-19 forbearance relief by the Plaintiff? ☐ **Yes** ☐ **No**

   If yes, please describe: _____

   _____

4. Has the Defendant, homeowner/borrower, been provided with relief other than COVID-19 relief by the Plaintiff? ☐ **Yes** ☐ **No**

   If yes, please describe: _____

   _____

5. Is there a Covid-19 Federal Moratorium Hold on this case: ☐ **Yes** ☐ **No;**

   If yes, identify applicable entity: ☐ FHA; ☐ HUD; ☐ FHLMC; ☐ FNMA; ☐ GNMA; ☐ VA; ☐ Private Investor; ☐ Conventional loan; ☐ Other: _____

   Expiration date of current hold: _____

ASSESSMENT OF PENDING OR ANTICIPATED MOTIONS (PRIOR JUDGMENTS AND ORDERS):

6. Type of Motion pending decision: ☐Order of Reference ☐Judgment of Foreclosure and Sale ☐Discontinuance ☐Dismissal ☐Other: _____
   Movant: ☐Plaintiff ☐Defendant

7. Opposition submitted on: _____ or ☐No opposition filed

8. Is the Plaintiff (servicer/lender) prepared to adjudicate the motion?

   ☐Yes, Plaintiff requests that the Court render a decision on the merits of the pending motion.
   ☐No, Plaintiff is not prepared to adjudicate the pending motion.
   If no, why?: _____

   ☐Plaintiff, the movant, intends on withdrawing the motion without prejudice. Annex letter withdrawing motion.

9. The briefing schedule proposed by Stipulation of the parties is ☐Approved ☐N/A.

Responses due by: Plaintiff: _____ Defendant: _____

Notes: _____

10. Is the subject property vacant or abandoned? ☐Yes ☐No

    If yes and Plaintiff wishes to waive conference requirement of AO/157/20 plaintiff shall submit affirmation averring that, following diligent inquiry, it knows the property at issue to be currently abandoned and vacant (pursuant to AO/232/20, section 2).

11. ☐Plaintiff's counsel has not received a response from the Defendant/homeowner. Accordingly, Plaintiff's counsel shall upload the COVID-19 Foreclosure Motion Status Conference Form and Affidavit of Service to the NYSCEF System and await a date and time from the Court for a COVID-19 Foreclosure Motion Status Conference.

PLAINTIFF'S COUNSEL:

_____, Esq. an attorney at law licensed to practice in the State of New York, and the attorney for the Plaintiff in this action, hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that other than the information supplied above, I am not aware of any COVID-19 relief sought by and granted to the Defendant by the Plaintiff as of the date of the submission of this Foreclosure Motion Status Conference Form, which would preclude the Plaintiff from proceeding with requesting that the Court render a decision on the merits of the pending motion.

DATE: _____ **_____**
SIGNATURE OF PLAINTIFF'S ATTORNEY

_____
PRINT NAME

[DEFENDANT, CONTINUE TO PART B]

PART B

(to be completed by Defendant)

DEFENDANT TO COMPLETE:

1. ☐ The defendant sought COVID-19 or other relief on _____(date).
   His or her request was ☐ n/a ☐ granted ☐ denied
   Description of relief, if granted: _____

2. The defendant ☐ is not currently impacted / ☐ is currently impacted, as a result of the COVID-19 pandemic as follows:

3. **The defendant(s) contact information (**required)**

Email Address (for court notice of virtual conferences):	
Telephone Number:	
Mailing Address:	

4. ☐ The Defendant and/or Defendant's attorney requests an in-person/ virtual COVID19 Foreclosure Motion Status Conference.
   If this box is not checked, the conference shall proceed by submission of this Form only.

By signing below the defendant/ defendant's attorney acknowledges that he/she has read the information contained in both Parts A and B of the COVID Motion FSC and has completed this form accurately and to the best of his/her knowledge.

DATE: _____ **Signature:**_____

Print Name:_____

☐ **DEFENDANT** ☐ **DEFENDANT'S ATTORNEY**

Within five (5) business days of receipt of the COVID Motion SCF defendant shall complete and return the entire COVID Motion SCF to the Plaintiff; upload to the NYSCEF System; mail to Supreme Court Nassau County, 100 Supreme Court Drive, ATTN: Foreclosure Motion Status Conference Part, Room 226 Mineola, NY 11501; or email to NCCovidMotionSCF@nycourts.gov.

If a copy is mailed/emailed to the Court, the defendant must simultaneously provide a completed copy of the COVID Motion SCF to the Plaintiff.

NOTICE TO TENANT:

If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

For more information about legal resources that may be available to you, go to www.nycourts.gov/evictions/nyc/ or call 718-557-1379 if you live in New York City or go to www.nycourts.gov/evictions/outside-nyc/ or call a local bar association or legal services provider if you live outside of New York City. Rent relief may be available to you, and you should contact your local housing assistance office.

TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

I am a tenant, lawful occupant, or other person responsible for paying rent, use and occupancy, or any other financial obligation under a lease or tenancy agreement at (address of dwelling unit):

_____

YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY SELECTING OPTION "A" OR "B", OR BOTH.

☐ A. I am experiencing financial hardship, and I am unable to pay my rent or other financial obligations under the lease in full or obtain alternative suitable permanent housing because of one or more of the following:

1. Significant loss of household income during the COVID-19 pandemic.

2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.

3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.

4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.

5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

To the extent that I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

☐ B. Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.

I understand that I must comply with all other lawful terms under my tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by my tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment against me. I further understand that my landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed: _____

Printed name: _____

Date signed: _____

NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

New York State
Emergency Rental Assistance Program

The Emergency Rental Assistance Program assists households behind on their rent that have experienced financial hardship due to COVID-19 and are at risk of homelessness or housing instability. In addition, the program can provide temporary rental assistance and assistance with unpaid utility bills.

DO I QUALIFY?

Eligible residents must meet the following criteria:

- Household gross income at or below 80 percent of area median income, which varies by county and household size.
- A member of the household received unemployment benefits or experienced a reduction in income, incurred significant costs or experienced financial hardship, directly or indirectly, due to the COVID-19 pandemic.
- The applicant owes past due rent at their current residence.

HOW DOES IT WORK?

This assistance can pay up to 12 months of past due rent and for some households, pay up to 3 months for future rent. The program can also pay for up to 12 months of overdue electric or gas bills. Please note, payments will always be issued directly to the landlord or utility provider.

Applications can be submitted online beginning

June 1

For more information, visit **otda.ny.gov/ERAP** or call **844-NY1RENT** (844-691-7368)

NEW YORK STATE | Office of Temporary and Disability Assistance

(Rev. 05/21)

New York State
Office of Temporary and Disability Assistance

Emergency Rental Assistance Program (ERAP)

Overview

Program open as of June 1, 2021. Applications are now being accepted.

Ready to Apply?

Apply for the ERAP online 24 hours a day, 7 days a week.

IMPORTANT NOTE: Once the application is started, all questions must be answered and the application signed and saved to submit the application. There currently is no way to save a partially completed application. Applicants are encouraged to gather all the information needed before starting an application including income of household members and rental amounts.

Applicants who previously started, but did not complete and sign an application, must start a new application. Applicants who have completed and signed an application can upload required documentation at any time.

APPLY FOR ERAP

The New York State Emergency Rental Assistance Program (ERAP) will provide significant economic relief to help low and moderate-income households at risk of experiencing homelessness or housing instability by providing rental arrears, temporary rental assistance and utility arrears assistance.

Seven communities that received funding for emergency rental assistance directly from the federal government opted to administer their own programs. Residents of City of Rochester and Monroe County, the City of Yonkers, Onondaga County and the towns of Hempstead, Islip and Oyster Bay must apply with their local programs for emergency rental assistance and are ineligible for assistance from the state-administered Emergency Rental Assistance Program.

reopens 8/17/2021 at 9AM

currently open until 8/20/2021 5PM

Eligibility

New York residents are eligible for ERAP if they meet all of the following criteria:

- Household gross income is at or below 80 percent of the Area Median Income (AMI). These income limits differ by county and household size. A household may qualify based on current income or calendar year 2020 income that is at or below 80 percent AMI.
- On or after March 13, 2020, a member of the household received unemployment benefits **or** experienced a reduction in income, incurred significant costs or experienced financial hardship, directly or indirectly, due to the COVID-19 pandemic.
- The applicant is obligated to pay rent at their primary residence and has rental arrears (rent overdue) at their current residence for rent owed on or after March 13, 2020.
- The household must be at risk of experiencing homelessness or housing instability, which can be demonstrated by having rental arrears owed on or after March 13, 2020.

There are no immigration status requirements to qualify for the program.

Households eligible for rental arrears may also be eligible for help paying utility arrears at the same rental unit.

Priority Applications

For the first 30 days of the program, priority will be given to households in the following order:

1. Households with income at or below 50 percent of the Area Median Income (AMI) that also include a household member who:
   - Is currently unemployed for at least 90 days; or
   - Is a veteran; or
   - Is currently experiencing domestic violence or is a survivor of human trafficking; or
   - Has an eviction case related to their current residence pending in court; or
   - Resides in a mobile home; or
   - Lives in a community that was disproportionately impacted by COVID-19; or
   - Lives in a dwelling of 20 or fewer units.
2. Households with income at or below 50 percent AMI.
3. Households with income at or below 80 percent AMI that also include a household member who:
   - Is currently unemployed for at least 90 days; or
   - Is a veteran; or
   - Is currently experiencing domestic violence or is a survivor of human trafficking; or
   - Has an eviction case related to their current residence pending in court; or
   - Resides in a mobile home; or
   - Lives in a community that was disproportionately impacted by COVID-19; or
   - Lives in a dwelling of 20 or fewer units.
4. Households with income at or below 80 percent AMI.

After the first 30 days, applications for all eligible households will be processed on a first-come, first-served basis, as long as funds remain available.

Benefits

Households approved for ERAP may receive:

- Up to 12 months of **rental arrears payments** for rents accrued on or after March 13, 2020.
- Up to 3 months of **additional rental assistance** if the household is expected to spend 30 percent or more of their gross monthly income to pay for rent.
- Up to 12 months of electric or gas **utility arrears payments** for arrears that have accrued on or after March 13, 2020.

Payments will be made directly to the landlord/property owner and utility company on behalf of the tenant. Tenant applicants will be notified of the amounts paid on their behalf. If a landlord is difficult to locate or does not otherwise provide information needed to complete the application, funds will be held for up to 180 days to allow sufficient time to locate the landlord and collect required information as well as to provide tenant protections and maximize landlord participation.

Apply

Program open as of June 1, 2021. Applications are now being accepted.

Documents you will need to apply when the program is open:

Renter Applicants

Renters will need to provide:

- **Personal identification** for primary applicant (individual signing application). Acceptable forms of identification include items such as: A photo ID, driver license or non-driver government-issued ID, passport, EBT/Benefits Issuance Card, birth certificate or school registration.
- **Social Security number** of any household members who have been issued one. **Individuals do not need to have a lawful immigration status to qualify for the program.**
- **Proof of rental amount**, signed lease, even if expired. If no lease is available then proof can be shown through a rent receipt, canceled check or money order. If no documentation is available, landlord attestation will be accepted.
- **Proof of residency and occupancy** – Signed lease, rent receipt, utility bill, school records, bank statement, postal mail with name of applicant, insurance bill, or driver license. Proof should be current.
- **Proof of Income:**
    - **Documents demonstrating monthly income** for the prior month, such as pay stubs, bank account deposit verification, unemployment benefits letter, or other proof;

      OR

    - **Documents demonstrating annual income** for 2020, such as a W-2 tax form from an employer, an annual statement of earnings, or a copy of a completed income tax return, such as a 1040, 1040EZ, 1099 tax form, or other evidence of 2020 annual income.
    - Self-attestation through a written and signed statement of income is permitted in certain circumstances where no documentation is available such as certain self-employment.

- **Copy of gas or electric utility bill,** if applying for help paying for utility arrears at the same rental unit.

Applicants will be asked to attest that on or after March 13, 2020, a member of the household received unemployment benefits or experienced a reduction in household income, incurred significant costs **or** experienced other financial hardship, directly or indirectly, due to the COVID-19 pandemic. The applicant will need to sign the application form and associated certifications agreeing that the information provided in the application is accurate.

Print renter's checklist - English, العربية, বাঙালি, 中文, Kreyòl Ayisyen, Italiano, 한국의, Polski, Русский, Español, אידיש

Landlord Applicants

Landlords and property owners will need to provide:

- **W-9 tax form** by keying this information in the Owner Account on the ERAP portal.
- **Executed lease** with tenant applicant, or if there is no written lease, a cancelled check, evidence of funds transfer or other documentation of the last full monthly rent payment. Upload pages of lease to at least include unit address, tenants on lease, monthly rental obligation, and signature page.
- **Documentation of rent due** from tenant by uploading a monthly rent confirmation form or ledger identifying the rental amount due by month. Do not include non-rent payments such as late fees or parking fees.
- **Banking information** by keying in direct deposit information in the Owner Account on the ERAP portal.
- If applicable, the owner affidavit or signed agreement designating the property management company/agent as authorized recipient of ERAP funds.

The property owner or an authorized property management company will be required to sign the application form and associated certifications agreeing that the information provided, including the amount of rental arrears owed, is accurate and does not duplicate a payment received from another program.

The property owner or authorized property management company must also agree to the following terms as a condition of accepting rental arrears payments:

- The ERAP payment satisfies the tenant's full rental obligations for the time period covered by the payment.
- Waive any late fees due on any rental arrears covered by the ERAP payment.
- Not increase the monthly rental amount above the monthly amount due at the time of application for ERAP assistance for months for which rental assistance is received and for one year from receipt of the ERAP payment.
- Not evict the household on behalf of whom the ERAP payment is made for reason of expired lease or holdover tenancy for one year from the receipt of the ERAP payment. An exception to this requirement shall be made if the dwelling unit contains four or fewer units and the property owner or owner's immediate family members intend to immediately occupy the unit for use as a primary residence.

Print landlord's checklist - English, العربية, বাঙালি, 中文, Kreyòl Ayisyen, Italiano, 한국의, Polski, Русский, Español, אידיש

Helpful Videos for Tenants and Landlords

Understanding the NYS ERAP Program and Applying for Funding - Details the various application and documentation requirements and how to apply for ERAP. *(Spanish Subtitles Available)*

Navigating the ERAP Homepage - Overview of the ERAP Portal Homepage, and its navigation features.
Español

Using the Tenant Application and Uploading Documents - Step-by-step walkthrough of the application and document upload process.
Español

Uploading Documents to your NYS ERAP Application - In-depth overview of the upload function, and required steps for submitting ERAP application documents.
Español

Understanding the Landlord Portal - Demonstration of the landlord portal, and associated features.
Español

Ready to Apply?

Apply for the ERAP online 24 hours a day, 7 days a week.

IMPORTANT NOTE: Once the application is started, all questions must be answered and the application signed and saved to submit the application. There currently is no way to save a partially completed application. Applicants are encouraged to gather all the information needed before starting an application including income of household members and rental amounts.

Applicants who previously started, but did not complete and sign an application, must start a new application. Applicants who have completed and signed an application can upload required documentation at any time.

APPLY FOR ERAP

Contact

Monday through Saturday from 8 a.m. - 7 p.m.

Contact us by phone:
844-NY1RENT (844-691-7368)
For the hearing impaired, TTY phone number: 1-833-843-8829.

Contact us by Webchat:

Chat with a representative

Report Emergency Rental Assistance Program Fraud

To report Emergency Rental Assistance Program fraud in New York State complete and submit the Emergency Rental Assistance Program Fraud Reporting Form.

Reasonable Accommodations

Reasonable accommodations for individuals with disabilities are available. Please tell us if you require a reasonable accommodation to apply for ERAP. Examples of available reasonable accommodations include assistance applying for ERAP, providing documents in an alternative format including braille, audio file (CD), data format (screen-reader accessible file on CD) and large print (18 point font) as requested, or TTY relay communications.

To request a reasonable accommodation, please contact the call center at 1-844-NY1-RENT (1-844-691-7368). If you are hearing impaired, a TTY phone number is available by calling 1-833-843-8829.

Emergency Rental Assistance Program Application Period Open in Hempstead and Islip. Opens on June 1

Updated: 3 days ago

The federal government has allocated over $2 billion to help New Yorkers who are struggling with rental or utility arrears as a result of the pandemic. The money was distributed to New York State and several communities across Long Island. Residents of Islip, Hempstead, and Oyster Bay can apply for assistance directly from their town's programs. Residents of other Long Island communities will apply through a website operated by New York State. Applications are being accepted NOW in Hempstead and Islip. We expect the New York State website to start accepting applications on June 1.

No matter where you live on Long Island, to be eligible, you must have:

- An income below $94,900 for a family of 4 (or $103,900 in the Town of Hempstead)
- A financial hardship directly or indirectly due to COVID-19
- Rental or utility arrears

Families are eligible for help regardless of whether they have a written lease and regardless of immigration status.

Tenants with questions about legal protections for renters during the pandemic can also find an updated FAQ on our website.

Residents of Hempstead
Apply through Town of Hempstead Emergency Rental Assistance Program (lihp.org).
Applications will be accepted until 5 pm on June 23.
To get help applying call (844) 260-7536.

Residents of Islip
Apply through Town of Islip: Community Development Agency (islipcda.org).

Read on for information about a housing information fair at the Brentwood Library to help residents of the Town of Islip and others who need help with the application process or have other housing-related legal questions.

Other Long Islanders *(Not residents of Hempstead, Oyster Bay, or Islip)*
Apply through the New York State website. Emergency Rental Assistance Program | OTDA (ny.gov).

Visit LawHelpNY for a list of tech tips before you begin the ERAP application that may help you complete the online application.

SUPREME COURT OF THE UNITED STATES

No. 21A8

PANTELIS CHRYSAFIS, ET AL. *v.*
LAWRENCE K. MARKS

ON APPLICATION FOR INJUNCTIVE RELIEF

[August 12, 2021]

The application for injunctive relief presented to JUSTICE SOTOMAYOR and by her referred to the Court is granted pending disposition of the appeal in the United States Court of Appeals for the Second Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this order shall terminate automatically. In the event the petition for a writ of certiorari is granted, the order shall terminate upon the sending down of the judgment of this Court.

This order enjoins the enforcement of only Part A of the COVID Emergency Eviction and Foreclosure Prevention Act (CEEFPA). 2020 N. Y. Laws ch. 381. That is the only relief applicants seek. See Case No. 2:21-cv-02516, ECF No. 1 at 9; Emergency Application for Writ of Injunction 7, 40. If a tenant self-certifies financial hardship, Part A of CEEFPA generally precludes a landlord from contesting that certification and denies the landlord a hearing. This scheme violates the Court's longstanding teaching that ordinarily "no man can be a judge in his own case" consistent with the Due Process Clause. *In re Murchison*, 349 U. S. 133, 136 (1955); see *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 53 (1993) (due process generally requires a hearing).

This order does not enjoin the enforcement of the Tenant Safe Harbor Act (TSHA), which applicants do not challenge.

2020 N. Y. Laws ch. 127, §§1, 2(2)(a). Among other things, TSHA instructs New York courts to entertain a COVID-related hardship defense in eviction proceedings, assessing a tenant's income prior to COVID, income during COVID, liquid assets, and ability to obtain government assistance. §2(2)(b). If the court finds the tenant "has suffered a financial hardship" during a statutorily-prescribed period, then it "shall [not] issue a warrant of eviction or judgment of possession." §2(1).

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting from grant of application for injunctive relief.

The New York Legislature has passed two laws regulating evictions during the COVID–19 pandemic. The first is the Tenant Safe Harbor Act, which provides tenants who have "suffered a financial hardship during the COVID–19 covered period" with a defense in eviction proceedings. 2020 N. Y. Laws ch. 127, §2.2.(a) (McKinney). The second is the COVID–19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPA). CEEFPA simplifies the process for tenants to invoke financial hardship during the pandemic as a defense to eviction. Tenants who wish to assert the defense must provide a sworn attestation stating that they are experiencing financial hardship or health impacts as a result of the pandemic. 2020 N. Y. Laws ch. 381, pt. A, §4. The attestation pauses eviction proceedings until the time that CEEFPA expires, namely the end of August 2021. §§2, 4, 6, 8; 2021 N. Y. Laws ch. 104 (establishing CEEFPA's August 31, 2021, expiration date). Pending eviction proceedings are stayed, new eviction proceedings cannot be filed, and outstanding eviction warrants cannot be executed until that date. 2020 N. Y. Laws ch. 381, pt. A, §§2, 4, 6, 8. Eviction proceedings may resume after August 31, 2021.

Only CEEFPA is before us. Applicants, five New York

landlords and one landlords' association, seek an "extraordinary" form of relief: "an injunction against enforcement of a presumptively constitutional state legislative act," *Respect Maine PAC* v. *McKee*, 562 U. S. 996 (2010), in circumstances where the request for an injunction was denied in the lower courts, and the court of appeals has yet to issue a substantive ruling. Moreover, the challenged law will expire in less than three weeks. Under these circumstances, such drastic relief would only be appropriate if "the legal rights at issue [we]re indisputably clear and, even then, sparingly and only in the most critical and exigent circumstances." *South Bay United Pentecostal Church* v. *Newsom*, 590 U. S. ___, ___ (2020) (ROBERTS, C. J., concurring) (slip op., at 2) (internal quotation marks omitted). I conclude that this strict standard is not met here, for three reasons.

First, the legal rights at issue in this case are not "indisputably clear." Applicants argue that CEEFPA denies landlords due process of law because once a tenant submits an attestation of financial hardship, evictions cannot proceed and the landlord cannot challenge the tenant's claim of hardship, for example, in court. Respondent argues, however, that the law is best viewed not as a deprivation of the right to challenge a tenant's hardship claim but as simply delaying the exercise of that right—as of now for less than three weeks until the law expires. After August 31, New York's eviction proceedings will be conducted exactly as they were before CEEFPA's enactment. Our precedents do not make it "indisputably clear" that this delay violates the Constitution. See *Sosna* v. *Iowa*, 419 U. S. 393, 410 (1975) (due process is not offended when "the gravamen of [the] claim is not total deprivation . . . but only delay").

Applicants also argue that CEEFPA violates their First Amendment right against compelled speech, because it requires them to provide their tenants with certain notices. However, there are persuasive arguments that CEEFPA re-

quires only the dissemination of "purely factual and uncontroversial information" in the context of commercial speech and is therefore authorized by our precedents. *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U. S. 626, 651 (1985). Given the arguments on the other side, I again cannot say that the legal rights in issue are indisputably clear.

Second, applicants have not shown that critical or exigent circumstances justify our intervention. As I have said, CEEFPA's pause on eviction proceedings will expire in less than three weeks, alleviating the hardship to New York landlords. Any hardship is further alleviated by provisions of CEEFPA that provide relief from foreclosure for property owners who own 10 or fewer dwelling units. See 2020 N. Y. Laws ch. 381, pt. B, subpts. A–B. Further, landlords' hardship is alleviated because CEEFPA does not preclude them from seeking unpaid rent and other damages in a common-law action. Finally, respondent states that New York is currently distributing more than $2 billion in aid that can be used in part to pay back rent, thereby helping to alleviate the need for evictions. See 2021 N. Y. Laws ch. 53, p. 635.

While applicants correctly point out that there are landlords who suffer hardship, we must balance against the landlords' hardship the hardship to New York tenants who have relied on CEEFPA's protections and will now be forced to face eviction proceedings earlier than expected. This is troubling because, as noted, New York is in the process of distributing over $2 billion in federal assistance that will help tenants affected by the pandemic avoid eviction. See *ibid.*; Consolidated Appropriations Act, 2021, H. R. 133, 116th Cong., 2d Sess., 686–692 (2020). Ending CEEFPA's protections early may lead to unnecessary evictions. It is impossible—especially on the abbreviated schedule of an application for an emergency injunction—to know whether more hardship will result from leaving CEEFPA in place or

from barring its enforcement.

Third, the public interest weighs in favor of respecting New York's "especially broad" latitude "to act in areas fraught with medical and scientific uncertainties." *Marshall* v. *United States*, 414 U. S. 417, 427 (1974). The New York Legislature is responsible for responding to a grave and unpredictable public health crisis. It must combat the spread of a virulent disease, mitigate the financial suffering caused by business closures, and minimize the number of unnecessary evictions. The legislature does not enjoy unlimited discretion in formulating that response, but in this case I would not second-guess politically accountable officials' determination of how best to "guard and protect" the people of New York. *South Bay United Pentecostal Church*, 590 U. S., at ___ (ROBERTS, C. J., concurring) (slip op., at 2) (quoting *Jacobson* v. *Massachusetts*, 197 U. S. 11, 38 (1905)).

For these reasons, I would not grant relief now, and therefore respectfully dissent. Of course, if New York extends CEEFPA's provisions in their current form, applicants can renew their request for an injunction.

Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 21A23

ALABAMA ASSOCIATION OF REALTORS, ET AL. *v.*
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, ET AL.

ON APPLICATION TO VACATE STAY

[August 26, 2021]

PER CURIAM.

The Director of the Centers for Disease Control and Prevention (CDC) has imposed a nationwide moratorium on evictions of any tenants who live in a county that is experiencing substantial or high levels of COVID–19 transmission and who make certain declarations of financial need. 86 Fed. Reg. 43244 (2021). The Alabama Association of Realtors (along with other plaintiffs) obtained a judgment from the U. S. District Court for the District of Columbia vacating the moratorium on the ground that it is unlawful. But the District Court stayed its judgment while the Government pursued an appeal. We vacate that stay, rendering the judgment enforceable. The District Court produced a comprehensive opinion concluding that the statute on which the CDC relies does not grant it the authority it claims. The case has been thoroughly briefed before us—twice. And careful review of that record makes clear that the applicants are virtually certain to succeed on the merits of their argument that the CDC has exceeded its authority. It would be one thing if Congress had specifically authorized the action that the CDC has taken. But that has not happened. Instead, the CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination. It strains credulity to believe

that this statute grants the CDC the sweeping authority that it asserts.

I

A

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act to alleviate burdens caused by the burgeoning COVID–19 pandemic. Pub. L. 116–136, 134 Stat. 281. Among other relief programs, the Act imposed a 120-day eviction moratorium for properties that participated in federal assistance programs or were subject to federally backed loans. §4024, *id.*, at 492–494.

When the eviction moratorium expired in July, Congress did not renew it. Concluding that further action was needed, the CDC decided to do what Congress had not. See 85 Fed. Reg. 55292 (2020). The new, administratively imposed moratorium went further than its statutory predecessor, covering all residential properties nationwide and imposing criminal penalties on violators. See *id.*, at 55293, 55296.

The CDC's moratorium was originally slated to expire on December 31, 2020. *Id.*, at 55297. But Congress extended it for one month as part of the second COVID–19 relief Act. See Consolidated Appropriations Act, 2021, Pub. L. 116–260, §502, 134 Stat. 2078–2079. As the new deadline approached, the CDC again took matters into its own hands, extending its moratorium through March, then again through June, and ultimately through July. 86 Fed. Reg. 8020, 16731, 34010.

The CDC relied on §361(a) of the Public Health Service Act for authority to promulgate and extend the eviction moratorium. See 58 Stat. 703, as amended, 42 U. S. C. §264(a). That provision states:

> "The Surgeon General, with the approval of the [Secretary of Health and Human Services], is authorized to make and enforce such regulations as in his judgment

> are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary."

See also 42 CFR §70.2 (2020) (delegating this authority to the CDC). Originally passed in 1944, this provision has rarely been invoked—and never before to justify an eviction moratorium. Regulations under this authority have generally been limited to quarantining infected individuals and prohibiting the import or sale of animals known to transmit disease. See, *e.g.*, 40 Fed. Reg. 22543 (1975) (banning small turtles known to be carriers of salmonella).

B

Realtor associations and rental property managers in Alabama and Georgia sued to enjoin the CDC's moratorium. The U. S. District Court for the District of Columbia granted the plaintiffs summary judgment, holding that the CDC lacked statutory authority to impose the moratorium. *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 2021 WL 1779282, *10 (May 5, 2021).

But the court stayed its order pending appeal. It reasoned that even though the Government had not shown a substantial likelihood of success, it did make a lesser showing of a "serious legal question on the merits," which the court said warranted granting a stay when the remaining stay factors weighed in the Government's favor. *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 2021 WL 1946376, *4–*5 (May 14, 2021) (citation

omitted); see also *Nken* v. *Holder*, 556 U. S. 418, 434 (2009) (listing the four traditional stay factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies" (citation omitted)). The D. C. Circuit agreed, though it rated the Government's arguments more highly. *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 2021 WL 2221646 (June 2, 2021).

This Court declined to vacate the stay. *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, *post*, p. ___. JUSTICE KAVANAUGH concurred, explaining that he agreed with the District Court that the CDC's moratorium exceeded its statutory authority. But because the CDC planned to end the moratorium in only a few weeks, and because that time would allow for additional and more orderly distribution of congressionally appropriated rental-assistance funds, he concluded that the balance of equities justified leaving the stay in place. JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE BARRETT noted that they would vacate the stay.

The moratorium expired on July 31, 2021. Three days later, the CDC reimposed it. See 86 Fed. Reg. 43244. Apart from slightly narrowing the geographic scope, the new moratorium is indistinguishable from the old.

With the moratorium once again in place, the plaintiffs returned to the District Court to seek vacatur of its stay. The District Court agreed with the plaintiffs that the stay was no longer warranted for two reasons. First, the Government was unlikely to succeed on the merits, given the four votes to vacate the stay in this Court and JUSTICE KAVANAUGH's concurring opinion. 2021 WL 3577367, *6 (Aug. 13, 2021). Second, the equities had shifted in the plaintiffs' favor: Vaccine and rental-assistance distribution

had improved since the stay was entered, while the harm to landlords had continued to increase. *Ibid.*, n. 3. But the court concluded that its hands were tied by the law of the case, in light of the D. C. Circuit's earlier decision not to vacate the stay. *Ibid.* That denial was followed by one more stop at the D. C. Circuit, where that court again declined to lift the stay. 2021 WL 3721431 (Aug. 20, 2021).

Having passed through the lower courts twice, the plaintiffs return as applicants to this Court to again ask us to vacate the District Court's stay.

II

The District Court concluded that its stay is no longer justified under the governing four-factor test. See *Nken* v. *Holder*, *supra*, at 434. We agree.

A

The applicants not only have a substantial likelihood of success on the merits—it is difficult to imagine them losing. The Government contends that the first sentence of §361(a) gives the CDC broad authority to take whatever measures it deems necessary to control the spread of COVID–19, including issuing the moratorium. But the second sentence informs the grant of authority by illustrating the kinds of measures that could be necessary: inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of contaminated animals and articles. These measures directly relate to preventing the interstate spread of disease by identifying, isolating, and destroying the disease itself. The CDC's moratorium, on the other hand, relates to interstate infection far more indirectly: If evictions occur, some subset of tenants might move from one State to another, and some subset of that group might do so while infected with COVID–19. See 86 Fed. Reg. 43248–43249. This downstream connection between eviction and the interstate

spread of disease is markedly different from the direct targeting of disease that characterizes the measures identified in the statute. Reading both sentences together, rather than the first in isolation, it is a stretch to maintain that §361(a) gives the CDC the authority to impose this eviction moratorium.

Even if the text were ambiguous, the sheer scope of the CDC's claimed authority under §361(a) would counsel against the Government's interpretation. We expect Congress to speak clearly when authorizing an agency to exercise powers of "vast 'economic and political significance.'" *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324 (2014) (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 160 (2000)). That is exactly the kind of power that the CDC claims here. At least 80% of the country, including between 6 and 17 million tenants at risk of eviction, falls within the moratorium. See Response in Opposition 26, 29. While the parties dispute the financial burden on landlords, Congress has provided nearly $50 billion in emergency rental assistance—a reasonable proxy of the moratorium's economic impact. See 86 Fed. Reg. 43247. And the issues at stake are not merely financial. The moratorium intrudes into an area that is the particular domain of state law: the landlord-tenant relationship. See *Lindsey* v. *Normet*, 405 U. S. 56, 68–69 (1972). "Our precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property." *United States Forest Service* v. *Cowpasture River Preservation Assn.*, 590 U. S. ___, ___–___ (2020) (slip op., at 15–16).

Indeed, the Government's read of §361(a) would give the CDC a breathtaking amount of authority. It is hard to see what measures this interpretation would place outside the CDC's reach, and the Government has identified no limit in §361(a) beyond the requirement that the CDC deem a

measure "necessary." 42 U. S. C. §264(a); 42 CFR §70.2. Could the CDC, for example, mandate free grocery delivery to the homes of the sick or vulnerable? Require manufacturers to provide free computers to enable people to work from home? Order telecommunications companies to provide free high-speed Internet service to facilitate remote work?

This claim of expansive authority under §361(a) is unprecedented. Since that provision's enactment in 1944, no regulation premised on it has even begun to approach the size or scope of the eviction moratorium. And it is further amplified by the CDC's decision to impose criminal penalties of up to a $250,000 fine and one year in jail on those who violate the moratorium. See 86 Fed. Reg. 43252; 42 CFR §70.18(a). Section 361(a) is a wafer-thin reed on which to rest such sweeping power.

B

The equities do not justify depriving the applicants of the District Court's judgment in their favor. 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. Despite the CDC's determination that landlords should bear a significant financial cost of the pandemic, many landlords have modest means. 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. See *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 435 (1982).

As harm to the applicants has increased, the Government's interests have decreased. Since the District Court entered its stay, the Government has had three additional months to distribute rental-assistance funds to help ease the transition away from the moratorium. Whatever interest the Government had in maintaining the moratorium's

original end date to ensure the orderly administration of those programs has since diminished. And Congress was on notice that a further extension would almost surely require new legislation, yet it failed to act in the several weeks leading up to the moratorium's expiration.

It is indisputable that the public has a strong interest in combating the spread of the COVID–19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends. Cf. *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 582, 585–586 (1952) (concluding that even the Government's belief that its action "was necessary to avert a national catastrophe" could not overcome a lack of congressional authorization). It is up to Congress, not the CDC, to decide whether the public interest merits further action here.

* * *

If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it. The application to vacate stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted.

So ordered.

SUPREME COURT OF THE UNITED STATES

No. 21A23

ALABAMA ASSOCIATION OF REALTORS, ET AL. *v.*
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, ET AL.

ON APPLICATION TO VACATE STAY

[August 26, 2021]

JUSTICE BREYER, with whom JUSTICE SOTOMAYOR and JUSTICE KAGAN join, dissenting.

The Centers for Disease Control and Prevention (CDC) has issued an order that, in light of the rise of the COVID–19 Delta variant, temporarily prohibits certain evictions in high-transmission counties through October 3. Today, this Court, as an emergency matter, without full briefing or argument, blocks that order by vacating a lower court's stay. I think the Court is wrong to do so, and I dissent.

"We may not vacate a stay entered by a [lower] court . . . unless that court clearly and 'demonstrably' erred in its application of 'accepted standards.'" *Planned Parenthood of Greater Tex. Surgical Health Servs.* v. *Abbott*, 571 U. S. 1061 (2013) (Scalia, J., concurring in denial of application to vacate stay) (quoting *Western Airlines, Inc.* v. *Teamsters*, 480 U. S. 1301, 1305 (1987) (O'Connor, J., in chambers)). Those accepted factors are "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken* v. *Holder*, 556 U. S. 418, 426 (2009) (internal quotation marks omitted). In my view, the courts below did not clearly err for three reasons.

First, it is far from "demonstrably" clear that the CDC lacks the power to issue its modified moratorium order. The CDC's current order is substantially more tailored than its prior eviction moratorium, which automatically applied nationwide. Justified by the Delta-variant surge, the modified order targets only those regions currently experiencing skyrocketing rates. 86 Fed. Reg. 43244, 43245, 43250 (2021). If a covered county "no longer experiences substantial or high levels of community transmission," the order "will no longer apply" there. *Id.,* at 43250. To illustrate the difference, when we denied applicants' last motion, fewer than 20% of counties would have been covered under the modified moratorium order's criteria. See CDC, COVID–19 State Profile Report 476 (June 25, 2021). Today, however, that figure is over 90%. See *infra*, at 7.

To be protected from eviction, a tenant must reside in a covered area and attest that he or she:

> (1) has "used best efforts to obtain all available governmental assistance for rent or housing";
>
> (2) satisfies certain income requirements;
>
> (3) is unable to pay rent "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";
>
> (4) continues to "us[e] best efforts to make timely partial rent payments that are as close to the full rent payment as . . . permit[ted]"; and
>
> (5) has "no other available housing options." *Id.*, at 43245.

Unlike under New York's moratorium, see *Chrysafis* v. *Marks*, *post*, at 1, landlords remain free to "challeng[e]" in court "the truthfulness of a tenant's . . . declaration" that he or she qualifies for the order's protection. 86 Fed. Reg.

43251.

The CDC issued this modified moratorium order (like its prior moratorium order) pursuant to its powers under §361(a) of the Public Health Service Act. That provision "authorize[s]" the CDC:

> "[T]o make and enforce such regulations as in [its] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases [interstate]. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary." 42 U. S. C. §264(a).

The statute's first sentence grants the CDC authority to design measures that, in the agency's judgment, are essential to contain disease outbreaks. The provision's plain meaning includes eviction moratoria necessary to stop the spread of diseases like COVID–19. When Congress enacted §361(a), public health agencies intervened in the housing market by regulation, including eviction moratoria, to contain infection by preventing the movement of people. See, *e.g.,* 5,589 New Cases in One Day Break Influenza Record, N. Y. Times, Jan. 29, 1920, section 1, pp. 1–2, col. 1 ("'[T]he Health Department . . . instruct[s] all landlords that no person suffering from [influenza and pneumonia] can be removed under any condition whatever without the sanction of the Health Department . . . '"). If Congress had meant to exclude these types of measures from its broad grant of authority, it likely would have said so.

Section 361(a)'s second sentence is naturally read to expand the agency's powers by providing congressional authorization to act on personal property when necessary. See

FTC v. *American Tobacco Co.*, 264 U. S. 298, 305–306 (1924). It could also be read to provide emphasis regarding particular enforcement measures. See *Ali* v. *Federal Bureau of Prisons*, 552 U. S. 214, 226 (2008).

Applicants urge, and today's *per curiam* agrees, that the second sentence should instead be read to cabin the CDC's authority. Not only does that reading lack a clear statutory basis but the second sentence goes on to empower the CDC to take "other measures, as in [its] judgment may be necessary." 42 U. S. C. §264(a). Furthermore, reading the provision's second sentence to narrow its first would undermine Congress' purpose. As a key drafter explained, "[t]he second sentence of subsection (a)" was written not to limit the broad authority contained in the first sentence, but to "expressly authorize . . . inspections and . . . other steps necessary in the enforcement of quarantine." Hearings on H. R. 3379 before the Subcommittee of the Committee on Interstate and Foreign Commerce, 78th Cong., 2d Sess., 139 (1944).

The *per curiam* also says that Congress must speak more clearly to authorize the CDC to address public health crises via eviction moratoria. But it is undisputed that the statute permits the CDC to adopt significant measures such as quarantines, which arguably impose greater restrictions on individuals' rights and state police powers than do limits on evictions. Indeed, the current Congress did not bristle at the Government's reading of the statute. In 2020, Congress extended the CDC's moratorium "issued . . . under section 361 of the Public Health Service Act." Consolidated Appropriations Act, 2021, Pub. L. 116–260, §502, 134 Stat. 2078–2079.

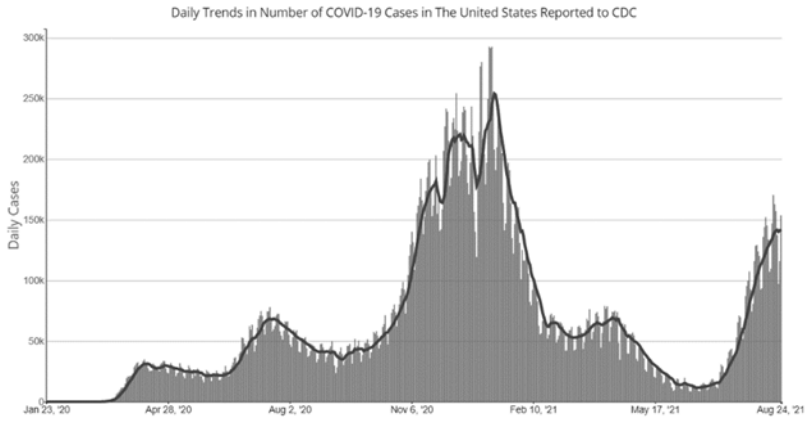
In any event, lower courts have split on this question. Compare *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 2021 WL 2221646, *2 (CADC, June 2, 2021), with *Tiger Lily, LLC* v. *United States Dept. of Housing and Urban Development*, 5 F. 4th 666, 669–670

(CA6 2021). Given the split among the Circuits, it is at least hard to say that the Government's reading of the statute is "demonstrably wrong." See *Coleman* v. *Paccar Inc.*, 424 U. S. 1301, 1304 (1976) (Rehnquist, J., in chambers). At minimum, there are arguments on both sides.

Certainly this Court did not resolve the question by denying applicants' last emergency motion, whatever one Justice might have said in a concurrence. The scope of that challenged moratorium, the balance of the equities, and the public interest were all different. As is typical in this Court's emergency orders denying extraordinary relief, we said almost nothing about our reasons for declining to act.

Second, the balance of equities strongly favors leaving the stay in place. Applicants say they have lost "thousands of dollars" in rental income. See Application 32. That injury is lessened by the moratorium order's directive that tenants have an obligation to make "as close to the full rent payment" as possible. 86 Fed. Reg. 43245. And to compensate for the shortfall, Congress has appropriated more than $46.5 billion to help pay rent and rental arrears. See §501, 134 Stat. 2070–2078 (appropriating $25 billion); American Rescue Plan Act, 2021, Pub. L. 117–2, §3201(a)(1), 135 Stat. 54 (appropriating $21.5 billion more). It may, as applicants say, take time to get that money—and that is an injury.

But compare that injury to the irreparable harm from vacating the stay. COVID–19 transmission rates have spiked in recent weeks, reaching levels that the CDC puts as high as last winter: 150,000 new cases per day.



Source: CDC, Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases.

To date, the CDC estimates that 38,150,911 Americans have been sickened. *Ibid.* 629,139 have died. *Ibid.* This week, the CDC calculates average new daily hospital admissions at 12,209. See CDC, New Admissions of Patients with Confirmed COVID–19, https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions. The number of patients hospitalized with COVID–19 is up 13.3% from last week. See CDC, Prevalent Hospitalization of Patients With Confirmed COVID–19, https://covid.cdc.gov/covid-data-tracker/#hospitalizations.

Look back at the order's criteria for temporary eviction relief. The CDC targets only those people who have nowhere else to live, in areas with dangerous levels of community transmission. These people may end up with relatives, in shelters, or seeking beds in other congregant facilities where the doubly contagious Delta variant threatens to spread quickly. See CDC, Delta Variant: What We Know About the Science, https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html (Delta variant is "more than 2x as contagious as previous variants" and may "cause

more severe illness than previous strains in unvaccinated persons"). Absent the current stay, the CDC projects a strong "likelihood of mass evictions nationwide" with public-health consequences that would be "difficult to reverse." 86 Fed. Reg. 43247, 43252.

Third, the public interest is not favored by the spread of disease or a court's second-guessing of the CDC's judgment. The CDC has determined that "[a] surge in evictions could lead to the immediate and significant movement of large numbers of persons from lower density to higher density housing. . . when the highly transmissible Delta variant is driving COVID–19 cases at an unprecedented rate." *Id.*, at 43248. The CDC cites models showing up to a 30% increased risk of contracting COVID–19 for some evicted people and those who share housing with them after displacement. *Ibid.* The CDC invokes studies finding nationally over 433,000 cases and over 10,000 deaths may be traced to the lifting of state eviction moratoria. *Ibid.*

The public interest strongly favors respecting the CDC's judgment at this moment, when over 90% of counties are experiencing high transmission rates. See CDC, COVD–19 Integrated County View, https://covid.cdc.gov/covid-data-tracker/#county-view. That figure is the highest it has been since at least last winter. See CDC, COVID–19 State Profile Report 372 (Aug. 20, 2021). It was in the *single digits* when we considered the CDC's previous moratorium order and denied applicants' earlier motion. See CDC, COVID–19 State Profile Report 476 (June 25, 2021).

On applicants' last trip to this Court, they argued that the "downward trend in COVID–19 cases and the effectiveness of vaccines" left "no . . . public-health rationale for the [CDC's then-operative eviction] moratorium." Application in No. 20A169, p. 4. These predictions have proved tragically untrue. Today they show just how little we may presume to know about the course of this pandemic.

Applicants raise contested legal questions about an important federal statute on which the lower courts are split and on which this Court has never actually spoken. These questions call for considered decisionmaking, informed by full briefing and argument. Their answers impact the health of millions. We should not set aside the CDC's eviction moratorium in this summary proceeding. The criteria for granting the emergency application are not met. I respectfully dissent.

June 30, 2021

Detailed Breakdown of the CFPB's COVID-19 Mortgage Servicing Final Rule

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With the release of the Consumer Financial Protection Bureau's COVID-19 mortgage servicing final rule and an August 31, 2021, effective date that will be here before we know it, the race is on for servicers to digest the law's new requirements and prohibitions and then implement them. This will not be an easy task.

As we noted in our prior post, the Bureau's final rule contains four main components:

- Moratorium on new foreclosure actions through December 31, 2021;
- Exception to the anti-evasion clause for certain COVID-19 modification options;
- New early intervention communication requirements; and
- Clarification on the reasonable diligence standard for borrowers in forbearance.

Below is a more detailed summary of each of the major aspects of the rule.

1. Foreclosure Moratorium

The hallmark of the Bureau's final rule is a moratorium on new foreclosure actions. However, rather than calling this a moratorium or "a temporary COVID-19 emergency pre-foreclosure review period" like the proposal framed it, the Bureau labels the foreclosure restrictions as temporary "procedural safeguards" that servicers must comply with before starting new foreclosure actions. Regardless of the name, the substance of the rule still serves to prevent servicers from making the first notice or filing required to initiate foreclosure proceedings for most loans.

This new framework will become effective on August 31, 2021, and will remain in effect through December 31, 2021. Unlike the CARES Act and other initiatives put forth throughout the pandemic that only applied to federally backed mortgage loans, the Bureau's rule applies to all closed-end mortgage loans that are secured by a borrower's principal residence, regardless of whether a loan is federally backed or held in portfolio. The procedural safeguards do not apply to small servicers and properties that are not secured by a borrower's principal residence. Notably, the Bureau also created exceptions from the procedural safeguards for any accounts that became 120 days delinquent prior to March 1, 2020, and any accounts where the statute of limitations related to foreclosure expires prior to January 1, 2022.

In addition to the aforementioned exceptions, the procedural safeguards framework in the final rule creates three distinct paths by which some foreclosures may be initiated during the latter months of 2021. First, if a borrower submits a complete loss mitigation application and the entire loss mitigation process has been exhausted and the borrower does not end up performing on a loss mitigation option, then the servicer may make the first notice or filing required to initiate foreclosure. Notably, there is not a temporal aspect to this safeguard, meaning that applications received prior to the rule's effective date may qualify.

Next, it is considered to be a procedural safeguard if a servicer determines that a property is abandoned according to the laws of the state or municipality where the property is located. Note that there is some overlap between this safeguard and the general scope parameters of the rule, which exempt properties that are not a borrower's principal residence. Regardless, if a property is considered abandoned based on the law of the applicable state or municipality, then a servicer may proceed with the first notice or filing.

Finally, the Bureau is considering it to be a procedural safeguard if a borrower is deemed to be unresponsive. This means that the servicer has not received any communications or payments from the borrower for at least 90 days. Additionally, the servicer must have complied with all early intervention live contact obligations and all applicable notice requirements in section 1024.41 of Regulation X during that time. Furthermore, an early intervention written notice must be sent between 10 and 45 days prior to the first notice or filing being made and, if a borrower was on a forbearance plan, the plan must have ended at least 30 days prior to the first notice or filing being made. Once all these boxes are checked, the first notice or filing may be made.

Altogether, this new procedural safeguard framework is a significant departure from what the Bureau initially proposed. The shift in approach is designed to balance concerns that were articulated by commenters regarding the broad nature of the Bureau's proposal. While servicers may now be able to proceed with foreclosure initiation in some cases, servicers must be extremely diligent and ensure full compliance with the various exceptions and procedural safeguards. To

that end, the Bureau emphasizes that servicers must retain evidence of compliance any time it proceeds with foreclosures under the procedural safeguard framework.

2. Anti-Evasion Exception

To facilitate fast and easy loss mitigation offers for borrowers who may need assistance coming out of the pandemic, the Bureau finalized its proposed exception to what is commonly referred to as the "anti-evasion clause" in Regulation X. More specifically, the law has long prohibited — with some very limited exceptions — mortgage servicers from offering loss mitigation options based upon evaluations of *incomplete* applications. You may recall that, through our prior blog posts and advocacy efforts, in the spring of 2020 we were able to secure an interim final rule that provided a new exception to the anti-evasion clause restrictions for COVID-19 deferral options. During that process, we also raised concerns about other streamlined programs and the need for servicer flexibility. A year later, the CFPB is now adding another exception that is tailored towards streamline modification options.

To take advantage of the exception and offer a loan modification without first collecting and evaluating a complete loss mitigation application, the modification option must meet the following criteria:

- The modification must be made available to borrowers experiencing a COVID-19-related hardship;
- The term of the loan is not extended by more than 480 months from the date of the modification;
- The borrower's principal and interest payments do not increase;
- Any amounts that are deferred do not accrue interest;
- No fees can be charged in connection with the modification;
- All existing late charges, penalties, stop payment fees, and similar charges that were incurred on or after March 1, 2020, must be waived upon the borrower's acceptance of the modification; and
- The borrower's acceptance of the loan modification offer, or completion of any trial plan, must bring the account current.

If these criteria are satisfied, then a servicer can offer the modification option based upon an evaluation of an incomplete application.

The Bureau was clear that this exception is largely based upon programs implemented by federal agencies and government-sponsored entities, including the Fannie Mae and Freddie Mac Flex Modification options. Servicers that are seeking to provide quick and meaningful relief to borrowers without having to go through what is often a complicated and protracted process of collecting a complete application may take advantage of this exception. At the same time, servicers should continue to be mindful of the anti-evasion clause and ensure that offers are being made in accordance with the law.

3. Early Intervention

Beginning on August 31, 2021, and until October 1, 2022, servicers will be subject to new, more specific early-intervention live contact requirements. Like the initial proposal, the specific requirements hinge upon whether a borrower is in forbearance at the time the contact is made. If a borrower is not in forbearance at the time of live contact and forbearance is available based on a COVID-19-related hardship, then the servicer must explain to the borrower:

- That forbearance programs are available;
- Unless the borrower is not interested in receiving information about forbearance, information about what forbearance options are available and how to apply; and
- At least one way that the borrower can find contact information for homeownership counseling services.

On the other hand, if a borrower is on forbearance, then the servicer must explain to the borrower:

- The date the forbearance plan is scheduled to end;
- What loss mitigation options are available and how to apply; and
- At least one way that the borrower can find contact information for homeownership counseling services.

For a borrower not on forbearance, the standard early intervention live contact timing requirements still apply. However, when a borrower is on forbearance, the rule sets forth unique timing requirements for when this content must be delivered to a delinquent borrower. Generally, this rule applies to the live contact that occurs between 10 and 45 days before the scheduled end date of the borrower's forbearance plan. However, for any plan that is scheduled to end between August 31, 2021, and September 10, 2021, the rule applies to the first live contact that is made after August 31, 2021.

This framework raises an important question: Must servicers comply with the early-intervention live contact requirements when a borrower is on a short-term forbearance plan that was offered based on an evaluation of an incomplete application? This question was addressed in the Bureau's April 3, 2020, Frequently Asked Questions. Now, however, the Bureau is adding commentary that could be viewed as contradictory to that guidance. We will have more on this issue in the future, so stay tuned.

4. Reasonable Diligence

Finally, in connection with forbearance plans, the Bureau is clarifying when a servicer must resume reasonable diligence efforts to help a borrower complete a loss mitigation application. Regulation X has long noted that, when a borrower has been offered a short-term forbearance plan based upon an evaluation of an incomplete loss mitigation application, servicers may suspend reasonable diligence efforts until near the end of the plan, at which time the servicer must contact the borrower to determine whether the borrower wants to complete the application. In connection with programs offered based upon a COVID-19-related hardship, this contact must occur at least 30 days before the scheduled end of the forbearance plan.

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