

NORTH CAROLINA
WAKE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2020 NOV -9 P 4: 32

20 CVS _____

JUDITH CAPELL and ACTION NC,

WAKE CO., C.S.C.

Plaintiffs,

v.

ARCHIE SMITH, in his official capacity as Clerk
of Superior Court for Durham County;
NICOLE BRINKLEY, in her official capacity as
Assistant Counsel for the North Carolina
Administrative Office of the Courts; AND
MCKINLEY WOOTEN, in his official capacity as
Director of the North Carolina Administrative
Office of the Courts,

Defendants.

COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure, Plaintiffs file this Complaint for Declaratory Judgment and for injunctive relief. Plaintiffs allege the following:

INTRODUCTION

1. Plaintiffs bring this Declaratory Judgment action, seeking a judicial determination as to the powers and duties of Defendants, specifically that:

- a. Defendant Smith must issue writs of possession in compliance with Executive Order 171 ("Executive Order") issued by the Honorable Roy Cooper, Governor of North Carolina, on October 28, 2020 and the Order issued by the Centers for Disease Prevention and Control ("CDC") creating a temporary nationwide moratorium on evictions for nonpayment of rent, effective September 4, 2020 until December 31, 2020 ("CDC Order"); and
- b. Defendants Brinkley and Wooten must direct clerks and other court officials to comply with the Executive Order and the CDC Order.

2. Further, this action seeks to enjoin Defendants from contravening the CDC Order in violation of the Supremacy Clause and rights guaranteed by the United States Constitution, including the Due Process Clause of the Fourteenth Amendment, and rights under the North Carolina Constitution, including Article I, Sec. 5 (Allegiance to the United States) and Article I, Sec.19 (Law of the land; equal protection of the laws).

3. Additionally, this action seeks to enjoin Defendant Wooten's and Defendant Brinkley's deliberate, unconstitutional policy of directing elected clerks of court and their employees to issue writs of possession contrary to the Executive Order, the CDC Order, N. C. Gen. Stat. § 1-305, and state and federal constitutions.

4. The CDC issued its Order to prevent severe harm to tenants evicted during a global health pandemic and to curb the ongoing spread of COVID-19 in the general population. The CDC Order prohibits the removal of tenants from their residences during its effective period so long as tenants submit a declaration of their eligibility under penalty of perjury ("Declaration") to the landlord, which Plaintiff Capell did.

5. The Executive Order recognizes the effectiveness of eviction moratoria to stop the increasing spread of the virus across our state and that residential evictions leave people homeless and at a heightened risk of contracting and spreading COVID-19. The Executive Order affirms that the CDC Order applies to all residential tenants in North Carolina who qualify for its protections. Further, the Executive Order mandates that when a residential tenant submits the Declaration to a landlord or files it with the court, the landlord cannot request a writ of possession unless a judge orders otherwise.

6. Upon information and belief, Defendant Smith continues to issue writs of possession in evictions for nonpayment of rent without proper consideration of facially valid

Declarations. Now Defendant Smith is likely to issue a Writ of Possession against Ms. Capell which will “command” the Durham County Sheriff to remove her from her home. Such an action will render Ms. Capell and her son homeless and place them at increased risk of contracting COVID 19 through no fault of their own. By submitting the Declaration, she is entitled to the protections of both the CDC Order and Executive Order.

7. In issuing writs of possession, Defendant Smith is complying with a policy promulgated by Defendants Wooten and Brinkley, which directs clerks across the state to “[continue] to process writs of possession” in violation of the CDC Order.

8. This policy violates the Supremacy Clause and has denied tenants across the state due process of law, as well as the protections afforded them under the Executive Order. Despite repeated communications informing Defendants Wooten and Brinkley of ongoing constitutional violations and noncompliance with the Executive Order, they have taken no corrective action.

9. Defendant Smith’s imminent action, like his record of action in similar cases, and like the policy promulgated by Defendants Wooten and Brinkley, violates and directly conflicts with the express provisions of the CDC Order, the CDC’s own guidance on its Order, and the Executive Order.

10. Defendant Smith’s likely issuance of a writ of possession against Ms. Capell hinders the purpose of the CDC Order, which aims to protect the health of individuals like Plaintiff Capell, who lost her employment during the pandemic through no fault of her own. Defendant’s action will deny Plaintiff Capell adequate notice and opportunity to be heard and deprive her of her substantive right to temporary immunity from actual eviction for nonpayment of rent under both the CDC and Executive Orders.

12. Plaintiff Action NC, comprised of staff members, dues-paying members, and volunteers, provides assistance to tenants in North Carolina, including those directly affected by the COVID-19 pandemic. As part of its efforts, Plaintiff Action NC informs tenants facing evictions about the protections afforded them by the CDC Order and the Executive Order. The acts, events, and omissions of Defendants directly contravenes Plaintiff Action NC's efforts.

12. Thus, Plaintiffs seek declaratory judgment and injunctive relief to protect their rights under federal and state constitutions and federal and state statutory law, as well as to protect their health and their family's health during this unprecedented crisis.

13. Each paragraph of this Complaint incorporates all others.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court. *See* N.C. Gen Stat. § 1-253 et seq. ("Declaratory Judgment Act"); N.C. Gen. Stat. § 7A-245(a)(3) ("Injunctive and declaratory relief to enforce or invalidate statutes; constitutional rights.").

15. This Court has the power to declare rights, status, and other legal relations, whether further relief is or could be claimed, and such declaration shall have the force and effect of a final judgment or decree. *See* N.C. Gen. Stat. § 1-253

16. The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

17. An action under the Declaratory Judgment Act may be used to determine the construction of a statute and the legal rights of persons under that statute.

18. The Declaratory Judgment Act is to be liberally construed and administered.

19. Venue is proper in this Court because Defendants Brinkley and Wooten maintain offices and exercise their respective authority in their official capacities and Wake County is

where many of the events and omissions giving rise to these claims occurred. Plaintiff, Action NC also has dues paying members in Wake County. Further, Wake Superior Court is not an inconvenient forum for Defendant Smith; his office is in Durham. *See* N.C. Gen. Stat. § 1-82.

20. An actual, justiciable controversy exists between the Plaintiffs and Defendants at present.

PARTIES

21. Plaintiff Judith Capell is a resident of Durham County and lives there with her three-year-old son and her son's father, Mr. Joey Cruz. She rents her home at the monthly rate of \$950.00.

22. Ms. Capell worked as a accountant for the food service company and Mr. Cruz worked part-time for Auto Zone. Both of them lost their employment during the COVID-19 pandemic.

23. The couple has paid rent as they were able to their landlord.

24. Their landlord filed a summary ejectment action for nonpayment of rent and was awarded possession of the premises.

25. Ms. Capell timely appealed but is unable to pay her rent bond; this rent bond and the continuing payment of it is needed for her and her family to remain housed in their apartment during the pendency of the summary ejectment appeal.

26. Action NC has approximately seven staff members, including Executive Director Alexander P. McCoy, in the North Carolina cities of Charlotte and Durham.

27. Action NC utilizes its staff, dues-paying members, and volunteers to organize poor and working-income communities in order to empower residents to take action that include asserting their rights as tenants to avoid evictions during the COVID-19 pandemic.

28. Many tenants have called Action NC's hotline seeking assistance to prevent an eviction and to request resources.

29. Action NC experienced an increase in calls to its hotline starting in March 2020, and there was usually an influx of calls whenever new legal orders were implemented including the "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" passed by the CDC in September 2020. Upon information and belief, since its issuance on October 28, 2020, the Executive Order is having the same effect on the number of incoming telephone calls and will continue to do so.

30. Based upon the higher call volume to its hotline, Action NC is in the process of transitioning to a new database to keep track of calls and to enable volunteers from various tenant associations to help with providing assistance to tenants.

31. Defendant Archie Smith currently serves as the Durham County Clerk of Court and has been the elected clerk since 2002. Defendant Archie Smith is sued in his official capacity.

32. Defendant Nicole Brinkley currently serves as Assistant Counsel to the North Carolina Administrative Office of the Courts and has served in this capacity throughout the time period described in this Complaint. Defendant Brinkley is sued in her official capacity.

33. Defendant McKinley Wooten currently serves as the Director of the North Carolina Administrative Office of the Courts ("Administrative Office of the Courts"), having

been appointed to that position in March 2020 by Chief Justice Cheri Beasley. Defendant McKinley Wooten is sued in his official capacity.

34. In his capacity as Director, Defendant Wooten is responsible for “evaluat[ing] the practices and procedures of courts,” for “[p]rescrib[ing] uniform administrative and business methods, systems, forms, and records to be used in the offices of the clerks of superior court,” and for supervising his department to “guide, direct, and support court officials in efforts to conform to both recommended and required compliance standards.” See N.C. Gen. Stat. § 7A-343(2), (3).

FACTS

The COVID-19 Pandemic Is Devastating North Carolina Families

35. North Carolina has suffered the staggering public health and economic consequences of the COVID-19 pandemic. As of October 7, 2020, almost 223,000 North Carolinians have been infected with the disease, and almost 3,700 have died. North Carolina Department of Health and Human Services, *COVID-19 North Carolina Dashboard*, NCDHHS (Oct. 7, 2020, 3:54 P.M.), <https://covid19.ncdhhs.gov/dashboard>. The unemployment rate in North Carolina remains at a remarkable 6.5%; even as the overall unemployment rate has recovered modestly since July, the workforce has nonetheless still shrunk by more than 70,000 people. Hayley Fowler and Joe Marusak, *Coronavirus live updates: Here’s what to know in North Carolina on Sept. 19*, Raleigh News & Observer (Oct. 7, 2020, 3:58 P.M.), <https://www.newsobserver.com/news/coronavirus/article245847100.html>.

36. Since the onset of the COVID-19 pandemic, North Carolina state officials have taken a variety of steps to curb residential evictions. On March 13, 2020, Chief Justice Cheri Beasley of the North Carolina Supreme Court, acting within her authority under N.C. Gen. Stat.

§ 7A-39(b)(2), issued Emergency Directive 1, directing the postponement of all non-essential judicial proceedings. *Order of the Chief Justice: Emergency Directive 1* (March 13, 2020).

37. Approximately two weeks later, Governor Roy Cooper issued an Executive Order (March Executive Order) clarifying that “no new evictions proceedings” should occur until these orders expired. *Assisting North Carolinians By Prohibiting Utility Shut-Offs, Late Fees, and Reconnection Fees; Providing Guidance About Restrictions on Evictions, etc.*, Executive Order No. 124 (Mar. 31, 2020).

38. Governor Cooper’s March Executive Order recognized that stable housing is essential toward slowing the spread of COVID-19: “any disruptions or dislocations that would require people to leave their homes increase the risk of spread of COVID-19....[E]victions and disconnections of utility services would exacerbate public health and safety risks[.]” *Id.*

39. Governor Cooper’s March Executive Order, in consultation with North Carolina Attorney General Josh Stein, specifically encouraged Clerks of Superior Court not to issue Writs of Possession in eviction actions, even where judgments had been entered, until the expiration of the Chief Justice’s order.

40. Governor Cooper’s March Executive Order also “strongly encouraged” sheriffs to delay the execution of Writs of Possession “in support of public health and public safety.” *Id.*

41. Because of the ongoing risks posed by COVID-19, Governor Roy Cooper issued a 21-day moratorium on residential evictions in North Carolina beginning May 30, 2020. *Assisting North Carolinians By Placing Temporary Prohibitions on Evictions and Extending the Prohibition on Utility Shut-Offs*, Executive Order No. 142 (May 30, 2020). The Governor again noted that “residential evictions...increase the risk that [evicted] people will contract and spread COVID-19.” *Id.* Yet these protections expired on June 30, 2020. *Id.*

42. Likewise responding to the danger posed by residential evictions during a global pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which included a federal eviction moratorium. Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136, § 4024 (2020). The CARES Act’s eviction moratorium prohibited the filing of new eviction actions against tenants living in certain federally assisted or financed properties. *Id.* The CARES Act’s protections expired on July 24, 2020. *Id.*

43. A study found that more than 40 percent of renter households in the United States were unable to pay rent and at imminent risk of eviction by the end of the year. Stout, *Analysis of Current and Expected Rental Shortfall and Potential Evictions in the U.S.*, September 25, 2020, https://www.ncsha.org/wp-content/uploads/Analysis-of-Current-and-Expected-Rental-Shortfall-and-Potential-Evictions-in-the-US_Stout_FINAL.pdf. This includes between 300,000 and 410,000 renter households in North Carolina—almost a million individuals. *Id.*

44. In the face of a looming eviction crisis and its certain impact on the further spread of COVID-19, President Donald J. Trump issued an Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners (“President’s Executive Order”) on August 8, 2020. Exec. Order No. 13945, 85 Fed. Reg. 49,935 (Aug. 8, 2020). The President’s Executive Order cited the CDC’s conclusion that the pandemic’s economic fallout “may lead to greater risk of eviction and homelessness or sharing of housing,” particularly for certain racial and ethnic minority groups. *Id.*

45. The President’s Executive Order also recognized the CDC’s observation that increased homelessness and shared housing could, in turn, “exacerbate and amplify the spread of COVID-19,” place those who are older or have underlying medical conditions at “higher risk for

severe COVID-19-associated illness,” and “result[] in increased in-person interactions between older, higher-risk individuals and their younger relatives or friends.” *Id.* The President’s order further found that Black individuals disproportionately experience eviction and, therefore, are most at risk of its short- and long-term consequences. *Id.* at 49,936.

46. Given these public health risks, the President’s Executive Order found that the prevention of evictions is critical to reducing the spread of COVID-19, and directed the Secretary of the Health and Human Services (“HHS”) and the Director of CDC to consider measures to temporarily halt residential evictions for nonpayment of rent. *Id.*

The CDC Orders Nationwide Eviction Moratorium To Slow Spread Of COVID-19

47. In recognition of the severe public health consequences of evictions during a pandemic, and in response to the Executive Order, the CDC, located within the Department of Health and Human Services (HHS), issued a nationwide moratorium on evictions for nonpayment of rent (CDC Order), pursuant to its authority under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and its implementing regulations (42 C.F.R. § 70.2). Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292–97 (Sept. 4, 2020). A true and accurate copy of the CDC Order is attached hereto as Exhibit A. This Order is effective from September 4, 2020 through December 31, 2020. *Id.*

48. The CDC issued the Order for the express purpose of preventing the further spread of COVID-19. *Id.* at 55,292–94.

49. In its Order, the CDC recognized that eviction moratoria serve as “effective public health measure[s] . . . to prevent the spread of communicable disease” in several ways. *Id.* at 55,292, 55,294. First, the CDC’s Order of a moratorium “facilitate[s] self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying

medical condition.” *Id.* This moratorium also “allow[s] State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19.” *Id.* The CDC further recognized that “housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19” and makes it difficult for these settings to effectively control the spread of the disease. *Id.* Additionally, the CDC noted that “[u]nsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.” *Id.* at 55,292, 55,296.

50. The CDC Order prohibits landlords, residential property owners, and other persons with a legal right to pursue eviction or possessory action from “evict[ing] any covered person from any residential property in any jurisdiction to which this Order applies during the effective period” of September 4, 2020 through December 31, 2020. *Id.* at 55,292–93, 55,296. A person violating the Order, whether landlords or tenants, may be subject to criminal penalties. *Id.* at 55,296.

51. The CDC Order applies to all jurisdictions in the United States, except for: (1) any state, local, territorial, or tribal area with an eviction moratorium that provides the same or greater level of protections; and (2) American Samoa. *Id.* at 55,293. The Moratorium is clear that it reaches only those areas that have less protections from eviction than it provides and “does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this [Moratorium].” *Id.* at 55,294.

52. The CDC Order defines a “covered person” as any tenant, lessee, or resident of a residential property that provides their landlord or property owner with a declaration under penalty of perjury indicating that they meet the following five requirements:

- a. The individual “has used best efforts” to obtain all available rental or housing government assistance, *id.* at 55,293;
- b. The individual either: (i) “expects to earn no more than \$99,000 in annual income” in 2020, (ii) “was not required to report any income in 2019 to the U.S. Internal Revenue Service,” or (iii) received a stimulus check pursuant to the CARES Act, *id.*;
- c. The individual is “unable to pay the full rent or make a full housing payment 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,” *id.*;
- d. The individual is “using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit, taking into account other nondiscretionary expenses,” *id.*; and
- e. If evicted, the tenant would likely become homeless or move into and live in close quarters in a new congregate or shared living situation, *id.*

53. The CDC Order provides that a tenant may use the CDC-provided declaration form, see Exhibit B or a “similar declaration under penalty of perjury.” *Id.* This Order does not specify a time by which a tenant must provide the information, and thus allows for its protections to be invoked at any point by the tenant.

54. To achieve its purpose of preventing the spread of COVID-19, the CDC Order mandates that it be interpreted and implemented to achieve three distinct objectives: (1) “[m]itigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness,” (2) “mitigating the further spread of COVID-19 from one U.S. State or U.S. territory,” and (3) “supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.” *Id.* at 55,293.

55. The CDC Order limits state and local court officials’ discretion in implementing and enforcing its provisions, and mandates that it be interpreted and implemented to achieve its named objectives to mitigate the spread of COVID-19 and support response efforts by the federal, state, and local governments.

56. Many courts across the country have applied this federal moratorium and halted eviction filings and cases or imposed meaningful procedural mechanisms prior to the filing of new evictions, eviction proceedings, and issuance of eviction judgments and writs of execution.

57. The CDC Order defines an “eviction” as “any action . . . to remove or cause the removal of a covered person from a residential property.” *Id.* This Order’s prohibitions appear on their face to include all stages of an eviction action. *Id.*

58. In North Carolina, the writ of possession is the legal instrument which actually causes an eviction: it “command[s]” a sheriff to “remove the [tenants] from, and put the [landlord] in possession of” the premises from which an eviction action rises. *See* N.C. Gen. Stat. § 42-36.2; *Administrative Office of Courts Form CV-401, Rev. 8/17*, https://www.nccourts.gov/assets/documents/forms/cv401-en.pdf?BK_lh848xBiRykDk_3VF0dsjqHmrUUjLb.

59. The issuance of a writ of possession is thus clearly an “eviction” within the definition of the CDC Order, and consequently prohibited in cases arising from an alleged non-payment of rent where a covered person has provided and served a valid Declaration conforming to the requirements of this Order.

60. The CDC issued guidance consistent with this interpretation, advising that courts should take into account the Order’s instruction to ensure that “the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the Order.” *HHS/CDC Temporary Halt In Residential Evictions To Prevent The Further Spread of COVID-19: Frequently Asked Questions*, October 12, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>. A true and accurate copy of the Frequently Asked Questions is attached as Exhibit C.

Defendant Brinkley, with Defendant Wooten’s Approval, Directed Clerks Of Court To Continue The Issuance of Writs of Possession Contrary To The CDC Order’s Moratorium, Producing Uneven Enforcement Of The Nationwide Moratorium.

61. Five days after the CDC Order took effect, Defendant Brinkley communicated by email dated September 9, 2020 (“the Email”) to acknowledge that her office was receiving questions from clerks of court across the state about how this Order affected their work. A true and accurate copy of the Email is attached as Exhibit D.

62. The Email was intended to provide instruction to Clerks of Superior Court across the state about how to implement the CDC Order, explaining that it arose “[i]n response to questions [the Office of General Counsel had] received,” and intended to provide “information and FAQs to assist Clerks of Superior Court.”

63. Defendant Brinkley’s instructions in the Email clearly represent a policy adopted by the Administrative Office of Courts.

64. Clerks across the state, including named Defendant Smith here, have adhered to the policy which Defendant Brinkley's email prescribed.

65. Although the CDC Order flatly forbids the actual eviction of any tenant for non-payment of rent, the Email wholly disregarded this valid, enforceable federal mandate, and instructed clerks that the CDC Order "does not change clerks' current process" of handling eviction actions and the issuance of writs of possession *in any way*.

66. By not changing the current process of clerks issuing writs of possession, Defendant Brinkley thereby instructed clerks to cause the eviction of tenants who were protected by the CDC Order. Her instructions directed clerks to violate a binding federal agency order, and in so doing to become accessories to landlords' commission of federal crimes under 42 U.S.C. § 271.

67. In short, after a valid federal order amidst an unprecedented public health crisis mandated a stop to all nonpayment evictions nationwide so long as a tenant properly and truly completed a Declaration, Defendant Brinkley's prescribed policy was, literally, "nothing changes."

68. Defendant Brinkley's prescribed policy is inconsistent with valid federal law and denied plaintiffs and others like them their rights under federal law and the United States Constitution.

69. In addition, Defendant Brinkley's prescribed policy directly led to the use of widely divergent and uneven standards and processes from county to county.

70. Due to Defendants' policy, tenants—including Plaintiff—are being evicted from their homes not because of a substantive difference in their situation but merely because of which county they happen to live in.

71. On information and belief, clerks of court in Durham, Lee, Wayne, and other counties continue to issue writs of possession against tenants protected by the CDC Order.

72. On information and belief, Defendant Wooten—as the Director of the Administrative Office of the Courts and Defendant Brinkley’s ultimate supervisor—was aware of and approved the contents of the Email on or about September 9, 2020.

73. In approving the email, Defendant Wooten thereby also explicitly or tacitly approved an illegal policy which denies Plaintiffs and others like them their rights under state and federal law and the North Carolina and United States Constitutions.

Governor Cooper Issued Executive Order 171 on October 29, 2020

74. On October 29, 2020, Governor Roy Cooper issued Executive Order 171(“Executive Order”) in a continued effort to assist North Carolinians at risk of eviction. A true and accurate copy of Executive Order 171 is attached as Exhibit E.

75. The Executive Order directed that the protections of the CDC Order applied to all residential tenants in North Carolina who were facing evictions for nonpayment or late payment of rent.

76. The Executive Order directed that landlords provide a blank Declaration form to any tenant in an eviction action, that tenants may complete one Declaration per household and that landlords will notify and file a submitted Declaration to the court.

77. Upon the landlord’s receipt of the Declaration completed by the tenant, the Executive Order specifically ordered that landlords “shall take no actions to request a writ of possession, and the landlord is not entitled to the writ.”

78. The Executive Order allows landlords to file a written response explaining reasons why an eviction should proceed, and a court will hold a hearing to determine whether to allow an eviction for reasons other than non-payment of rent.

Defendants Wooten and Brinkley Knew Their Policy Posed An Unreasonable Risk of Harm But Failed To Take Corrective Action

79. Moreover, Defendants Wooten and Brinkley, directly and through their counsel, were repeatedly made aware in the days and weeks after September 9, 2020 that the Email had produced confusion among clerks, causing violations of tenants' statutory and constitutional rights.

80. These communications made clear, or ought to have made clear, to Defendants Wooten and Brinkley that their policy had denied tenants across North Carolina, including Plaintiffs, their rights under state and federal law and North Carolina and United States Constitutions.

81. Despite repeated notifications about the ongoing violations of state and federal law, and by clerks across the state, neither Defendant Wooten nor Defendant Brinkley took any corrective action or issued any instruction countermanding their earlier policy that the CDC Order "does not change" the evictions process in North Carolina.

82. Defendants' response thus manifested deliberate indifference to violations of Plaintiffs' statutory and constitutional rights.

83. Even after the issuance of the Executive Order on October 29, 2020, Defendants have failed to take any corrective action or revise its Email to the clerks as of filing date of this Complaint. Unlike their current inaction, Defendants sent out the Email within just five days after the issuance of the CDC Order on September 4, 2020.

84. Had Defendants revised or countermanded their earlier policy, they could have prevented the harms which Plaintiffs and those like them have suffered—not just the deprivation of Plaintiffs’ rights but the substantive harms of eviction, homelessness, and displacement. Defendants’ current inaction and their prior action are a natural cause of these harms.

Defendant Smith Threatens to Cause Plaintiff’s Eviction in Violation of The CDC Moratorium and the Executive Order

85. In his official capacity as Durham County Clerk of Court, Defendant Smith has authority to issue Writs of Possession of Real Property, pursuant to N.C. Gen. Stat. Ann §1-313 and § 42-36.2.

86. Plaintiff Judith Capell is a resident of Durham County and lives there with her three-year-old son and her son’s father, Mr. Joey Cruz. She rents her home at the monthly rate of \$950.

87. Ms. Capell worked as an accountant for a food service company.

88. Mr. Cruz, who has suffered strokes, worked part time for AutoZone.

89. On or around May 25, 2020, Ms. Capell’s employment ended due to the food service company’s loss of business because of the coronavirus.

90. Around that same time, Mr. Cruz’s hours at AutoZone were reduced.

91. Ms. Capell applied for unemployment benefits near the end of May 2020 and began receiving \$732 per week in unemployment. That amount included \$600 per week in supplemental unemployment benefits authorized by the CARES Act.

92. In the summer of 2020, she moved into her current home at 2420 Sparger Rd., Apt. B, Durham, NC 27705, pursuant to a written lease with her landlord, RKLC One, LLC.

93. On July 31, 2020, the \$600 per week supplemental unemployment benefits authorized under the CARES Act expired, and her unemployment benefits were reduced to \$132 per week.

94. On September 1, 2020, Ms. Capell applied to the Durham Department of Social Services (DSS) for rental assistance. She recently received a commitment of rental assistance from DSS, but it only assisted with three months' rent, August, September, and October. She still owes November 2020 rent and is unable to post her rent bond.

95. Despite losing her income, Ms. Capell has offered partial rent payments to her landlord through DSS.

96. On October 12, 2020, Ms. Capell's landlord filed an eviction case against her for nonpayment of rent.

97. The presiding small claims magistrate entered an eviction judgment against Ms. Capell on October 23, 2020. That same day, Ms. Capell appealed the magistrate's judgment to district court for a trial de novo.

98. Ms. Capell read and signed the CDC declaration on October 23, 2020.

99. Ms. Capell delivered the signed declaration to her landlord through her attorney and by US mail on October 28, 2020.

100. Ms. Capell's attorney filed a copy of the CDC declaration and the attached certificate of service with the Durham County Clerk of Court on October 28, 2020. A true and accurate copy of this CDC Declaration and Certificate of Service are attached as Exhibit F.

101. Ms. Capell does not have enough money to pay the required monthly rent bond for November 2020 and will therefore no longer be able to stay the execution of the magistrate's eviction judgment.

102. Ms. Capell and her family will be homeless if the court issues a writ of possession on her landlord's request to execute the eviction judgment in November.

103. On information and belief, Defendant Smith has issued writs of possession in other non-payment eviction cases even where tenants have provided facially valid Declaration in compliance with the requirements of the CDC Order—acting in direct conflict with this Order's mandates and also now Governor Cooper's latest Executive Order.

104. The issuance of a writ in these circumstances clearly constitutes an eviction under the meaning of the CDC Order, since a writ would *command* the sheriff to remove a tenant from her home.

105. The issuance of a writ in these circumstances undermines the purpose of the CDC Order by threatening to expose tenants to COVID-19, accelerating its spread throughout Durham County and North Carolina generally, and potentially gravely injuring or even killing affected tenants and their families.

106. The issuance of a writ in these circumstances violates the Executive Order's prohibition against landlords requesting a writ to which they are not entitled.

107. Action NC members and volunteers, as well as the residents of the poor and working income communities they serve, include tenants who have been unable to pay their rents due to loss of income arising from the pandemic. Like Ms. Capell, many of these persons are or will be "covered persons" subject to the protections of the CDC Order and Executive Order.

108. Action NC members and volunteers, as well as the residents of the poor and working income communities they serve, are tenants who are or will likely be served with writs of possession in violation of the CDC Order and Executive Order.

109. Defendants' actions to date, and threatened action in Ms. Capell's case, contradicts federal law and the Executive Order and threatens to deny Plaintiffs and others like members and volunteers of Action NC, and residents in the communities they serve, their rights under state and federal law and the North Carolina and United States Constitutions.

Defendants' Violation Of N.C. Gen. Stat. § 1-305 Requiring Clerks To Enforce Judgments That Are In Full Force And Effect

110. N. C. Gen. Stat. § 1-305 states the clerks "shall issue executions on all unsatisfied judgments entered in the clerk's court, which are in full force and effect upon the request of any party or person entitled thereto and upon payment of the necessary fees."

111. Governor Cooper's Executive Order states that: "[u]pon receiving a Declaration, the landlord shall take no actions to request a writ of possession, and the landlord is not entitled to the writ, but the landlord may submit a response to the Declaration...."

112. Defendants may issue writs of possession only when a landlord is legally entitled to execution of the unsatisfied judgment in summary ejectment.

113. Defendants' issuance of writs of possession where the tenant has delivered a signed CDC declaration to the landlord, as evidenced by the tenant filing a copy of the declaration and certificate of service in the eviction court file, resulted in not only violations of N. C. Gen. Stat. § 1-305, but also the Executive Order.

114. As a result, Defendants' actions have harmed tenants and will likely harm Ms. Capell and other tenants.

Defendants' Denials of Constitutional Rights To Tenants Have Harmed Action NC

115. After the CDC Order was issued, Action NC learned that some tenants were wrongfully evicted from their homes and other tenants were faced with the risk of eviction.

116. The most vulnerable tenants, including those who live in hotels, were often treated as trespassers and made to leave their homes by law enforcement without having their day in court.

117. Wrongful evictions not only violate tenants' rights, but also prevent tenants from having a place to live during the pandemic.

118. Action NC has provided various services to assist tenants facing eviction during the COVID-19 pandemic including conducting mediations and negotiations with landlords to help tenants remain in their homes, educating tenants about their rights, and distributing materials and resources to tenants at community events and online.

119. Additionally, Action NC has engaged in advocacy efforts to promote tenants' rights, such as an October 16, 2020 letter to the Chief Justice of the North Carolina Supreme Court on its behalf as well as on behalf of a network of housing advocates. The letter requested the Chief Justice to provide clear orders to magistrates, clerks, and law enforcement agencies around how the CDC Order is applied in North Carolina and to ensure residents have equal access to justice and due process before being put out of their homes in the middle of a pandemic.

120. Furthermore, Action NC has educated tenants on the Governor's Executive Order, and it desires clarity and consistency among the courts concerning this Order.

121. Action NC has also referred some tenants to approximately 10-15 local agencies and community partners for assistance based upon the tenants' needs in order to avoid evictions during the pandemic.

122. Based upon Action NC's efforts to assist tenants, it has received threatening letters from some landlords as a means of intimidation and is bearing the expense of creating new database to handle the influx of calls from tenants facing evictions for nonpayment.

123. Action NC plans to continue advocating for the rights of tenants to prevent evictions during the pandemic.

CLAIM FOR DECLARATORY RELIEF

124. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

125. The North Carolina Declaratory Judgment statutes, N. C. Gen. Stat. Ch. 1, Art. 26, expressly states: "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed." N.C. Gen. Stat. § 1-253.

126. There exists an actual controversy between the parties regarding their rights under both the CDC Order and Executive Order in that:

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- a. Defendants erroneously assert that the CDC Order allows landlords to obtain writs of possession against tenants who are being evicted for non-payment even after these tenants have submitted Declarations invoking the protections of that Order.
- b. Defendants Brinkley and Wooten have failed to revise the Email directing clerks to issue writs of possessions after tenants have submitted these Declarations to the landlords and even filed the same with the court prior to the issuance of the writ.
- c. Defendants have acted consistently with those assertions to the detriment of tenants who are entitled to these protections.
- d. Defendants have issued writs of possession to landlords who are not legally entitled to enforce an unsatisfied judgment pursuant to N. C. Gen. Stat. § 1-305.

127. Plaintiffs vigorously dispute Defendants' declaration of their rights; Plaintiffs also dispute the proper nature of their legal relations with Defendants under these two Orders. As such, there exists an actual controversy between the parties.

128. Defendants' actions in continuing to issue writs of possession and direct clerks to issue those writs in violation of the CDC and Executive Orders makes actual litigation unavoidable unless this court settles the parties' dispute.

CLAIM FOR INJUNCTIVE RELIEF

129. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

130. Plaintiffs seek to preliminarily enjoin Defendants from denying tenants their rights under both CDC and Executive Orders pursuant to N.C. Gen. Stat. § 1-485.

131. Defendants' actions violate plaintiffs' rights under procedural due process under law as follows:

Violation of Procedural Due Process

132. The Fourteenth Amendment to the U.S. Constitution protects against the deprivation of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 2. The Fourteenth Amendment's protections apply to both property and liberty interests.

133. The North Carolina Constitution ensures due process to its residents. NC Const. art.1, sec. 19.

134. A state-created liberty interest arises when a state imposes "substantive limitations on official discretion." *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). A statute or regulation may create a liberty interest where it contains "explicitly mandatory language, i.e.,

specific directives to the decisionmaker that if the regulations’ substantive predicates are present, a particular outcome must follow.” *Ky. Dep’t of Corrs. v. Thompson*, 490 U.S. 454, 463 (1989) (internal quotation marks omitted).

135. The CDC Order recognizes the importance of maintaining tenants’ interests in their leaseholds and places substantive limitations on the exercise of state and local courts’ official discretion related to eviction actions for nonpayment of rent, using explicitly mandatory language in connection with substantive predicates.

136. The CDC Order makes clear that tenants “shall not” face eviction—i.e., any action to remove or cause the removal of a tenant from a residential property— if they submit the required Declaration under penalty of perjury. This Order further provides that a violation of these protections may result in criminal prosecution under federal criminal statute.

137. Plaintiffs have a state-created liberty interest in temporary immunity from any action to remove or cause their removal from residential property—including the issuance of a writ of possession which would command the sheriff to remove them from their homes. This immunity arose when Plaintiffs, as a “covered persons,” submitted Declarations under penalty of perjury claiming protection under the CDC’s Order.

138. Defendant Smith’s likely issuance of a writ of possession would deprive Plaintiff of this temporary immunity from eviction without adequate procedural due process. Defendant threatens to issue this writ despite that Plaintiff did not receive adequate notice and opportunity to be heard regarding the content of her Declaration, and moreover, that the landlord’s very act of seeking this writ constitutes a federal crime.

139. Defendants Brinkley and Wooten knowingly promulgated a policy which directs Defendant Smith to deny Plaintiffs this temporary immunity from eviction without adequate procedural due process as established in the Executive Order.

140. Defendants' policy violates the Executive Order that requires landlords to file a written response explaining reasons why an eviction should proceed, and a court will hold a hearing to determine whether to allow an eviction for reasons other than non-payment of rent

141. Since promulgating the policy, Defendants Brinkley and Wooten have been made aware that the consequence of their policy is the deprivation of Plaintiffs' temporary immunity from eviction without adequate procedural due process; despite knowing this, they have taken no corrective action, even after the Executive Order was issued on October 29, 2020.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief pursuant to NC Gen Stat. 1-253:

- a) Enter a declaratory judgment that writs of possession issued by North Carolina clerks of where the tenant has delivered a signed CDC declaration to the landlord and the landlord has failed to obtain a court order allowing for the eviction to go forward are void as violations of the Supremacy Clause and Fourteenth Amendment to the United States Constitution and N.C. Gen. Stat. § 1-305;
- b) Issue preliminary and permanent injunctions prohibiting Defendant Archie Smith from issuing a writ of possession against Judith Capell;
- c) Issue preliminary and permanent injunctions prohibiting Defendants from violating the CDC's nationwide eviction moratorium and the Executive Order or Plaintiffs' rights to due process;

- d) Issue preliminary and permanent injunctions against Defendants Wooten and Brinkley requiring them to direct clerks and other court officials to comply with the CDC nationwide eviction moratorium and the Executive Order and not to issue writs in violation of the CDC nationwide eviction moratorium and the Executive Order; and
- e) For such other and further relief as is just and proper under the circumstances.

This the 9th day of November 2020.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19. **DATES:** This Order is effective September 4, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Nina Witkowsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, GA 30329; Telephone: 404-639-7000; Email: cdcregulations@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-CoV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.¹

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.² During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these best efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Applicability

Under this Order, a landlord, owner of a residential property, or other person³ with a legal right to pursue

eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order. This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Nor does this order apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Renter's or Homeowner's Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions to prevent the further spread of COVID-19 may use. To invoke the CDC's order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing

partnerships, societies, and joint stock companies, as well as individuals.

¹ CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

² Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

³ For purposes of this Order, "person" includes corporations, companies, associations, firms,

Exh. b7 A

payment. Executed declarations should not be returned to the Federal Government.

Centers for Disease Control and Prevention, Department of Health and Human Services

Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

Summary

Notice and Order; and subject to the limitations under "Applicability": Under 42 CFR 70.2, a landlord, owner of a residential property, or other person⁴ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

Definitions

"Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

"Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

"Covered person"⁵ means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or

other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),⁶ (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary⁷ out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

"Evict" and "Eviction" means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage.

"Residential property" means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or

similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

"State" shall have the same definition as under 42 CFR 70.1, meaning "any of the 50 states, plus the District of Columbia."

"U.S. territory" shall have the same definition as under 42 CFR 70.1, meaning "any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness;
- mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and
- supporting response efforts to COVID-19 at the Federal, State, local, territorial, and tribal levels.

Background

There is currently a pandemic of a respiratory disease ("COVID-19") caused by a novel coronavirus (SARS-CoV-2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

⁴For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

⁵This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., *Who gets evicted? Assessing individual, neighborhood, and network factors*, Social Science Research 82 (2017), 366–377, <http://dx.doi.org/10.1016/j.ssresearch.2016.08.017>, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HPRDReport_SanFrancisco_FinalDraft-1.pdf.

⁶According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,821 annually). See National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

⁷An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.⁸

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.⁹ During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

Applicability

This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more

restrictive than the requirements in this Order.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;¹⁰ (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Eviction and Risk of COVID-19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.¹¹ Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an

index case of COVID-19 than other close contacts.¹²

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.¹³ Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.¹⁴ The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.¹⁵

¹² Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study*. *Lancet Infect Dis* 2020. [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

¹³ See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

¹⁴ Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

¹⁵ See Congressional Research Service, *CARES Act Eviction Moratorium*, (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

⁸ CDC, *People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 28, 2020).

⁹ Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA Netw Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

¹⁰ Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick*, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

¹¹ United States Census Bureau. *American Housing Survey*, 2017. <https://www.census.gov/programs-surveys/ahs.html>.

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.¹⁶

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30–40 million people in America could be at risk of eviction.¹⁷ A wave of evictions on that scale would be unprecedented in modern times.¹⁸ A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID-19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID-19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.¹⁹ Approximately 15% of moves are interstate.²⁰

Eviction, Homelessness, and Risk of Severe Disease From COVID-19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population.²¹ In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.²² Additionally,

some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.²³

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID-19 have been identified in homeless shelters.²⁴ In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.²⁵ In Boston, Massachusetts, universal COVID-19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.²⁶ COVID-19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).²⁷ Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.²⁸

CDC guidance recommends increasing physical distance between beds in homeless shelters.²⁹ To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to

individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID-19. Neither consequence is in the interest of the public health.

The risk of COVID-19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.³⁰ The unsheltered homeless are at higher risk for infection when there is community spread of COVID-19. The risks associated with sleeping and living outdoors or in an encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID-19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID-19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID-19.³¹ Also, the homeless

uploads/2020/07/Count-Us-In-2020-Final-7.29.2020.pdf

¹⁶ United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>

¹⁷ Mosites E, et al, *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters—Four U.S. Cities*, March 27–April 15, 2020. MMWR 2020 May 1;69(17):521–522.

¹⁸ Tobolowsky FA, et al. *COVID-19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington*, 2020. MMWR 2020 May 1;69(17):523–526.

¹⁹ Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV-2 Infection in Residents of a Large Homeless Shelter in Boston*. JAMA. 2020 Apr 27;323(21):2191–2. Online ahead of print.

²⁰ Imbert E, et al. *Coronavirus Disease 2019 (COVID-19) Outbreak in a San Francisco Homeless Shelter*. Clin Infect Dis. 2020 Aug 3.

²¹ National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: <https://nhchc.org/cdc-covid-dashboard/>.

²² Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

¹⁶ See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: <https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html>.

¹⁷ See Emily Benfer, et al., *The COVID-19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk*, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

¹⁸ As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. <https://evictionlab.org/national-estimates/>.

¹⁹ See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: <https://www.census.gov/data/tables/time-series/demo/migration-mobility/historic.html>.

²⁰ *Id.*

²¹ See CDC, Coronavirus Disease 2019 (COVID-19), People Who Are at Increased Risk for Severe Illness, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

²² Seattle-King County. Point in Time Count. <https://regionalhomelessystem.org/wp-content/>

³⁰ In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. See, Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

³¹ Hugo Vasquez-Vera, et al. *The threat of home eviction and its effects on health through the equity* Continued

often have underlying conditions that increase their risk of severe outcomes of COVID-19.³² Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.³³

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.³⁴ At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,³⁵ which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Findings and Action

Therefore, I have determined the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or U.S. territories that

do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.³⁶

Based on the convergence of COVID-19, seasonal influenza, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as fall and winter approach, I have determined that a temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the "Applicability" section, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID-19. Another potential consequence would be if evicted individuals become

homeless and unsheltered, and further contribute to the spread of COVID-19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid State and local authorities in the enforcement of their quarantine and

lens: A systematic review. *Social Science and Medicine*. 175 (2017) 199e208.

³² Fazel S, Geddes JR, Kushel M. The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations. *Lancet*. 2014;384(9953):1529–1540.

³³ Hsu HE, et al. Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020. *MMWR* 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

³⁴ See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

³⁵ Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys. *Clin Microbiol Infect*. 2019; 25(2):249.e1–249.e6.

³⁶ In the United States, public health measures are implemented at all levels of government, including the Federal, State, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

other health regulations and to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this order to prevent eviction is effectuated to protect the public health, the States and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG-CV and ESG-CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, State and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy->

issues/cares/state-and-local-governments for more information.

Effective Date

This Order is effective upon publication in the Federal Register and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

Attachment

Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;³⁷

- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or

³⁷ "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

wages, lay-offs, or extraordinary³⁸ out-of-pocket medical expenses;

- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.³⁹

- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant Date

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

Nina B. Witkofsky,

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2020-19654 Filed 9-1-20; 4:15 pm]

BILLING CODE 4163-18-P

³⁸ An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

³⁹ "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY
HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;¹
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary² out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

¹ "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

² An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

Exhibit B

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.³
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

³ "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to you.

HHS/CDC TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19

FREQUENTLY ASKED QUESTIONS

Introduction

This non-binding guidance document shares the views of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS), U.S. Department of Housing and Urban Development (HUD), and U.S. Department of Justice (DOJ) on frequently asked questions about the CDC Order entitled [*Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*](#), 85 Fed. Reg. 55,292 (Sept. 4, 2020). This guidance document does not create or impose any obligations on any member of the public or any entity beyond those established by the Order. This guidance document is not a comprehensive summary of the duties and obligations under the Order. Individuals should seek the assistance of a legal aid program or private legal counsel (as applicable)¹ for questions relating to the application of the Order to their individual circumstances.

What does the Order do?

The Order temporarily halts residential evictions of covered persons for nonpayment of rent during September 4, 2020, through December 31, 2020. This means that a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action cannot evict for nonpayment of rent any covered person from any residential property in any U.S. state or U.S. territory where the Order applies. We explain where the Order applies and who is covered later in this document.

What does CDC mean by "eviction"?

"Eviction" means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. State and local laws with respect to tenant-landlord relations vary, as do the eviction processes used to implement those laws. The judicial process will be carried out according to state and local laws and rules. Eviction does not include foreclosure on a home mortgage.

As indicated in the Order, courts should take into account the Order's instruction not to evict a covered person from rental properties where the Order applies. The Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction of a covered person for non-payment of rent does NOT take place during the period of the Order. State and local courts may take judicial notice of the CDC Order, and the associated criminal penalties that may be imposed for non-compliance in making a formal judgment about any pending or future eviction action filed while this Order remains in effect.

¹ For more information on legal aid programs, see the following: Legal Services Corporation (<https://www.lsc.gov/what-legal-aid/find-legal-aid>) and the ACL Elder Care Locator (<https://eldercare.acl.gov/Public/Index.aspx>).

Who is a "covered person" for purposes of this Order?

A "covered person" is any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury that:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- (2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- (3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses²;
- (4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
- (5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

Frequently Asked Questions

How does someone use this protection?

A tenant, lessee, or resident of a residential property must provide a completed and signed copy of the declaration, as described above, to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. The declaration may be signed and transmitted either electronically or by hard copy. Each adult listed on the lease, rental agreement, or housing contract should complete the declaration. In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of other adult residents party to the lease, rental agreement, or housing contract at issue. The declaration can be downloaded [here](#). For more information about the form, see below. **Do not return your completed form to CDC.**

² An "extraordinary out-of-pocket medical expense" is defined in the Order as any unreimbursed medical expense that is likely to exceed 7.5% of one's adjusted gross income for the year.

Has CDC provided a declaration form that eligible individuals can complete and submit to their landlord?

Yes. CDC has issued a declaration form that is compliant with the Order. CDC recommends that eligible persons use this declaration form. The declaration form is available on the CDC website: See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

Individuals are not obligated to use the CDC form. Any written document that an eligible individual presents to their landlord will comply with the Order, as long as it contains the same information as the CDC declaration form.

All declarations, regardless of the form used, must be signed, and must include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration.

In addition, people are allowed to use a form translated into other languages. Even though declarations with other languages may satisfy the requirement that a covered person must submit a declaration, CDC cannot guarantee that they in fact do satisfy the requirement. However, declarations in languages other than English are compliant if they contain the information required to be in a declaration, are signed, and include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration.

To seek the protections of the Order, each adult listed on the lease, rental agreement, or housing contract should complete and sign a declaration and provide it to the landlord where they live. Individuals should not submit completed and signed declarations to the CDC or any other federal agency. In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of other adult residents party to the lease, rental agreement, or housing contract at issue.

I have already been evicted. Does this Order apply to me?

The effective date of the CDC Order is September 4, 2020. That means that any evictions for nonpayment of rent that may have been initiated prior to September 4, 2020, but have yet to be completed, will be subject to the Order. Any tenant who qualifies as a "Covered Person" and is still present in a rental unit is entitled to protections under the Order. Any eviction that occurred prior to September 4, 2020 is not subject to the Order.

If I am a covered person, do I still owe rent to my landlord?

Yes. Covered people still owe rent to their landlords. The Order halts residential evictions only temporarily. Covered persons still must fulfill their obligation to pay rent and follow all the other terms of their lease and rules of the place where they live. (See question below regarding evictions for reasons other than paying rent). Covered persons must use best efforts to make timely partial payments that are as close to the full payment as their individual circumstances permit, considering other nondiscretionary expenses. When the Order expires, consistent with the applicable landlord-tenant or real-property laws, a covered person will owe their landlord any unpaid rent and any fees, penalties, or interest as a result of their failure to pay rent or make a timely housing payment during the period of the Order.

How can CDC help me from being evicted?

CDC has issued this Order to temporarily halt residential evictions of covered persons for nonpayment of rent from September 4, 2020 through December 31, 2020. CDC is not able to help individual tenants or landlords in eviction actions. Individuals should seek the assistance of a legal aid program or private legal counsel (see footnote #1). Please see question below regarding enforcement of the Order.

Who do I contact to appeal an eviction decision made against me?

The Order does not establish an administrative appeal process. Individuals who need legal assistance with appeals for eviction actions taken that they believe are in violation of this Order should consult with a private attorney or legal aid program (see footnote #1).

Is CDC providing rental assistance?

No. But information about federal and state assistance programs is described below.

Where does the Order apply?

The Order applies only in states (including the District of Columbia), localities, territories, or tribal areas that do not have in place a moratorium on residential evictions that provides the same or greater level of public-health protection than the CDC's Order. Relevant courts deciding these matters should make the decision about whether a state order or legislation provides the same or greater level of public health protection. The Order does not apply in American Samoa, which has reported no cases of COVID-19. Should COVID-19 cases be reported in American Samoa, the Order would then be applicable to American Samoa.

CDC is aware of the following websites for more information on state-by-state eviction moratoriums:

- <https://www.nolo.com/legal-encyclopedia/emergency-bans-on-evictions-and-other-tenant-protections-related-to-coronavirus.html>
- <https://evictionlab.org/covid-policy-scorecard/#scorecard-intro>
- <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>
- <https://www.rhls.org/evictionmoratoriums/>

CDC is providing these links for your awareness only. CDC has not evaluated and does not endorse these websites.

Can I still be evicted for reasons other than not paying full rent?

Yes, you may still be evicted for reasons other than not paying full rent or making a full housing payment. The Order does not prevent you from being evicted for

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or

(5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).

Individuals who are confirmed to have, have been exposed to, or might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. Individuals who might have COVID-19 are advised to self-isolate except to get medical care. See What to Do If You Are Sick, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

You may have additional protections against evictions under laws in your state.

How can people find government rental assistance?

The US Department of Housing and Urban Development (HUD) has coronavirus-related resources for renters available on its [website](#).

In addition, there are state and local resources available for renters and landlords. HUD has allocated and made available \$4 billion in Emergency Solutions Grants and \$5 billion in Community Development Block Grants, including \$2 billion in grants focusing on areas with increased eviction risk. State and local authorities are able to use these funds for rental assistance. Tenants and landlords are encouraged to connect with local and state authorities to find out how to access these funds. Contact information for many of these authorities can be found on the [HUD website](#).

HUD has also released guidance on rent repayment plans for [tenants and landlords](#), though that guidance is not specific to requesting protection from eviction under this order.

In addition, the HHS Administration for Children and Families administers the Community Services Block Grant (CSBG) program. The CSBG funds States, territories, tribes, and local nonprofit Community Action Agencies (CAAs) that provide a variety of services for low-income families and individuals. Based on needs identified within the community, CSBG funds flexible support that territories, tribes, CAAs and other eligible entities can use to meet the unique needs of children, youth, and families, including housing-related needs. To access these resources, individuals and families may wish to contact their state and local authorities:

- <https://communityactionpartnership.com/find-a-cap/>
- <https://www.acf.hhs.gov/ocs/resource/state-officials-and-program-contacts>

What types of residential properties are covered by the CDC's order?

The Order applies to any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes. The Order does not apply to hotel rooms, motel rooms, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

What is CDC's legal authority for issuing this Order?

CDC issued this Order under the authority of section 361 of the Public Health Service Act (42 U.S.C. § 264) and federal regulations codified at 42 C.F.R. § 70.2. Under 42 U.S.C. § 264, the HHS Secretary is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between U.S. states and U.S. territories. The authority for carrying out these functions has been delegated to the CDC Director. Under long-standing legal authority found at 42 C.F.R. § 70.2, the CDC Director can take public health measures to prevent the interstate spread of communicable diseases in the event of inadequate local control.

Why did CDC issue this Order?

CDC issued this Order because evictions threaten to increase the spread of COVID-19. During a pandemic, calling a temporary halt to evictions can be an effective public health measure to prevent the spread of disease. A temporary halt of evictions can help people who get sick or who are at risk for severe illness from COVID-19 protect themselves and others by staying in one place to quarantine. These orders also allow state and local authorities to more easily implement stay-at-home and social distancing measures to lessen the community spread of COVID-19. Housing stability helps protect public health because homelessness increases the likelihood that people may move into close quarters in homeless shelters or other settings. These crowded places put people at higher risk of getting COVID-19. People who are homeless and not in a shelter also have increased risk of severe illness from COVID-19.

Do landlords have to make their tenants aware of the CDC order and Declaration?

No, landlords are not required to make their tenants aware of the Order and Declaration. But landlords must otherwise comply with all requirements of the Order.

What does it mean when a tenant has declared themselves to be a covered person under the CDC Order?

Covered persons located in jurisdictions in which this Order applies may not be evicted for non-payment of rent solely on the basis of the failure to pay rent or similar charges at any time during the effective period of the Order. You may continue to charge rent and accept partial payments from your tenant during this time. If local laws permit, you may also agree to a repayment schedule with your tenant for back rent payments that have accumulated during this time. Tenants retain all existing rights and protections against eviction under applicable state law.

What can a landlord do if a tenant has declared that they are a covered person under the CDC Order, but the landlord does not believe the tenant actually qualifies?

The Order does not preclude a landlord from challenging the truthfulness of a tenant's declaration in any state or municipal court. The protections of the Order apply to the tenant until the court decides the issue as long as the Order remains in effect.

If a landlord initiated an eviction for nonpayment of rent before September 4 (the effective date of the CDC Order) but has not completed the eviction, does the CDC Order provide eviction protections for the tenant?

Yes. The effective date of the CDC Order is September 4, 2020. That means that any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and have yet to be completed, will be subject to the Order. Any tenant who qualifies as a "Covered Person" and is still present in a rental unit is entitled to protections under the Order. Any eviction that occurred before September 4, 2020, is not subject to the Order.

What are the penalties for a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action violating this Order?

Several laws (18 U.S.C. §§ 3559 and 3571, 42 U.S.C. § 271, and 42 C.F.R. § 70.18) say that a person who violates the Order may be subject to a fine of no more than \$100,000 or one year in jail, or both, if the violation does not result in death. A person violating the Order may be subject to a fine of no more than \$250,000 or one year in jail, or both, if the violation results in a death or as otherwise provided by law. An organization violating the Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. These are criminal penalties and are determined by a court of law. CDC has no involvement in these penalties.

What if individuals act in bad faith when completing and submitting the declaration?

Anyone who falsely claims to be a covered person under this Order by attesting to any material information which they do not believe to be true may be subject to criminal penalties under 18 U.S.C. § 1621 (perjury) or other applicable criminal law.

How does the federal government intend to enforce this Order?

The U.S. Department of Justice prosecutes violations of this Order.

From: Brinkley, Nicole N. <Nicole.N.Brinkley@nccourts.org>
Sent: Wednesday, September 9, 2020 5:12 PM
To: Judicial.Clerks of Superior Court <Judicial.ClerksofSuperiorCourt@nccourts.org>; Judicial.Assistant Clerks of Superior Court <Judicial.AssistantClerksofSuperiorCourt@nccourts.org>; Judicial.Deputy Clerks of Superior Court <Judicial.DeputyClerksofSuperiorCourt@nccourts.org>
Cc: Judicial.Chief Magistrates <Judicial.ChiefMagistrates@nccourts.org>; Judicial.Magistrates <Judicial.Magistrates@nccourts.org>; Judicial.Chief District Court Judges <Judicial.ChiefDistrictCourtJudges@nccourts.org>; Judicial.District Court Judges <Judicial.DistrictCourtJudges@nccourts.org>; NCJC.CSD.Court Services Division <NCJC.CSD.CourtServicesDivision@nccourts.org>; NCJC.CPD.Court Programs Division <NCJC.CPD.CourtProgramsDivision@nccourts.org>; NCJC.CPD.CS Staff <NCJC.CPD.CSStaff@nccourts.org>; NCJC.CSD.Procedural Help Desk <NCJC.ProceduralHelpDesk@nccourts.org>; NCJC.CSD.Training & Development <CSD.Training&Development@nccourts.org>; Judicial.Superior Court Judges <Judicial.SuperiorCourtJudges@nccourts.org>; Judicial.Senior Resident Superior Court Judges <Judicial.SeniorResidentSuperiorCourtJudges@nccourts.org>; Lassiter, Jamie L. <Jamie.L.Lassiter@nccourts.org>; Dona Lewandowski (<lewandowski@sog.unc.edu>) <lewandowski@sog.unc.edu>; Smith, Meredith Stone <meredith.smith@sog.unc.edu>
Subject: CDC agency order

Dear Clerks, Assistant Clerks and Deputy Clerks of Superior Court and other Court Officials,

The Centers for Disease Control and Prevention (CDC) published an [agency order](#) in the Federal Register on Friday, September 4, 2020 temporarily halting certain evictions. 85 F.R. 55292.

In response to questions we have received, the Office of General Counsel offers the following information to assist **Clerks of Superior Court**.

Residential Eviction Moratorium

The CDC agency order became **effective September 4, 2020 and expires December 31, 2020**. The action of the CDC follows President Trump's [Executive Order 13945](#) issued on August 8, 2020, directing that "[t]he Secretary of Health and Human Services and the Director of the CDC shall consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession." 85 F.R. 49935.

The order provides that "a **landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action** shall not evict any **covered person** from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order" (Emphasis added). The order defines "evict" and "eviction" as "any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property" and excludes foreclosure on a home mortgage. The temporary residential eviction moratorium is intended to protect tenants, lessees, or residents of residential properties covered by the CDC's order from eviction. The CDC cites to 42 U.C.S § 264 and 42 C.F.R. § 70.2 as its authority to issue the moratorium.

Exhibit D

The protections afforded under the CDC agency order are not automatic but must be invoked by a tenant. A tenant who provides a declaration executed under penalty of perjury to the “landlord, owner of the residential property, or other person who has a right to have them evicted or removed from where they live” stating the following is a “covered person” under the order and may not be evicted from a residential property during the moratorium:

1. The individual has used best efforts to obtain all available government assistance for rent or housing (available government assistance is defined in the order as “any governmental rental or housing payment benefits available to the individual or any household member”);
2. The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- 3) The individual is unable to pay the full rent or make a full housing payment 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) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual’s circumstances may permit, taking into account other nondiscretionary expenses; and
- 5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting— because the individual has no other available housing options (available housing is defined in the order as “any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual”).

The order specifies that evictions based on the following are not precluded:

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

The CDC agency order does not:

- relieve a tenant’s “obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract”;
- preclude “the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract”;
- waive any fees, penalties or interest; or
- apply in any State, local, territorial, or tribal area with a moratorium providing the same or greater level of public health protection.

Enforcement and Federal Criminal Penalties

The CDC agency order is enforceable by federal authorities and cooperating State and local authorities. Federal criminal penalties include fines and/or one year in jail. The U.S. Department of Justice has authority to initiate criminal court proceedings for imposition of the criminal penalties.

In summary, the CDC order does not change the clerks' current process of (i) filing and scheduling summary ejectment actions, including making the CARES Act affidavit (CVM-207) available to plaintiffs pursuant to Emergency Directive 18, and (ii) continuing to process writs of possession.

The clerks and the NCAOC cannot give legal advice about individual litigants' rights or obligations. Clerks also cannot advise sheriffs who may have questions about the CDC order and their duties. This is meant to be general guidance for clerks and may not address every scenario within a case. Court officials with questions may reach out to myself at Nicole.N.Brinkley@nccourts.org or Matt Kraus at Matthew.R.Kraus@nccourts.org with any questions.

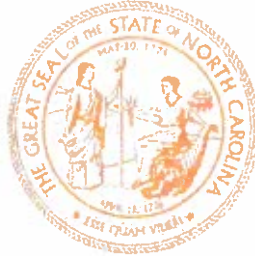
-Nickie

<image001.png> Nicole Brinkley
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E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.



State of North Carolina

ROY COOPER
GOVERNOR

October 28, 2020

EXECUTIVE ORDER NO. 171

ASSISTING NORTH CAROLINIANS AT RISK OF EVICTION

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165 and 169-170; and

WHEREAS, more than two hundred sixty-six thousand (266,000) people in North Carolina have had COVID-19, and four thousand two hundred forty-five (4,245) people in North Carolina have died from the disease; and

WHEREAS, as of the date of this Executive Order, and relative to recent weeks, there has been a considerable increase in the COVID-19 daily case counts, an increase in the associated hospitalizations and emergency-department visits for COVID-19-like illnesses, and an increase in the percent of daily case counts that are positive, prompting, most recently, the undersigned to pause the state in Phase 3 of its reopening process; and

WHEREAS, these trends require the undersigned to implement certain measures in order to slow the spread of the virus across the state and protect the neediest North Carolinians from housing loss and housing insecurity; and

Exhibit E

Residential Evictions in North Carolina

WHEREAS, in addition to its public health consequences, the economic effects of the COVID-19 pandemic have broadly impacted residential tenants across the state, many of whom have been unable to timely or fully make their rent payments, thereby facing the risk of eviction; and

WHEREAS, residential evictions remove people from their homes, where they are safest during the COVID-19 pandemic, which therefore increases the risk that such people will contract and spread COVID-19; and

WHEREAS, many residential evictions leave people homeless, where they are at heightened risk of contracting and spreading COVID-19 either through unsheltered living situations or through relocation to homeless shelters or other congregate living situations, where they face enhanced risk of contracting COVID-19; and

WHEREAS, because many people are now performing their jobs and receiving schooling from their homes, residential evictions during the COVID-19 pandemic also threaten people's ability to maintain their livelihood and receive education; and

WHEREAS, according to a September 25, 2020 report from the National Council of State Housing Agencies, there are currently an estimated 300,000 – 410,000 renter households in North Carolina unable to pay rent and at risk of eviction, and a projected estimated 240,000 eviction filings in North Carolina by January 2021; and

WHEREAS, the undersigned's administration recognizes that eviction moratoria are not only effective public health measures to control the spread of COVID-19, but that they can also have significant impacts on the economic and socioeconomic realities of many North Carolinians and;

WHEREAS, accordingly, the undersigned's administration has implemented various measures to-date to protect vulnerable populations from residential evictions during the COVID-19 pandemic, including through the issuance of Executive Order Nos. 124 and 142, which placed a temporary moratorium, through June 20, 2020, on residential evictions for reasons of late payment or nonpayment, and through the creation of the Housing Opportunities and Prevention of Evictions Program ("HOPE"), designed to provide financial relief to the neediest of North Carolina families; and

Centers for Disease Control and Prevention Order Temporarily Halting Residential Evictions

WHEREAS, the Centers for Disease Control and Prevention issued an order, pursuant to 42 U.S.C. § 264 of the Public Health Act and 42 C.F.R. § 70.2, and titled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," temporarily halting certain residential evictions nationwide, from September 4, 2020 through December 31, 2020 (the "CDC Order"); and

WHEREAS, the CDC Order recognizes that COVID-19 poses a historically unprecedented threat to public health, and that a temporary halt to certain residential evictions "constitutes a reasonably necessary measure to prevent the further spread of COVID-19 throughout the United States"; and

WHEREAS, the CDC Order protects certain residential tenants from eviction for nonpayment of rent under certain conditions; and

WHEREAS, the CDC Order applies to North Carolina and, according to the Order's terms, shall be enforced by federal authorities and cooperating state and local authorities; and

WHEREAS, despite the application of the CDC Order to North Carolina, recent reports have made clear that the CDC Order has been enforced inaccurately and inconsistently in some

parts of North Carolina, thereby exposing some tenants to unwarranted eviction and unnecessary hardship; and

WHEREAS, many residential tenants who have been evicted from their homes lack adequate resources and legal representation to assist with any challenges to potentially inaccurate and inconsistent applications of the CDC Order to their particular circumstances; and

WHEREAS, in order to qualify for protection from eviction under the CDC Order, a residential tenant must complete a declaration form, under penalty of perjury, and provide it to his or her landlord, declaring, among other required criteria for eligibility, that the tenant has used best efforts to obtain all government assistance for rent or housing, that the tenant has used best efforts to make timely partial payments that are as close to the full payment as the tenant's circumstances may permit, and that the tenant or tenant's household is below a certain income threshold (the "Declaration"); and

WHEREAS, many residential tenants in North Carolina who would otherwise qualify for eviction protection under the terms of the CDC Order are unaware of the obligation to deliver a completed and signed Declaration to their landlord, and accordingly do not then receive the corresponding protection from eviction under that Order, resulting in unwarranted evictions and unnecessary hardship for many North Carolinians; and

WHEREAS, under the CDC Order, landlords are not required to inform their residential tenants at risk of eviction or in the process of eviction of the CDC Order of the tenants' obligation to provide the landlord with a completed and signed Declaration in order to receive the full scope of protection under the Order; and

WHEREAS, an affirmative obligation on the landlord to provide a residential tenant with a copy of the Declaration form in any action for eviction against that tenant under Article 3 of Chapter 42 of the North Carolina General Statutes will inform and educate residential tenants about their rights under the CDC Order, and may lessen the number of North Carolinians removed from their homes during the COVID-19 pandemic; and

WHEREAS, for the same reasons, a landlord must be required to inform the court if a tenant has provided the landlord with a copy of the Declaration, and any Declaration must be filed with the court; and

WHEREAS, to ensure the effective execution of the CDC Order, this Executive Order provides for the modification of residential leases to effectuate certain procedures in the event a tenant's Declaration is filed with the court, and in the event the landlord decides to contest that Declaration; and

WHEREAS, like the CDC Order, this Executive Order does not block evictions for reasons other than nonpayment of rent, interest, late fees, or penalties; and

WHEREAS, the restrictions on evictions under this Executive Order shall extend only during the term of this Executive Order; and

WHEREAS, the CDC Order does not relieve any residential tenant from the obligation to pay rent, make housing payments, or comply with any other obligation that the tenant may have under tenancy, lease or contract, and it does not protect tenants from eviction for reasons of criminal activity, threatening the health or safety of other tenants, or violating building codes or other ordinances; and

WHEREAS, in order to ensure accuracy and consistency in the application of the CDC Order to residential tenants in North Carolina, and to best protect the most vulnerable of North Carolina households during the COVID-19 pandemic, the undersigned desires to (i) clarify that the protections for qualifying residential tenants under the CDC Order shall apply to those qualifying residential tenants in North Carolina and (ii) implement other reasonable and necessary measures to clarify and extend the protections extended by the CDC Order; and

Residential Assistance Program in North Carolina

WHEREAS, the undersigned has established the HOPE program for rent and utility assistance, overseen and administered by the North Carolina Office of Recovery and Resiliency, and seeded with Coronavirus Aid, Relief and Economic Security Act ("CARES") funding in excess of \$117 million dollars; and

WHEREAS, the HOPE program, which launched October 15, 2020, is aimed at those residential tenants who have a household median income at or below eighty percent of their area's median income, occupy a rental property as their primary residence, and are behind on rent or utility bills when they apply for monetary assistance; and

WHEREAS, the HOPE program provides monetary assistance to those residential tenants who meet the program's criteria, by way of rent payments made directly to the residential tenant's landlord, for up to six months of rental assistance, and provides protection from eviction for qualifying tenants, provided their landlord executes an agreement not to evict the qualifying tenant for a specified duration of time, in exchange for receipt of funds through the HOPE program (the "HOPE Landlord-Tenant Agreement"); and

WHEREAS, since the HOPE program became effective, over 22,800 North Carolinians have applied for assistance through the program, underscoring the significant need for rental assistance and eviction protection across the state during the pandemic; and

WHEREAS, as of the date of this Executive Order, the vast majority of HOPE program applicants who have met the eligibility criteria for assistance under that program have not yet received protection from eviction, because their application has not yet advanced to the stage whereby the landlord must execute the required HOPE Landlord-Tenant Agreement; and

WHEREAS, the undersigned wishes to extend the protections of this Executive Order to those HOPE program applicants who have met the eligibility criteria for assistance under that program but who have not yet received protection from eviction under the HOPE Landlord-Tenant Agreement; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to "cooperate and coordinate" with the President of the United States and the heads of department and other agencies of the federal government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and

local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(2), the undersigned, with the concurrence of the Council of State, may establish a system of economic controls over all resources, materials, and services, including shelter and rents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) further authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Evictions Moratorium.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Protections Apply to all Residential Tenants Who Qualify under the CDC Order.

1. The protections of the CDC Order shall apply to all residential tenants in North Carolina who qualify for protection from eviction under the terms of that Order.
2. Nothing in this Executive Order precludes evictions of tenants for reasons other than nonpayment or late payment of rent (including nonpayment or late payment of fees, penalties or interest).
3. For avoidance of doubt, such protections apply to those qualifying residential tenants regardless of whether or not the rental property is federally subsidized.

Section 2. Landlords' Obligations in any Residential Eviction Action; Application of the CDC Order's Protections.

For the reasons and pursuant to the authority set forth above, the undersigned orders that all residential leases are modified to effectuate the following procedures. These procedures are required only during the effective period of this Executive Order.

- A. Obligation to Provide CDC Declaration Form to Residential Tenants in any Action for Eviction.** In any action for eviction to recover possession of residential property under Article 3 of Chapter 42 of the North Carolina General Statutes that is commenced on or after the effective date of this Executive Order and before the termination of this Executive Order, the landlord must execute an affidavit and present it to the court certifying that the landlord has provided the residential tenant with a blank copy of the Declaration form.

- B. One Declaration per Household. A single Declaration or a single equivalent declaration from a tenant responsible for paying rent under the lease is sufficient to activate the protections of this Executive Order. Notwithstanding any guidance from the CDC to the contrary, separate Declarations are not required from each person living in the home.
- C. Result of Filing a Declaration. In actions pending on or commenced after the date of this Executive Order, a landlord who has been provided with a tenant's Declaration pursuant to the CDC Order shall immediately notify the court that such Declaration has been received and shall submit a copy of the Declaration to the court within five (5) days of receipt.
- D. Purposes for which Eviction Actions May Proceed. In the event the landlord believes the action should still proceed despite the filing of the Declaration, the landlord shall submit to the court a response to the Declaration identifying in writing why the landlord believes the action should still proceed despite the protections of the CDC Order. For example, the landlord may respond by indicating that the eviction is for a reason other than nonpayment or late payment of rent. A hearing to determine whether the action should proceed shall be held according to the timeline for hearings for eviction proceedings, or as otherwise established by the court.
- E. Writs of Possession.
1. Upon receiving a Declaration, the landlord shall take no actions to request a writ of possession, and the landlord is not entitled to the writ, but the landlord may submit a response to the Declaration as stated above in Subsection D.
 2. If a court determines that the eviction should proceed under Subsection D, and ultimately enters a judgment against the tenant, nothing in this Executive Order prohibits a landlord from requesting a writ of possession, and the landlord shall be legally entitled to a writ of possession in those circumstances.

Section 3. Impact of Receipt of Monetary Assistance through the HOPE Program.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

The protections from eviction of this Executive Order shall extend to those residential tenants who have applied for the HOPE program and have been notified that they have met the eligibility criteria for participation in the HOPE program, even if those residential tenants would not qualify for protection from eviction under the CDC Order. Once the landlord has executed the HOPE Landlord-Tenant Agreement, the tenant shall be protected from eviction under the terms of that Agreement, and not under this Executive Order.

Section 4. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 5. Savings Clause and Interpretation.

- A. If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
- B. The protections stated in this Executive Order are independent from the requirements of the CDC Order and shall be in force regardless of any repeal, rescission, amendment, or administrative interpretation of the CDC Order. If any court without jurisdiction over the State of North Carolina enjoins or otherwise blocks or modifies the CDC Order, in whole or in part,

this Executive Order shall continue to apply, and this Executive Order shall continue to provide the protections listed in the CDC Order.

Section 6. Distribution.

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Enforcement.

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 8. Effective Date.

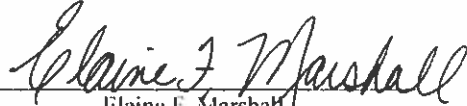
This Executive Order is effective October 30, 2020, at 5:00 pm. This Executive Order shall remain in effect until December 31, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 28th day of October in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
File No. 20 CVD 3357

RKLC ONE, LLC,

Plaintiff,

v.

JUDITH CAPELL & JOEY CRUZ,

Defendants.

2020 OCT 28 2 24

DURHAM CO. S.C.

[Signature]

CERTIFICATE OF SERVICE

This is to certify that I have on this date served Plaintiff with a copy of the foregoing **Declarations by Defendants Capell and Cruz pursuant to the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19** by depositing the same in the United States Mail, properly addressed to Plaintiff with adequate postage thereon in the manner prescribed by the Rules of Civil Procedure as follows:

Glenda Wilson
RKLC One, LLC
2121 Guess Road
Durham, NC 27705

This the 28th day of October 2020.

LEGAL AID OF NORTH CAROLINA, INC.
ATTORNEYS FOR DEFENDANT JUDITH CAPELL

BY:

[Signature]

Peter Gilbert
NC Bar # 40415
P.O. Box 2101
Durham, NC 27702
(919) 226-5915
(919) 714-6602 (FAX)

Exhibit F

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY
HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;¹
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary² out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

¹ "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

² An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.³
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Judith Capell
Signature of Declarant

10/23/20
Date

³ "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to you.

2007 10 3 57

Form Approved
OMB Control No. 0920-1303
Expiration Date: 12/31/2020

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY
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DURHAM CO., C.S.C.

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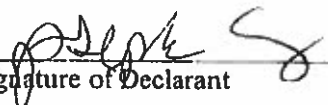
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Signature of Declarant

10-27-20
Date

RECEIVED
OCT 29 4 10 29
CDC/ATSDR

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