

Kimball, Tirey & St. John LLP

Legal Alert

United States Supreme Court Vacates Stay of U.S. District Court Decision, Thereby Invalidating CDC Eviction Moratorium

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On August 26, 2021, the Supreme Court of the United States ruled on an issue related to the CDC eviction moratorium in a [6-3 decision](#). The CDC, an agency of the executive branch of the government, established a nationwide eviction moratorium in 2020 preventing many evictions, including those unrelated to COVID-19. A group of plaintiffs obtained a judgment from a federal district court to vacate the moratorium on the basis the CDC order was unlawful. The Department of Justice appealed and sought a stay of the enforcement of this judgment, which was ultimately granted. Yesterday, the Supreme Court vacated that stay stating that the CDC exceeded its authority in enacting the eviction moratorium. The Court reasoned that only an act of Congress can create law, not an agency of the executive branch, especially when it has not been given explicit authority to do so. In deciding to vacate the stay, the lower court decision invalidating the CDC Moratorium is now enforceable. Therefore, the CDC Moratorium may no longer be used by tenants to stay evictions moving forward. As the Supreme Court is the highest court of the United States, this decision is final, unless **Congress** creates a new or similar law banning evictions due to the COVID-19 pandemic.

Word of Caution

The Court expressly stated in the last few sentences of its opinion that if Congress extends or reenacts a moratorium through the required legislative process, it would be constitutional. The relevant portion of the opinion states as follows: “[i]t is up to Congress, not the CDC, to decide where the public interest merits further action here. If a federally imposed eviction moratorium is to continue, congress must specifically authorize it”.

Congress created its own moratorium through the CARES Act (which was in effect between March and July 2020) and later extended the CDC moratorium as part of the federal stimulus in 2021, suggesting they may take action to enact a similar eviction moratorium in light of the Court’s opinion.

What does this mean for evictions moving forward?

The news has already stated that evictions are now able to proceed, but this is only partially true. This decision lifted a federal layer of protection only, there are still laws and regulations in place protecting tenants in the State of California from eviction. If a tenant was being protected from eviction solely on the CDC moratorium, then that protection has ended, and that eviction may now proceed. Many courts have enacted their own stays based upon the CDC Eviction Moratorium. It is possible that your attorney may need to request an ex parte hearing in order to have the court lift its stay in order to proceed with the case and seek a lockout. If a tenant is covered under AB 3088 and its extensions, or local moratoria, this decision will not affect those protections.

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