



Update on Lawsuits Challenging CDC Eviction Moratorium

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Federal court challenges to CDC moratorium

- Cases filed in U.S. District Courts in Atlanta, Memphis, and Columbus seeking orders declaring the CDC moratorium unconstitutional
- Basic claims:
 - Old: CDC moratorium is a taking, violates rights of access to court, due process
 - 13/13 courts have rejected so far
 - *Elmsford Apt. Assocs., LLC v. Cuomo*, 2020 WL 3498456 (S.D.N.Y. June 29, 2020)
 - *HAPCO v. City of Philadelphia*, 2020 WL 5095496 (E.D.Pa. Aug. 28, 2020)
 - New: Congress did not/could not give CDC the power to impose an eviction moratorium
- Judicial relief requested:
 - “judgment against CDC invalidating CDC’s eviction-moratorium order”
 - “restraining order or preliminary injunction against the CDC order”

- *Brown v. Azar* (Atlanta case)
 - Motion for preliminary injunction pending, gov't filed brief Oct. 2
 - No hearing date yet reported
- *KBW Investment Properties, LLC v. Azar* (Ohio case)
 - TRO denied Sept. 25 after telephonic hearing
 - However, trial is consolidated with preliminary injunction hearing for Oct. 15
 - DOJ brief due Oct. 12, responsive briefing by Oct. 15
- *Tiger Lilly LLC v. HUD* (Memphis case)
 - Motion for preliminary injunction filed Sept. 26
 - Awaiting further clarification on schedule, further proceedings

Federal court challenges (3)

- Ohio hearing on Oct. 15 is on the merits
 - If court rules for plaintiff, could enter permanent injunction declaring order unconstitutional
 - Would invalidate CDC order nationwide, DOJ would need to appeal and seek stay from 6th Circuit
- Other cases will likely turn on whether preliminary injunction(s) are granted:
 - General standard: court weighs four factors
 - (i) likelihood of success on the merits
 - (ii) irreparable harm
 - (iii) balance of equities
 - (iv) public interest
 - Here:
 - Landlords' claimed injuries would be purely economic, not irreparable harm
 - Massive public health, public interest considerations vs. landlords' claimed injuries