

ORAL ARGUMENT NOT YET SCHEDULED

No. 21-5093

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ALABAMA ASSOCIATION OF REALTORS, et al.,
Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the District of Columbia

BRIEF OF *AMICI CURIAE* OF THE AMERICAN ACADEMY OF PEDIATRICS;
AMERICAN MEDICAL ASSOCIATION; CENTER FOR HEALTH POLICY AND LAW AT
NORTHEASTERN UNIVERSITY SCHOOL OF LAW; CHANGELAB SOLUTIONS;
CHILDREN’S HEALTHWATCH; THE GEORGE CONSORTIUM; GLMA;
HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY; MEDICAL SOCIETY OF
THE DISTRICT OF COLUMBIA; NATIONAL HISPANIC MEDICAL ASSOCIATION;
NATIONAL MEDICAL ASSOCIATION; PUBLIC HEALTH LAW WATCH; EMILY A.
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GREGG GONSALVES; PETER HEPBURN; DANYA E. KEENE; KATHRYN M. LEIFHEIT;
MICHAEL Z. LEVY; SABRIYA A. LINTON; CRAIG E. POLLACK; JULIA RAIFMAN;
GABRIEL L. SCHWARTZ; AND DAVID VLAHOV
IN SUPPORT OF THE DEFENDANTS-APPELLANTS URGING REVERSAL.

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This brief has been prepared by professors associated with Wake Forest University School of Law and a clinic operated by Yale Law School, but does not purport to present the schools' institutional views, if any.

CERTIFICATE OF INTERESTED PERSONS

No. 21-5093, *Alabama Realtors Ass'n v. Department of Health and Human Services*

The undersigned counsel of record certifies that the following listed persons and entities as described in Circuit Rule 28(a)(1)(A) have an interest in the outcome of this case. Except for the following listed persons to the best knowledge of counsel, all parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for Appellants. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Amici curiae listed in this brief:

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ChangeLab Solutions

Children's Healthwatch

The George Consortium

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rule 26.1, counsel for *amici curiae* state that nongovernmental corporate entity amici (the American Academy of Pediatrics; American Medical Association; Center for Health Policy And Law at Northeastern University School of Law; ChangeLab Solutions; Children’s HealthWatch; The George Consortium; GLMA: Health Professionals Advancing LGBTQ Equality; Medical Society of the District of Columbia; National Hispanic Medical Association; National Medical Association; and Public Health Law Watch) have no parent corporation and no publicly held corporation owns 10% or more of the stock of this entity.

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INTEREST OF *AMICI CURIAE*

The 25 *amici* include: national association *amici* that represent medical professionals who strive to advance the health of children, adolescents, adults, and disadvantaged and minority populations; organizational *amici* that specialize in public health; and individual *amici* who are sociologists, epidemiologists, and public health, law, nursing, and medical school faculty. They are the nation's foremost authorities on eviction, housing, and health. Based on their extensive research and work in this area, all *amici* recognize that housing is critical to protecting public health and ensuring health equity during the COVID-19 pandemic.

The **AMERICAN ACADEMY OF PEDIATRICS** (AAP) is a national, not-for-profit organization and membership organization dedicated to improving child and adolescent health that represents over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists nationwide. AAP recognizes that the health of children and housing security are closely intertwined, and children without homes are more likely to suffer from chronic disease, hunger, and malnutrition than are children with homes.

The **AMERICAN MEDICAL ASSOCIATION** (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents,

and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

CENTER FOR HEALTH POLICY AND LAW AT NORTHEASTERN UNIVERSITY SCHOOL OF LAW advances law and policy reforms to strengthen population health, reduce health disparities, nourish public health programs and enhance access to affordable, high-quality healthcare.

CHANGELAB SOLUTIONS is a nonprofit that works across the nation to advance equitable laws and policies that ensure healthy lives for all. With more than two decades of experience in enacting policy, systems, and environmental changes at local and state levels, we focus on eliminating health disparities by addressing the social determinants of health. ChangeLab Solutions is an interdisciplinary team of lawyers, planners, policy analysts, public health practitioners, and other professionals who collaborate with community-based organizations, local and state governments, and anchor institutions to create thriving, just communities. We believe

a vision of widespread health and prosperity should guide the future of housing and development in the United States. Our healthy housing work focuses on what it takes to make safe, stable, and affordable housing a reality for everyone.

CHILDREN’S HEALTHWATCH is a nonpartisan network of pediatricians, public health researchers, and child health and policy experts committed to improving the health and development of young children in America. Based on our research and that of others, the connection between housing and health is clear: when children live in safe, stable homes they are better able to thrive. Children in families that fall behind on rent, move frequently, and/or experience or have experienced homelessness are more likely to be in poor health, at developmental risk, and have a history of hospitalizations. Families facing eviction, and thus housing instability and homelessness, were at a high risk of poor child and adult health outcomes prior to the COVID-19 crisis and are at an even greater risk today. Coping strategies like “doubling up” with friends or relatives make them even more susceptible to contracting COVID-19.

GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY

(GLMA) is the largest and oldest association of lesbian, gay, bisexual, transgender and queer (LGBTQ) health professionals. GLMA’s mission is to ensure health equity for LGBTQ and all sexual and gender minority (SGM) individuals, and equality for LGBTQ/SGM health professionals in their work and learning environments

by utilizing the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research. Previously known as the Gay and Lesbian Medical Association, GLMA is a national leader in addressing the full range of health concerns and issues affecting LGBTQ people, including by ensuring that sound science and research informs health policy and practices for the LGBTQ community.

The **MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA** (MSDC) is a state medical society with representation in the AMA House of Delegates. With over 3,000 members, MSDC is the largest medical organization representing metropolitan Washington physicians in the District. MSDC joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies

NATIONAL HISPANIC MEDICAL ASSOCIATION (NHMA) represents the interests and concerns of 50,000 licensed physicians who are committed to working with its partners to improve the health of Hispanic and underserved populations. NHMA's advocacy and education efforts are focused on increasing health equity in the United States.

NATIONAL MEDICAL ASSOCIATION (NMA) is the largest and oldest national organization representing more than 50,000 African-American physicians

and the patients they serve. NMA aims to improve the quality of health among disadvantaged and minority populations.

PUBLIC HEALTH LAW WATCH (PHLW) AND THE GEORGE CONSORTIUM is a nationwide network of over 70 public health law scholars, academics, experts, and practitioners who are dedicated to advancing public health through law. PHLW's goals are to increase visibility and understanding of public health law issues, identify ways to engage on these issues and provide legal analysis and commentary. The statements expressed in this brief do not necessarily represent the views of any individuals or institutions affiliated with PHLW.

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INTRODUCTION AND SUMMARY OF ARGUMENT¹

Eviction moratoriums help reduce the spread of COVID-19. When the majority of state-level moratoriums expired, the Centers for Disease Control and Prevention (“CDC”) issued an agency order (“CDC Order”) to prevent evictions from spreading COVID-19 and thwarting pandemic mitigation efforts. The CDC Order recites only the tip of the iceberg of health evidence linking evictions and COVID-19 spread. The best available studies suggest that complete and comprehensive eviction moratoriums can effectively slow the spread of COVID-19 and prevent COVID-19 transmission, infection, and mortality.

Protecting public health during the pandemic requires protecting those most likely to contract, spread, and die from COVID-19. The people most at risk of eviction are particularly vulnerable to COVID-19 and are likely to live in the ZIP codes with the lowest vaccination rates. Low-income populations are often exposed to social determinants of poor health and often have chronic illness or disability. As such, they are at enhanced risk of serious complications or death as a result of COVID-19. The consequences of eviction (such as overcrowding, homelessness, and housing instability) spur contact with others and hinder compliance with key strategies to

¹ Counsel for the parties have not authored this brief. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the *amici curiae* contributed money that was intended to fund preparing or submitting this brief.

contain COVID-19, including social distancing, self-quarantining, and hand hygiene. These deleterious health impacts and the spread of COVID-19 are tied to the act of eviction itself and are quite preventable if evictions are halted under the CDC's moratorium at this critical turning point in the pandemic's course.

ARGUMENT

I. Mass Evictions are Likely Nationwide Without the CDC Order

A. *The COVID-19 Pandemic Significantly Increased Housing Insecurity*

COVID-19 struck the United States when millions of adults and children already lived perilously close to eviction. One out of four (10.9 million) renters spent over half of their income on housing before the pandemic due to stagnant wages, rising rents, and lack of federal financial support.² In the United States, 29.3% of renter households were rent burdened—defined as spending 30–50% of income on housing—before the pandemic.³ In 2016, the last available year of nationwide eviction data, 3.7 million evictions were filed nationally.⁴

The pandemic recession precipitated widespread job and wage loss. Between April and July 2020, the national unemployment rate fluctuated between 10.2% and

² *America's Rental Housing 2020*, Joint Ctr. For Hous. Stud. of Harv. U. 4, 26 (2020), <https://bit.ly/3iJ95tx>.

³ *Map and Data*, Eviction Lab, <http://evictionlab.org/map/#/2016> (last visited May 11, 2021). (based on U.S. Census 2011-2016 American Community Survey).

⁴ *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable: Hearing Before the H. Comm. on Fin. Servs.*, 116th Cong. 3 (2020) (statement of Matthew Desmond), <https://bit.ly/3npCaxH>.

14.7%, falling to 6.0% in March 2021.⁵ That month, the Census Bureau estimated that 7.2 million renters were behind on housing payments.⁶ On top of this, 19.88% of all households with children reported slight or no confidence in their ability to pay next month's rent, and thus are at heightened risk of eviction.⁷ Throughout the pandemic, Black families have faced the highest risk of eviction.⁸ Federal unemployment assistance, stimulus payments, and rental assistance have not been sufficient to prevent debt accumulation among tenants.⁹ Rental assistance is only just beginning to reach tenants and landlords.¹⁰

B. Without Legal Protections from Eviction, Filing Rates Increase

During the pandemic, the Eviction Lab at Princeton University has tracked real-time eviction filings in 27 cities and 5 states, representing one-fifth of the rental market.¹¹ Based on this data, the Eviction Lab identified that a significant number of

⁵ Press Release, Bureau of Lab. Stat., U.S. Dep't of Lab., The Employment Situation—July 2020 14 (Aug. 7, 2020), <https://bit.ly/3nuwulQ> (May, June, and July figures); Press Release, Bureau of Lab. Stat., The Employment Situation—March 2021 (Apr. 2, 2021), bit.ly/3dGZ4gV.

⁶ *Week 27 Household Pulse Survey: March 17 – March 29*, U.S. Census Bureau at Housing Table 1b, U.S. Census Bureau (Apr. 7, 2021), <https://bit.ly/3elNebu>.

⁷ *Id.* at Housing Table 2b.

⁸ Emily Lemmerman, Renee Louis, Joe Fish & Peter Hepburn, *Preliminary Analysis: Who is being filed against during the pandemic?*, Eviction Lab (Dec. 21, 2020), <https://bit.ly/3t1nsyi>.

⁹ *See Policy Basics: How Many Weeks of Unemployment Compensation Are Available?*, Ctr. on Budget & Pol'y Priorities, <https://bit.ly/2RaIT2Y> (last updated Apr. 17, 2021); *Unemployment Insurance Relief During COVID-19 Outbreak*, U.S. Dep't of Lab., <https://bit.ly/3vo3mQs> (last visited May 12, 2021).

¹⁰ Jason DeParle, *Federal Aid to Renters Moves Slowly, Leaving Many at Risk*, N.Y. Times (Apr. 25, 2021), <https://nyti.ms/3vkFHAr>.

¹¹ *The Eviction Tracking System*, Eviction Lab, <https://bit.ly/3tPrgUP> (last updated May 22, 2020).

property owners use the eviction process as a rent collection tool¹² and are evicting tenants for small amounts of money—during the pandemic, typically less than the local median amount for one month’s rent and as little as \$120—showing that property owners seem to have a low threshold for profit loss before they consider displacing their tenants.¹³ At the same time, tenants lack legal protections or support to contest evictions, especially as demand for legal assistance has increased during the pandemic.¹⁴ Municipalities with weaker eviction protections see more eviction filings.¹⁵

The Eviction Lab’s research on eviction filings during the pandemic shows that 1) moratoriums effectively chill eviction filings during the pandemic; and 2) without moratoriums, eviction filings quickly reach or exceed historic filing rates. Along with stimulus and federal unemployment payments, the CARES Act slowed

¹² Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filings: Civil Courts, Property Management, and the Threat of Displacement*, Soc. Forces 1, 19 (2020), <https://bit.ly/2FcNPhX>.

¹³ Renee Louis, Alieza Durana & Peter Hepburn, *Preliminary Analysis: Eviction Claim Amounts During COVID-19 Pandemic*, Eviction Lab (Aug. 27, 2020), <https://bit.ly/3gAS5Io>.

¹⁴ Nationwide, an estimated 90% of landlords have legal counsel compared to only 10% of tenants in eviction proceedings. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22 *Fast Focus* 1 (2015), <https://bit.ly/36MxjAO>.

¹⁵ *The Eviction Tracking System*, *supra* note 11.

evictions by prohibiting eviction of tenants in buildings with federally backed mortgages or federal subsidies until August 25.¹⁶ Since September 4, 2020, the CDC Order has forestalled residential evictions where a tenant meets certain criteria.¹⁷ These actions to prevent the spread of COVID-19 were effective. In the short period between expiration of CARES Act protections and promulgation of the CDC Order, new eviction filings rose quickly to exceed historical levels in almost every jurisdiction without a local moratorium (Figure 1).¹⁸ Eviction filings rose as much as 395% above historical weekly averages after the CARES Act expired.¹⁹ Following the CDC Order, new filings dropped dramatically, to as low as 83% below historical weekly averages.²⁰ The Eviction Lab estimates that, due to moratoriums, landlords filed 2.14 million fewer evictions since March 15, 2020 than would be typically filed.²¹ Without the CDC Order, it is likely that evictions will quickly increase to

¹⁶ Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281, 491 (2020).

¹⁷ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020); *CDC Eviction Moratorium – Initial Analysis*, NLIHC (Sept. 4, 2020), <https://bit.ly/2GFrn1C>.

¹⁸ Peter Hepburn & Renee Louis, *Preliminary Analysis: Shifts in Eviction Filings from the CARES Act to the CDC Order*, Eviction Lab (Sept. 22, 2020), <https://bit.ly/30LMeaw>.

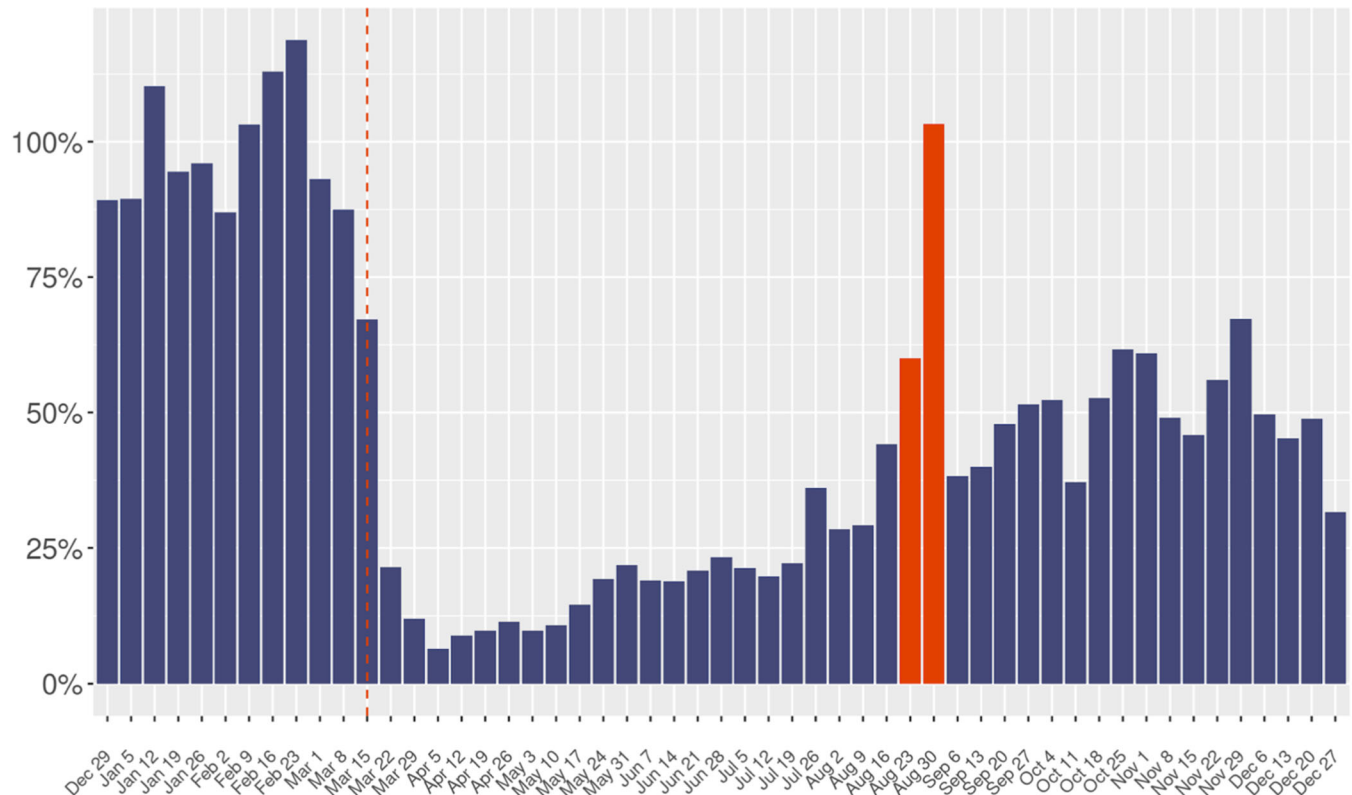
¹⁹ *The Eviction Tracking System*, *supra* note 11.

²⁰ Olivia Jin, Emily Lemmerman & Peter Hepburn, *Neighborhoods with Highest Eviction Filing Rates have Lowest Levels of COVID-19 Vaccination*, Eviction Lab (forthcoming) (draft on file with authors); *see also* Hepburn & Louis, *supra* note 18, reporting 1.55 million fewer filings in 2020.

²¹ Peter Hepburn, Renee Louis, Joe Fish, Emily Lemmerman, Anne Kat Alexander, Timothy A. Thomas, Robert Koehler, Emily Benfer & Matthew Desmond, *U.S. Eviction Filings in 2020*, Socius (2021). *See also* U.S. Gov't Accountability Off., *Covid19 Housing Protections: Moratoriums Have Helped Limit Evictions, but Further Outreach Is Needed* 15 (2021).

unprecedented heights. This would place families and individuals at risk of contracting and spreading COVID-19, as well as related and severe health harms.

Figure 1. Weekly Eviction Filings in Eviction Tracker System Sites Relative to Historical Averages.



II. Eviction Moratoriums Slow the Spread of COVID-19 and Prevent Negative Short- and Long-Term Health Outcomes

A. Evictions Spread COVID-19, Thwarting Efforts to Contain the Virus

Eviction forces families into transiency and crowded residential environments²² that increase new contact with others and make compliance with pandemic

²² Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 120 (2012) (stating eviction “greatly diminishes one’s chance of securing affordable housing in a decent neighborhood, stymies one’s chances of securing housing assistance, and often leads to homelessness and increased residential mobility”).

health guidelines difficult, if not impossible (Figure 2). Eviction increases the likelihood of staying with family and friends who may themselves be at high risk for COVID-19.²³ Residential crowding and increased contact with others drive the spread of respiratory illnesses, including COVID-19.²⁴ Even seemingly small differences in household size have been linked to substantial increases in the transmission rate of infectious disease.²⁵ Adding as few as two new members to a household can as much as double the risk of other illness.²⁶ This increased likelihood of transmission of infectious disease generally comports with research on the novel coronavirus,

²³ Michelle D. Layser et al., *Mitigating Housing Instability During a Pandemic*, Or. L. Rev. (forthcoming 2021) (manuscript at 4, 14), <https://bit.ly/3sOpjGS>.

²⁴ See Eric Lofgren et al., *Influenza Seasonality: Underlying Causes and Modeling Theories*, 81 J. Virology 5429, 5431 (2007); see also B.L. Gleason et al., *Geospatial Analysis of Household Spread of Ebola Virus in Quarantined Village—Sierra Leone, 2014*, 145 Epidemiology & Infection 2921, 2921 (2017) (showing that an increasing number of persons per household was a risk factor for household Ebola acquisition); M. Kermode et al., *Tuberculosis Infection and Homelessness in Melbourne, Australia, 1995-1996*, 3 Int'l J. Tuberculosis & Lung Disease 901, 901, 905 (1999); Andrew R. Zolopa et al., *HIV and Tuberculosis Infection in San Francisco's Homeless Adults: Prevalence and Risk Factors in a Representative Sample*, 272 JAMA 455, 458 (1994).

²⁵ Patrick K. Munywoki et al., *Frequent Asymptomatic Respiratory Syncytial Virus Infections During an Epidemic in a Rural Kenyan Household Cohort*, 212 J. Infectious Diseases 1711, 1711 (2015), <https://bit.ly/3nwYDJ2>; see also Abhishek Bakuli et al., *Effects of Pathogen Dependency in a Multi-Pathogen Infectious Disease System Including Population Level Heterogeneity—A Simulation Study*, 14 Theoretical Biology & Med. Modelling 1, 1 (2017), <https://bit.ly/2IaVtdW>.

²⁶ Michael Baker et al., *Household Crowding a Major Risk Factor for Epidemic Meningococcal Disease in Auckland Children*, 19 Pediatric Infectious Disease J. 983, 983 (2000) (adding two adolescents or adults to a six-room home roughly doubles the risk of meningococcal disease).

which recognizes that individuals are at particularly high risk of contracting COVID-19 from others in their household.²⁷

Smaller, crowded spaces increase the spread of respiratory diseases like COVID-19. During the 1918 influenza epidemic, the difference between having 45 square feet and 78 square feet of living space per person was associated with a ten-fold increase in the rate of illness.²⁸ Other studies suggest overcrowding spreads tuberculosis²⁹ and severe cases of influenza among children.³⁰

Evicted households are likely to contract—and spread—COVID-19 while moving from shelter to shelter or home to home.³¹ In many cases, people facing homelessness will sleep in cars or outdoors, where they have access only to public restrooms.³² These environments prevent individuals and families from adhering to the CDC's primary interventions: social distancing, maintaining good hygiene practices such as hand washing, self-quarantining, or cleaning masks and other personal

²⁷ Qifang Bi et al., *Epidemiology and Transmission of COVID-19 in 391 Cases and 1286 of Their Close Contacts in Shenzhen, China: A Retrospective Cohort Study*, 20 *Lancet* 911, 911 (2020).

²⁸ C. Andrew Aligne, *Overcrowding and Mortality During the Influenza Pandemic of 1918: Evidence from U.S. Army Camp A.A. Humphreys, Virginia*, 106 *Am. J. Pub. Health* 642, 642 (2016) (noting that the relationship between crowding and flu was highly significant ($p < 0.001$)).

²⁹ E. Drucker et al., *Childhood Tuberculosis in the Bronx, New York*, 343 *Lancet* 1482, 1482 (1994), <https://bit.ly/34FEaci>.

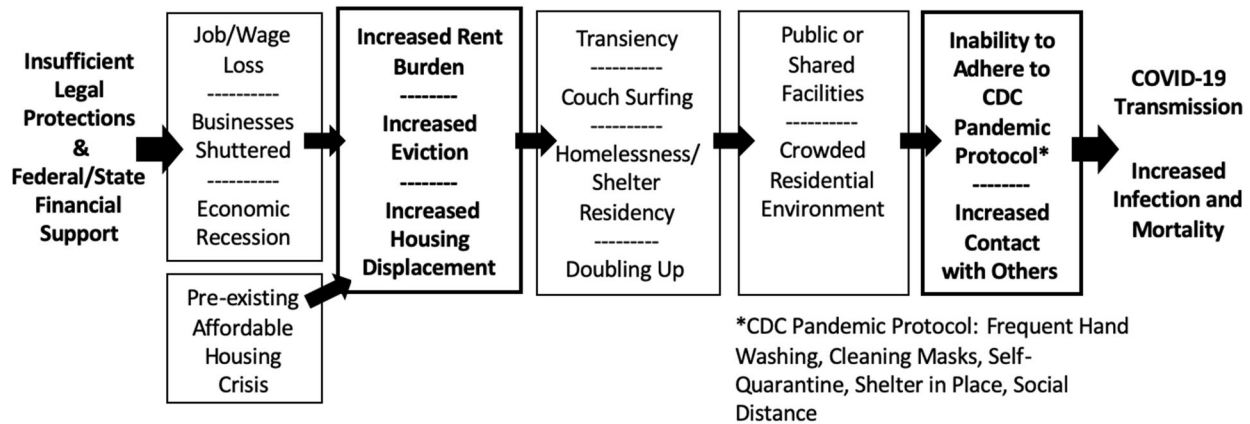
³⁰ Kimberly M. Yousey-Hindes & James L. Hadler, *Neighborhood Socioeconomic Status and Influenza Hospitalizations Among Children: New Haven County, Connecticut, 2003–2010*, 101 *Am. J. Pub. Health* 1785 (2011).

³¹ COVID-19 Pandemic Planning Scenarios, Ctrs. for Disease Control & Prevention (Sept. 10, 2020), <https://bit.ly/36RatI6>.

³² Sara K. Rankin, *Punishing Homelessness*, 22 *New Crim. L. Rev.* 99, 126 (2019).

protective equipment. By driving families to poorer neighborhoods, eviction may also lead to less frequent COVID-19 testing.³³

Figure 2. Eviction Increases the Risk of COVID-19 Acquisition and Transmission.³⁴



Indeed, the mere threat of eviction can increase stress levels, anxiety, and depression, which weaken the immune system.³⁵ These responses are likely to advance the spread of infectious diseases. Because of the highly contagious nature of

³³ Stephanie Schmitt-Grohé, Ken Teoh & Martín Uribe, *Covid-19: Testing Inequality in New York City* (NBER Working Paper No. 27019), <https://bit.ly/3vm6YCH>.

³⁴ Emily A. Benfer, David Vlahov, Marissa Long, Evan Walker-Wells, J.L. Pottenger, Jr., Gregg Gonsalves & Danya E. Keene, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 *J. Urb. Health* 1 (2021), <https://bit.ly/2LcBvRA>.

³⁵ Dusica Lecic Tosevski & Milica Pejovic Milovancevic, *Stressful Life Events and Physical Health*, 19 *Current Op. Psychiatry* 184, 185, 187 (2006); see Hugo Vásquez-Vera et al., *The Threat of Home Eviction and Its Effects on Health Through the Equity Lens: A Systemic Review*, 175 *Soc. Sci. & Med.* 199, 202–05 (2017); see generally Linda M. Niccolai, Kim M. Blankenship & Danya E. Keene, *Eviction from Renter-Occupied Households and Rates of Sexually Transmitted Infections: A County-Level Ecological Analysis*, 46 *Sexually Transmitted Diseases* 63 (2019).

COVID-19, increased contraction of the disease among individuals facing eviction can quickly boost transmission across a large segment of the community.

Housing stability is especially critical to pandemic control because infected persons can spread COVID-19 before they start showing symptoms and possibly for weeks after symptoms appear.³⁶ According to the CDC, approximately 30% of infected individuals may never show symptoms—but nonetheless may transmit the virus to others.³⁷ Due to the high rate of movement among people who face eviction, eviction is likely to spread COVID-19 by exposing healthy individuals to those who are unaware they are carrying the virus or those who know they have COVID-19, but are unable to self-isolate.³⁸

Eviction is associated with decreased access to primary and specialty medical care, regardless of an individual's housing status post-eviction.³⁹ In addition, those

³⁶ *COVID-19 Basics*, Harv. Med. Sch., <https://bit.ly/3nviSa3> (last updated Apr. 14, 2021) (summarizing studies that “have shown that symptoms could appear as soon as three days after exposure to as long as 13 days later”).

³⁷ *COVID-19 Pandemic Planning Scenarios*, *supra* note 31, at table 1.

³⁸ Anjalika Nande, Justin Sheen, Emma L. Walters, Brennan Klein, Matteo Chinazzi, Andrei H. Gheorghe, Ben Adlam, Julianna Shinnick, Maria Florencia Tejada, Samuel V. Scarpino, Alessandro Vespignani, Andrew J. Greenlee, Daniel Schneider, Michael Z. Levy & Alison L. Hill, *The Effect of Eviction Moratoria on the Transmission of SARS-CoV-2*, 12 *Nature Comm'ns* 2274 (2021), <https://go.nature.com/3esNYLV>.

³⁹ See Mary Clare Kennedy et al., *Residential Eviction and Risk of Detectable Plasma HIV-1 RNA Viral Load Among HIV-Positive People Who Use Drugs*, 21 *AIDS & Behav.* 678, 681, 683 (2017). Eviction may lead to decreased engagement in healthcare, resulting in missed appointments and lack of adherence to prescribed treatment. See Niccolai, Blankenship & Keene, *supra* note 35, at 66.

facing eviction have difficulty prioritizing their health needs while fighting to maintain housing.⁴⁰ From this baseline, eviction itself amplifies individual risk of COVID-19 complications and mortality.

Whether through increased crowding; decreased ability to maintain safe, clean, and hygienic living spaces; or limited access to health care, eviction is particularly threatening to individual and public health during a pandemic.⁴¹

B. Eviction Increases the Rate of COVID-19 Among High-Risk Populations, Leading to Long-Term Complications or Death

People most vulnerable to eviction are more likely to suffer from poor health conditions that place them at high risk of severe or fatal cases of COVID-19.⁴² The lower a person's socioeconomic status, the greater their risk of eviction and suffering from chronic diseases, including heart disease, pulmonary disease, and diabetes.⁴³ Each of these may increase the mortality risk of COVID-19.⁴⁴ The CDC has identified several comorbidities that increase risk of severe illness with COVID-19, including pulmonary disease, high blood pressure, diabetes, obesity, chronic liver or

⁴⁰ Danya E. Keene, "That Wasn't Really a Place to Worry About Diabetes": Housing Access and Diabetes Self-Management Among Low-Income Adults, 197 Soc. Sci. & Med. 71 (2018).

⁴¹ Emily A. Benfer et al., *supra* note 34.

⁴² *Id.* at nn.51–81, tbl. 1.

⁴³ *Id.* at 57.

⁴⁴ *Id.*

kidney disease, and respiratory disease.⁴⁵ Each of these conditions is more prevalent among low-income populations and people of color, the populations most at risk of eviction before and during the pandemic.⁴⁶

Eviction itself leads to numerous comorbidities.⁴⁷ Evictions are associated with several interrelated conditions, including anxiety, depression, sexually transmitted infections,⁴⁸ HIV-related treatment outcomes,⁴⁹ drug use,⁵⁰ exposure to violence,⁵¹ mental health hospitalization,⁵² and suicide.⁵³ During the COVID-19 pandemic, a study from researchers at Boston University and Johns Hopkins schools of public health found that suicidal ideation increased more than fourfold; stressors including difficulty paying the rent were associated with suicidal ideation.⁵⁴ For

⁴⁵ *People with Certain Medical Conditions*, Ctrs. for Disease Control & Prevention (Mar. 21, 2021), <https://bit.ly/3jVuuRL>; *People at Increased Risk*, Ctrs. for Disease Control & Prevention (Apr. 20, 2021), <https://bit.ly/2GNtvEi>.

⁴⁶ Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 Socio. Sci. 649 (2020); *Housing is the Best Medicine: Supportive Housing and the Social Determinants of Health*, Corp. for Supportive Hous. (July 2014), <https://bit.ly/2SFpvIQ>.

⁴⁷ *Homelessness & Health: What's the Connection?*, Nat'l Healthcare for the Homeless Council (Feb. 2019), <https://bit.ly/34GF74a>; Ctrs. for Disease Control & Prevention, *supra* note 45.

⁴⁸ Niccolai, Blankenship & Keene, *supra* note 35, at 65.

⁴⁹ Kennedy et al., *supra* note 39, at 7–8.

⁵⁰ Andreas Pilarinos et al., *The Association Between Residential Eviction and Syringe Sharing Among a Prospective Cohort of Street-Involved Youth*, 14 Harm Reduction J. 1, 3 (2017).

⁵¹ Kennedy et al., *supra* note 39.

⁵² Robert Collinson & David Reed, *The Effects of Evictions on Low-Income Households* 25 (Dec. 2018) at 3, <https://bit.ly/3lrYftK>.

⁵³ Yerko Rojas & Sten-Åke Stenberg, *Evictions and Suicide: A Follow-Up Study of Almost 22,000 Swedish Households In The Wake Of The Global Financial Crisis*, 70 J. Epidemiology & Comm. Health 409, 412–13 (2016).

⁵⁴ Julia Raifman, Catherine Ettman, Lorraine Dean, Colleen Barry & Sandro Gale, COVID-19 Related Stressors and Suicidal Ideation (unpublished manuscript on file with counsel).

women, eviction is associated with physical and sexual assault,⁵⁵ drug use and related harms,⁵⁶ mental illness,⁵⁷ and future housing precarity.⁵⁸ The health conditions and high health care costs associated with eviction make future evictions more likely.⁵⁹ In this way, eviction worsens longstanding patterns of economic and housing instability in addition to poor health.⁶⁰

Eviction is particularly traumatizing to children and affects emotional and

⁵⁵ Nihaya Daoud et al., Pathways and Trajectories Linking Housing Instability and Poor Health Among Low-Income Women Experiencing Intimate Partner Violence (IPV): Toward A Conceptual Framework, 56 *Women & Health* 208, 209–10 (2016).

⁵⁶ Alexandra B. Collins et al., Surviving the Housing Crisis: Social Violence and The Production Of Evictions Among Women Who Use Drugs In Vancouver, Canada, 51 *Health & Place* 174, 179 (2018).

⁵⁷ Patty R. Wilson & Kathryn Laughon, House to House, Shelter to Shelter: Experiences of Black Women Seeking Housing After Leaving Abusive Relationships, 11 *J. Forensic Nursing* 77, 77 (2015).

⁵⁸ Craig Evan Pollack, Kathryn M. Leifheit & Sabriya L. Linton, *When Storms Collide: Evictions, COVID-19, and Health Equity*, *Health Aff.* (Aug. 4, 2020), <https://bit.ly/36JuHnd>.

⁵⁹ Gabriel L. Schwartz, Kathryn M. Leifheit, Lisa Berkman, Jarvis T. Chen & Mariana C. Arcaya, *Health Selection into Eviction: Adverse Birth Outcomes and Children's Risk of Eviction Through Age 5*, *Am. J. Epidemiology* (in print); Gabriel L. Schwartz, *Cycles of Disadvantage: Eviction & Children's Health in the United States* (2020) (Ph.D. dissertation, Harvard University) <https://bit.ly/31NMJBw>; see also Heidi L. Allen et al., *Can Medicaid Expansion Prevent Housing Evictions?*, *Health Affs.* (Sept. 2019), <https://bit.ly/30IZwEQ>.

⁶⁰ Matthew Desmond, *Evicted* (2016); Allen et al., *supra* note 59; Pollack, Leifheit & Linton, *supra* note 58.

physical well-being and development for years, if not a lifetime.⁶¹ Eviction increases the likelihood of emotional trauma, lead poisoning,⁶² food insecurity,⁶³ and academic decline for children.⁶⁴ Eviction is also strongly associated with adverse childhood experiences, which have long-term negative health impacts, including increased risk of cardiovascular disease and pulmonary disease in adulthood and decreased life expectancy.⁶⁵ Children whose mothers are evicted during pregnancy are

⁶¹ Am. Acad. of Pediatrics, *Providing Care for Children and Adolescents Facing Homelessness and Housing Insecurity*, 131 *Pediatrics* 1206 (2013), <https://bit.ly/3dbi0CT>; Heather Sandstrom & Sandra Huerta, Urb. Inst., *The Negative Effects of Instability on Child Development: A Research Synthesis* 6 (2013), <https://urbn.is/2SCVfhB>.

⁶² Gabriel L. Schwartz, Kathryn M. Leifheit, Lisa Berkman, Mariana Arcaya & Jarvis T. Chen, *Is Eviction Poisonous? A Survival Analysis of Eviction and Lead Poisoning in a National Urban Birth Cohort* (unpublished manuscript) (on file with author); Gabriel L. Schwartz, Kathryn M. Leifheit, Lisa Berkman, Jarvis T. Chen & Mariana C. Arcaya, *Health Selection into Eviction: Adverse Birth Outcomes and Children's Risk of Eviction Through Age 5*, *Am. J. Epidemiology* (forthcoming) (draft on file with authors). *See also Homelessness Just 'One of The Concerns' When Someone Is Evicted*, NewsWise (Jan. 28, 2020), <https://bit.ly/3loTQHR>.

⁶³ Kathryn M. Leifheit, *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 *SSM—Population Health* 1, 6 (2020); Kathryn M. Leifheit, Gabriel L. Schwartz, Craig E. Pollack, Kathryn J. Edin, Maureen M. Black, Jacky M. Jennings & Keri N. Althof, *Severe Housing Insecurity during Pregnancy: Association with Adverse Birth and Infant Outcomes*, 17 *Int'l J. Env't Res. Pub. Health* 2020, 8659), <https://bit.ly/3ga1vIJ>.

⁶⁴ Gabriel L. Schwartz, Kathryn M. Leifheit, Jarvis T. Chen, Mariana C. Arcaya & Lisa Berkman, *Childhood Eviction and Cognitive Skills: Developmental Timing-Specific Associations in an Urban Birth Cohort* (unpublished manuscript under publication review) (on file with author); Schwartz, *supra* note 62; *see also* Desmond, *supra* note 14; Thomas Kottke et al., *Access to Affordable Housing Promotes Health and Well-Being and Reduces Hospital Visits*, 22 *Permanent J.* 1, 2–3 (2017); Stephen Gaetz et al., *Youth Homelessness and Housing Stability: What Outcomes Should We Be Looking For?*, 32 *Healthcare Mgmt. F.* 73 (2019).

⁶⁵ Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*, 159 *Archives of Pediatrics & Adolescent Med.* 1104, 1107 (2005).

more likely to have adverse birth outcomes, such as low birthweight or preterm pregnancies.⁶⁶ Families of children born with adverse birth outcomes are substantially more likely to be evicted in the first five years of their child's life.⁶⁷ The evidence is clear: Child health and housing security are closely intertwined.⁶⁸ Ultimately, eviction primarily affects members of society most vulnerable to COVID-19 and triggers a cycle of poor health and housing instability that increases COVID-19 infection rates and severity.

C. Studies Suggest Eviction Moratoriums Prevent COVID-19 Deaths

Eviction moratoriums are an effective public health tool to slow COVID-19 infection and death.⁶⁹ At least three recent peer-reviewed studies demonstrate this relationship. First, researchers from University of California-Los Angeles, John Hopkins University, Boston University, University of California-San Francisco, and Wake Forest University used varying expiration dates of state eviction moratoriums as a natural experiment to evaluate whether lifting moratoriums was associated with

⁶⁶ Gracie Himmelstein & Matthew Desmond, *Association of Evictions With Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, JAMA Pediatrics (Mar. 1, 2021), <https://bit.ly/3aJuaTf>; Kathryn M. Leifheit, *Severe Housing Insecurity in Pregnancy: Association with Adverse Birth Outcomes in a Cohort of Urban Mothers and Infants*, Am. Pub. Health Ass'n (Nov. 5, 2019), <https://bit.ly/3lvdBNN>.

⁶⁷ Schwartz et al., *supra* note 59.

⁶⁸ Am. Acad. of Pediatrics, *supra* note 61.

⁶⁹ Emily A. Benfer et al., *supra* note 34.

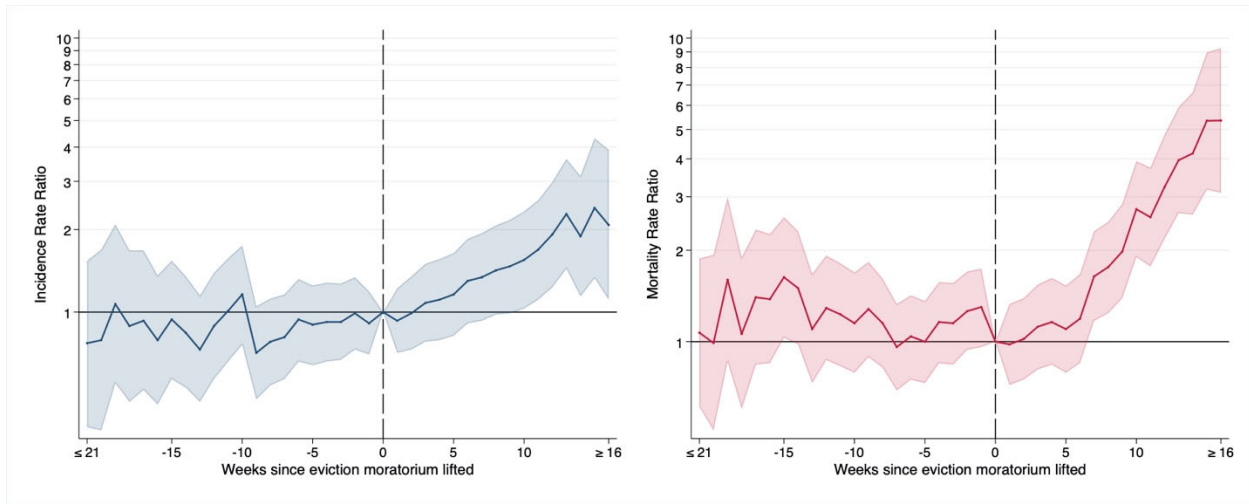
increased COVID-19 spread and mortality.⁷⁰ The study cohort included forty-three states and the District of Columbia, which instituted moratoriums during the pandemic, and compared the twenty-seven states that lifted their moratoriums to those that did not. After controlling for mask orders, stay at home orders, school closures, and testing rates, as well characteristics of states and underlying time trends, lifting moratoriums was associated with 1.6 times higher COVID-19 mortality after seven weeks and 5.4 times higher mortality after sixteen weeks.⁷¹ Similarly, lifting moratoriums was associated with 1.6 times higher incidence of COVID-19 after ten weeks, and 2.1 times higher incidence after sixteen weeks compared to maintaining eviction moratoriums (Figure 3).⁷²

⁷⁰ Kathryn M. Leifheit, Sabriya L. Linton, Julia Raifman, Gabriel L. Schwartz, Emily A. Benfer, Frederick J. Zimmerman & Craig Evan Pollack, *Expiring Eviction Moratoria and COVID-19 Incidence and Mortality*, <https://bit.ly/2VBio5y> (in print 2021).

⁷¹ *Id.* at 3.

⁷² *Id.*

Figure 3. Relative Risk of COVID-19 Cases and Deaths Associated with Lifting Moratoriums.⁷³



A similar study conducted by researchers at Duke University and the National Bureau of Economic Research substantiates these findings.⁷⁴ Comparing eviction moratoriums against COVID-19 infection and mortality rates across municipalities, the authors conclude that policies limiting evictions reduced COVID-19 infection rates by 3.8% and mortality by 11% between March and November 2020.⁷⁵ Moreover, had a nationwide eviction moratorium existed during the entire study period, the

⁷³ *Id.* Adjusted rate ratios comparing daily COVID-19 incidence (blue, new cases per population) and mortality (red, deaths per population) between states that lifted eviction moratoriums and states that maintained moratoriums. Rate ratios were modeled using negative binomial regression with fixed effects for state and calendar week, adjusting for testing rate, stay-at-home orders, school closures, and mask mandates.

⁷⁴ Kay Jowers, Christopher Timmins, Nrupen Bhavsar, Qihui Hu & Julia Marshall, *Housing Precarity & The COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* (NBER Working Paper No. 28394, 2021), bit.ly/3tKdCSH.

⁷⁵ *Id.* at 10–11.

authors estimate that national COVID-19 infection rates would have been 14.2% lower and 40.7% fewer deaths would have occurred.⁷⁶

Researchers from the University of Pennsylvania, Harvard University, and University of Illinois Urbana-Champaign modeled the potential impacts of lifting eviction moratoriums on COVID-19 infection and mortality rates.⁷⁷ The authors determined that even a 1% increase in eviction rate can increase COVID-19 infections by 4%.⁷⁸ The study demonstrates that the relationship between eviction rates and COVID-19 infections is not linear, but exponential.

When applied to metropolitan areas like Houston or San Antonio, which experienced smaller initial outbreaks but relatively early easing of lockdown restrictions, the model suggests that eviction rates have a significant impact on the ultimate number of COVID-19 cases and deaths. With an eviction rate of 0.25% per month, the model predicts a roughly 0.6% increase in total infections.⁷⁹ With an increase to just 2% ,⁸⁰ the model predicted a roughly 8% increase in total infections, in the first week.

⁷⁶ *Id.* at 11.

⁷⁷ Nande et al., *supra* note 38.

⁷⁸ *Id.*

⁸¹ *Id.*

⁸⁰ *Map and Data*, *supra* note 3.

D. Evictions Facilitate the Interstate Spread of COVID-19

Evictions facilitate the interstate spread of COVID-19 in at least two ways. First, because interstate moves due to eviction are common, it is clear that the health effects of eviction have an interstate dimension. Although few researchers study this exact question, survey and anecdotal evidence suggests interstate moves are common. A 2015 study analyzing 500 evicted tenants in San Francisco found that 7% of evicted tenants in the study moved out of state.⁸¹ The subjects moved to the Midwest, Northeast, and South, and as far away as Hawaii, American Samoa, and the Philippines.⁸² Because San Francisco is hundreds of miles from any other state, we expect a much higher percentage of tenants likely move across state lines when they are evicted from homes in metropolitan areas that span multiple states. These effects are likely noticeable in metro areas around cities such as Charlotte, Kansas City, St. Louis, Cincinnati, New York City, and so on.

These interstate moves increase the risk of COVID-19 spread across the country during the pandemic. Research demonstrates that COVID-19 hospitalization and

⁸¹ Eviction Defense Collaborative and Anti-Eviction Mapping Project, *Mapping Relocation*, The Anti-Eviction Mapping Project (2015), bit.ly/2Qnzd58.

⁸² *Id.*

mortality rates closely track general infection rates.⁸³ Because eviction and congregate living arrangements increase COVID infection rates and exposure to others, evicted tenants spread the disease more widely than their housed counterparts.⁸⁴ Research demonstrates that COVID-19 infections follow an exponential pattern when strict social distancing and quarantine guidelines cannot be followed.⁸⁵ As highly-infectious variants of COVID-19 develop around the world, infection and transmission rates are growing faster than ever in some parts of the country.⁸⁶ Thus, even a single infection in a congregate living arrangement can increase COVID-19 rates for an entire community, affecting case rates across borders when infected individuals travel between states.⁸⁷

⁸³ COVID Data Tracker, *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, Ctrs. for Disease Control & Prevention (Apr. 21, 2021), <https://bit.ly/3vq6USv>.

⁸⁴ See Lofgren et al., *supra* note 24; Baker et al., *supra* note 26 (adding two new members to a household double the risk of respiratory infection); Benfer et al., *supra* note 34 at nn.12–50.

⁸⁵ Natalia L. Komarova, Luis M. Schang & Dominik Wodarz, *Patterns of the COVID-19 Pandemic Spread Around the World: Exponential Versus Power Laws*, Royal Soc’y Publ’g (Sept. 30, 2020), bit.ly/32GzwdQ (finding an exponential growth pattern of COVID-19 infections in the United States).

⁸⁶ See COVID Data Tracker, *Variant Proportions*, Ctrs. for Disease Control & Prevention (Apr. 20, 2021), <https://bit.ly/3viTqrD>. As of March 2021, the B.1.1.7 variant is the most prevalent strain of COVID-19 in the United States. *Id.* The CDC estimates that this variant is up to 50% more transmissible than the initial strains of COVID-19 detected in the United States. Summer E. Galloway et al., *Emergence of SARS-CoV-2 B.1.1.7 Lineage – United States, December 29, 2020 – January 12, 2021*, Ctrs. for Disease Control & Prevention (Jan. 22, 2021), <https://bit.ly/3ncoYfE>.

⁸⁷ See Shi Chen, Qin Li, Song Gao, Yuhao Kang & Xun Shi, *State-Specific Projection of COVID-19 Infection in the United States and Evaluation of Three Major Control Measures*, *Nature Sci. Reps.* (Dec. 30, 2020), <https://go.nature.com/2QPwmBw>.

Second, even where evicted tenants remain, they might contribute to the interstate spread of COVID-19. An evicted tenant is more likely to contract COVID-19 and more likely to spread the virus beyond members of her household,⁸⁸ even if she never leaves the city. The individuals she infects will infect others in turn, until the chain of infection reaches surrounding states. As the number of infections in the chain rises in other jurisdictions, so too will hospitalizations and deaths. Thus, even single intrastate evictions can increase the spread of COVID-19 and the demand for medical services between states.

Eviction moratoriums help stop the spread of COVID-19 across state lines. Without the moratorium, this pattern risks being replicated millions of times over as families are evicted and move across the country, spreading COVID-19 as they go.

E. Evictions Are Concentrated in Neighborhoods with the Lowest Vaccination Rates And Slowest Economic Recoveries

The communities that face the greatest risk and harms of eviction are also those with the lowest vaccination rates due to barriers to access. Eviction Lab tracking of eviction filings shows a strongly negative correlation between vaccination rate and eviction filing—meaning that evictions are more likely in ZIP codes with fewer

⁸⁸ See Nande et al., *supra* note 38; Lofgren et al., *supra* note 84; Baker et al., *supra* note 84 (adding two new members to a household double the risk of respiratory infection).

vaccinated residents. The poorer a ZIP code, the lower its vaccination rate—that disparity has grown since the beginning of April to almost 5 percent in mid-May.⁸⁹

⁸⁹ Amy Harmon and Josh Holder, *They Haven't Gotten a Covid Vaccine Yet. But They Aren't 'Hesitant' Either*, N.Y. Times (May 12, 2021) <https://nyti.ms/3wB8bGz>.

Figure 4. Evictions Are More Commonly Filed Where There Are Fewer Vaccinated Residents.⁹⁰



Barriers to vaccination prevent over 30 million Americans who are willing to receive the COVID-19 vaccine from being vaccinated.⁹¹ Over two-thirds of these have no college education; 20 million have children in their household; roughly 15 million earn less than \$74,999 a year.⁹² A range of obstacles slows their vaccination: They are unable to get away from work, do not have a convenient vaccination site

⁹⁰ Jin, Lemmerman & Hepburn, *supra* note 20.

⁹¹ *Week 29 Household Pulse Survey: April 28 – May 10*, U.S. Census Bureau at Health Table 5, <https://bit.ly/3umwarw> (May 19, 2021).

⁹² *Id.*

in their neighborhood, face some kind of language barrier, or did not have time or access to the Internet to schedule a vaccination.⁹³ The stress and displacement following eviction may make it difficult for families to make and keep vaccination appointments.

Groups that face the highest risk of eviction, like single mothers, have borne the brunt of the pandemic's economic consequences. School closure drove massive gaps in workforce participation based on gender—while all mothers lost jobs at roughly 150% the rate of fathers at the beginning of the pandemic, single mothers faced 200% job loss.⁹⁴ These inequities persist.⁹⁵ Single mothers with children face the highest rates of eviction.⁹⁶

Even if vaccination barriers were removed, children under 12 remain ineligible for vaccines and at risk of COVID-19 infection. Almost four million children have tested positive for COVID-19—14.1% of all cases in the United States.⁹⁷ With one in five renter households with children behind on rent as of May 10,⁹⁸ children are especially vulnerable to eviction and its immediate and long-term health effects.

⁹³ Harmon & Holder, *supra* note 89.

⁹⁴ Lauren Bauer, *Mothers are Being Left Behind in the Economic Recovery from COVID-19*, Hamilton Project (May 6, 2021) <https://bit.ly/2SpUgVIL>.

⁹⁵ *Id.*

⁹⁶ See Section III.A.

⁹⁷ Am. Acad. of Pediatrics, *Children and COVID-19: State-Level Data Report* (May 20, 2021) <https://bit.ly/34ny6FD>.

⁹⁸ *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, Ctr. on Budget & Pol'y Priorities, <https://bit.ly/34ojru0> (last updated May 20, 2021).

Barriers to vaccination persist in the areas with the highest eviction rates and increased risk of COVID-19 spread due to eviction—as well as the long-term, negative health impacts of eviction—remains high.

III. Eviction and COVID-19 Disproportionately Harm Marginalized Groups

A. Evictions Disparately Affect Groups Based on Race, Gender, and Sexual Orientation

Historic trends and recent data demonstrate that people of color are more likely to face eviction during the pandemic. The most comprehensive study of millions of eviction records in 39 states finds clear racial and gender disparities in eviction filings and judgments,⁹⁹ with Black renters facing eviction at the highest rates of any racial group.¹⁰⁰ The loss of employment or an unexpected emergency can precipitate housing instability. Over 70% of Black and Latinx adults entered the pandemic lacking emergency funds to cover three months of expenses compared to half of white adults.¹⁰¹

Evictions during the COVID-19 pandemic also pose a disproportionate threat to the LGBT community, and particularly LGBT people of color. Recent research

⁹⁹ Hepburn, Louis & Desmond, *supra* note 46.

¹⁰⁰ Benjamin F. Teresa, RVA Eviction Lab, *The Geography of Eviction in Richmond: Beyond Poverty* (2017), <https://bit.ly/3iFEmxu>; Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 Harv. C.R.-C.L. L. Rev. 115 (2016).

¹⁰¹ Mark Hugo Lopez et al., *Financial and Health Impacts of COVID-19 Vary Widely by Race and Ethnicity*, Pew Res. Ctr. (May 5, 2020), <https://pewrsr.ch/3xltfIK>.

shows that 12.4% of LGBT individuals report being laid-off during the pandemic, compared to 7.8% of non-LGBT respondents.¹⁰² As a result of such economic insecurity, 19.9% of LGBT respondents report difficulty making rent or mortgage payments, compared to just 11.7% of non-LGBT individuals.¹⁰³ LGBT people of color are more than three times as likely to face difficulty making housing payments than their non-LGBT white peers.¹⁰⁴

Without government interventions like the CDC order, the eviction crisis will be immediate and precipitous for millions of Americans. During this severe economic downturn, eviction may represent the end of financial stability, housing security, and safety from COVID-19 infection and mortality for many families and historically marginalized communities.¹⁰⁵

B. COVID-19 Has Killed Black, Indigenous, and Latinx People at Higher Rates

COVID-19 has disproportionately harmed people of color. The CDC reports Black, Indigenous Americans, and Hispanic/Latinx persons face an infection rate at least 1.1, 1.6, and 2.0 times the rate of non-Hispanic whites, respectively.¹⁰⁶ Black and Hispanic/Latinx persons are 2.9 and 3.3 times more likely to be hospitalized

¹⁰² Brad Sears, Kerith J. Conron & Andrew R. Flores, *The Impact of the Fall 2020 COVID-19 Surge on LGBT Adults in the US*, UCLA Sch. L. Williams Inst. (Feb. 2021), bit.ly/2QgjiWd.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Emily A. Benfer et al., *supra* note 34, Fig. 2.

¹⁰⁶ *COVID-19 Hospitalization and Death by Race/Ethnicity*, Ctrs. for Disease Control & Prev. (Apr. 16, 2021), <https://bit.ly/3mYlSeu>.

with COVID-19, respectively.¹⁰⁷ COVID-19 death rates are similarly stark: 1.9 times higher for Black people, 2.3 times for Hispanic and Latinx people,¹⁰⁸ and 2.4 times for Indigenous people than whites.¹⁰⁹ Of the population who died of between the ages of 35 and 44, almost half were Hispanic/Latinx and a quarter were Black.¹¹⁰ Further, non-white children are dying from COVID-19 at over twice the rate of white children.¹¹¹

These numbers are driven by deep underlying health disparities related to the inability to social-distance in many low-wage jobs, crowded living conditions due to poverty and eviction, bias among health care providers, disparate access to health care, among other social determinants of health.¹¹² The available state-level data on racial disparities underscores these national disparities.¹¹³ Eviction during the

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Res. Lab (Mar. 5, 2021), <https://bit.ly/36K8ZPL> (comparing white death rate of 150 per 100,000 with Indigenous people death rate of 256 per 100,000).

¹¹⁰ 500 US COVID-19 Deaths, Explained in 8 Charts and Maps, Vox (Feb. 16, 2021), <https://bit.ly/3xpcqWW>.

¹¹¹ *Understanding the Data*, The COVKID Project (Mar. 6, 2021), <https://bit.ly/3nhkhBz>.

¹¹² Emily A. Benfer, Seema Mohapatra, Lindsay F. Wiley & Ruqaiyah Yearby, Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequity During and After COVID-19, 19 *Yale J. Health Pol'y L. & Ethics* 122 (2020), <https://bit.ly/2GzVW9c>.

¹¹³ *See, e.g., Racial Data Dashboard*, COVID Tracking Project, <https://bit.ly/2QvDF1t> (showing disproportionately higher rates of infection and death for non-whites relative to percentage of population by state).

COVID-19 pandemic perpetuates health inequity among Black, Hispanic/Latinx people, and women.¹¹⁴

Protecting public health during this pandemic requires protecting those most likely to contract, spread, and die from COVID-19, especially people in poverty and people of color, who are more likely to face barriers to vaccination, be evicted, and suffer severe harm during the pandemic. Public health requires that *all* people are protected from COVID-19.

CONCLUSION

Eviction moratoriums have mitigated COVID-19 spread and death. The CDC Order may be able to help control the pandemic, protect the public health, and prevent severe harm for millions of people, especially in communities of color. The CDC eviction moratorium is a critical public health tool that must remain in place.

DATED: June 1, 2021

Respectfully submitted,

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¹¹⁴ Emily A. Benfer et al., *supra* note 34 at nn.82–96.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that,

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(4) because it contains 6,269 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type style for the body text and 12-point Times New Roman type style for the footnotes.

/s/ Kathleen L. Millian

Kathleen L. Millian

June 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing brief with the Clerk of the United States Court of Appeals for the District of Columbia Circuit via the CM/ECF system this 1st day of June, 2021, to be served on all counsel of record via ECF.

/s/ Kathleen L. Millian

Kathleen L. Millian