

Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 21A23

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

ON APPLICATION TO VACATE STAY

[August 26, 2021]

PER CURIAM.

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

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

I

A

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

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

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

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

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

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

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

B

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

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

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

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

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

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

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

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

II

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

A

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

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

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

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

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

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

B

The equities do not justify depriving the applicants of the District Court’s judgment in their favor. The moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery. Despite the CDC’s determination that landlords should bear a significant financial cost of the pandemic, many landlords have modest means. And preventing them from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 435 (1982).

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

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

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

* * *

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

So ordered.