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## **In NCLA Amicus Win, Federal Circuit Revives Lawsuit Against CDC's Illegal Eviction Moratorium**

*Darby Development Company, Inc., et al. v. United States*

**Washington, DC (August 7, 2024)** – Today, the U.S. Court of Appeals for the Federal Circuit [reversed](#) a decision by the U.S. Court of Federal Claims that dismissed the *Darby Development Company v. U.S.* lawsuit against the Centers for Disease Control and Prevention's nationwide eviction moratorium. The New Civil Liberties Alliance had filed an *amicus curiae* [brief](#) with the Federal Circuit in the case calling for this result. Unlike the Court of Federal Claims, the Federal Circuit correctly found dozens of rental property owners made a valid legal claim when they argued the moratorium was a physical taking of property for public use that required just compensation under the Fifth Amendment's Taking Clause. NCLA celebrates today's ruling, which remands the case to the Court of Claims for further proceedings, an important step in vindicating constitutional rights during emergencies.

The rental property owners argue CDC's eviction moratorium constituted either a compensable taking or an illegal exaction under the Fifth Amendment. NCLA agreed, pointing out that dismissing the owners' takings claim would encourage the government to take private property, worth billions of dollars, for public use.

Though the Supreme Court ultimately held the eviction moratorium to be an illegal exercise of executive power, at no point was it merely an action by a few rogue agents. Rather, the moratorium was begun and continued by affirmative steps taken by each of the three branches of government. The Executive Branch created the eviction moratorium and extended it numerous times via executive orders. Congress also extended the policy, and members of the Congressional majority used their position to exert political pressure on the Executive Branch to continue it even after the legislatively authorized period expired. The Judiciary, when asked to adjudicate the legality of these moratoria, denied injunctive relief in part because they said there would be future opportunities for people to seek compensation.

In short, Congress and the Executive Branch worked hand-in-glove to create and extend the eviction moratoria, and the Judiciary allowed them to continue. Therefore, as NCLA argued, the rationale for protecting public funds from rogue actors ceased to apply when each branch of government knowingly and purposefully contributed to, and endorsed, the taking of private property. On remand, the Court of Federal Claims must award compensation.

### **NCLA released the following statements:**

“The Federal Circuit correctly rejected the Government's outlandish position that the fact that actions were later found to be illegal should serve as a shield against liability. If that argument doesn't make sense to a regular American, that's because it is nonsensical. NCLA is gratified that the Federal Circuit allowed the lawsuit seeking compensation for the government's actions to proceed.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

“It should not have taken the Federal Circuit more than two years to reach this just and logical result. But NCLA is delighted the Court recognizes that the government cannot illegally take someone's property and then refuse

compensation once that taking is found to be illegal. On remand, the Court of Federal Claims should act quickly to provide compensation to these claimants—and any others whose cases were awaiting the outcome here.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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