

April 2, 2021

Thea Whalen
Executive Director
The Texas Justice Court Training Center
1701 Directors Blvd, Suite 530
Austin, Texas 78744

Via e-mail: td24@txstate.edu

Re: The Texas Justice Court Training Center's (JCTC) Guidance regarding the Centers for Disease Control and Prevention's (CDC) Eviction Moratorium

Dear Thea Whalen:

The CDC issued a third order extending the moratorium on certain evictions through June 30, 2021, because the public health experts at the agency believe that we are not out of the woods yet. As the CDC says in its order, the nation is still seeing twice as many cases per day as we did during the initial peak in April 2020, and transmission rates still match the second peak in July 2020.¹ Meanwhile, we know from our work on behalf of vulnerable clients that after a year of economic crisis, landlords are placing a historic demand on Texas courts to evict tenants, many of whom are currently in the process of requesting rental assistance and have nowhere to go.

The CDC knows from research that most of these evicted tenants will end up crowded into someone's living room, or if they're less fortunate, forced to seek refuge in homeless shelter or out on the street.² And the CDC knows from research that all of these settings facilitate COVID-19 transmission and create the risk of another outbreak.³ To meet this historic crisis, the CDC has for the third time determined that a responsive remedy is warranted: to prohibit, by federal law, a landlord from taking **any action** to cause the removal of a covered person from their home.

We are concerned that the JCTC's recent guidance to Texas justice courts⁴ undermines the enforcement of that law by directing judges to let landlords ignore the law with practical impunity. That guidance recommends that Texas Justice Courts allow eviction cases to proceed regardless of the CDC order's applicability, tells Justice Courts that there are "no actions for the court to take" if provided a CDC declaration, and that there is "no role" for a Justice Court judge if a constable is about to execute a writ of possession against a covered person. Essentially, Justice Courts are being told to allow landlords to use their courts to do the very thing that the CDC order forbids and leave tenants to hope that the specter of a Department of Justice fine will deter their landlord from forcing them into a shelter or onto the street.

¹Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 FR 16731, 16732 (Mar. 28, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-03-31/pdf/2021-06718.pdf>

²*Id.* at 16734–35.

³*Id.*

⁴Texas Justice Court Training Center website, "Coronavirus Updates, Information, and Resources" (last visited April 1, 2021), <https://www.tjctc.org/coronavirus.html>

The HHS/CDC Frequently Asked Questions that the JCTC Guidance appears to use to justify the court noninvolvement is this: “The judicial process will be carried out according to state and local laws and rules. The Order is not intended to terminate or suspend the operations of any state or local court.”⁵ However, that sentence is followed shortly in the HHS/CDC FAQs by another sentence, which requires courts to follow the CDC order: “As indicated in the Order, courts should take into account the Order’s instruction not to evict a covered person from rental properties where the Order applies.”⁶ The HHS/CDC FAQs contemplates court involvement, and certainly the non-issuance of a writ of possession during the CDC moratorium. Since the CDC order is meant to ensure that a “landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order,”⁷ then a Justice Court should have the duty to enforce the law and not leave it up to the landlord in these cases. We ask that the JCTC Guidance be revised accordingly.

We know that deterrence alone is not enough. Since the CDC issued its first order, our attorneys have heard from countless tenants who are being taken to court by landlords after giving them a copy of the CDC declaration. The threat of a fine has not stopped landlords from pushing thousands of cases forward.⁸ The only thing that has made the CDC’s protections real for the last six months has been Texas courts’ refusal to let landlords use their courtrooms to violate federal law.

In reality, landlords cannot violate the CDC Order without acquiescence by the Justice Courts. The order prohibits “any action” to remove a covered person,⁹ which should include the actions that require a court’s cooperation: requesting a trial setting, seeking a judgment at trial, and asking the court to issue and order the execution of a writ of possession. Essentially, the JCTC’s Guidance instructs Justice Courts that although federal law prohibits a landlord from seeking to evict a tenant, including the execution of a writ of possession, it is perfectly legal for the Justice Courts to cooperate in that process.

The JCTC has not counseled nor would it counsel Justice Courts to treat other federal laws similarly, and for good reason. For example, the Fair Housing Act creates a private right of action and authorizes agency enforcement of civil penalties when a landlord discriminates against a tenant on the basis of race. Like the CDC order, nothing in the text of the FHA “specifically directs or forbids courts to take any action” in a discriminatory eviction lawsuit. And yet it would be inconceivable to imagine guidance instructing a justice of the peace to issue a judgment in favor of a discriminatory landlord and leave the tenant to seek a civil remedy later. When the conduct prohibited by federal law necessarily requires court-ordered relief, a court unavoidably has a role in prohibiting that conduct by refusing to issue that relief.

Prior iterations of CDC order have been upheld by multiple federal district courts that recognized the CDC’s authority to respond to our current public health crisis by limiting evictions. *See, e.g.,*

⁵HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, Frequently Asked Questions, 1, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/downloads/Eviction-Moratoria-Order-FAQs-02012021-508.pdf>

⁶*Id.*

⁷Temporary Halt in Residential Evictions, 86 FR 16731.

⁸*See, e.g.,* January Advisors, “First Results of the CDC Eviction Moratorium in Houston” (Feb. 8, 2021) (finding that Houston-area landlords had filed and advanced over 1,700 eviction cases despite a CDC declaration as of late January 2020), *available at* <https://www.januaryadvisors.com/cdc-eviction-moratorium-houston/>

⁹Temporary Halt in Residential Evictions, 86 FR 16731, 16732 (““Evict” and “Eviction” means **any action** by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a residential property. This definition also does not prohibit foreclosure on a home mortgage.”) (emphasis added).

Chambless Enterprises, LLC v. Redfield, 3:20-CV-01455, 2020 WL 7588849 (W.D. La. Dec. 22, 2020); *Brown v. Azar*, 1:20-CV-03702-JPB, 2020 WL 6364310 (N.D. Ga. Oct. 29, 2020). The current order is enforceable federal law. And critically, research suggests that the order and other eviction restrictions are saving thousands of lives.¹⁰ We respectfully ask that the JCTC revise its current guidance on the CDC order to reaffirm the proper role of Texas Justice Courts in enforcing this vital and valid federal law by abating cases in which the tenant provides the landlord and the court with a signed declaration that conforms with the order’s requirements.

Sincerely,

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¹⁰Temporary Halt in Residential Evictions, FR 16731, 16734