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RESIDENTIAL EVICTION AND PUBLIC HOUSING: COVID-19 AND BEYOND*

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I. INTRODUCTION

This Article provides an account and analysis of the eviction-reducing public health measures taken during the COVID-19 pandemic in the United States, adding to the urgent and growing body of research that seeks both to capture a description of the current situation and press for best practices to be implemented more widely.¹ I gave the panel presentation that this Article accompanies approximately six weeks before this writing, and already much has changed with

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1. E.g., Anne Kat Alexander & Sarah Lee, *Preliminary Analysis: A Year of Eviction Moratoria*, EVICTION LAB (Mar. 29, 2021), <https://evictionlab.org/one-year-of-eviction-moratoria/> [<https://perma.cc/3THF-4YV6>]; Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL'Y L. & ETHICS 122 (2020); Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* 5 (Nov. 30, 2020) (unpublished manuscript) (on file with the *Indiana Health Law Review*); Emily A. Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1 (2021); Renee Louis et al., *Preliminary Analysis: Eviction Claim Amounts During the COVID-19 Pandemic*, EVICTION LAB (Aug. 27, 2020), <https://evictionlab.org/covid-eviction-claims> [<https://perma.cc/NV2Y-TURS>]; Peter Hepburn & Renee Louis, *Preliminary Analysis: Shifts in Eviction Filings from the CARES Act to the CDC Order*, EVICTION LAB (Sept. 22, 2020), <https://evictionlab.org/shifts-in-eviction-filings-from-cares-act-to-cdc-order> [<https://perma.cc/6JK4-GQMR>]; Peter Hepburn & Renee Louis, *Preliminary Analysis: Eviction Filings During and After Local Eviction Moratoria*, EVICTION LAB (Nov. 15, 2020), <https://evictionlab.org/moratoria-and-filings/> [<https://perma.cc/4UDL-QTZZ>] [hereinafter *Eviction Filings During and After Local Eviction Moratoria*].

respect to housing policy, infection counts, and the pandemic as a whole; even more will change before this Article goes to press. During the time between my presentation and this writing, Americans elected a new president; that new president, Joe Biden, will be inaugurated on January 20, 2020. Before Inauguration Day, the national eviction moratorium put in place to curb the spread of COVID-19 by the Centers for Disease Control and Prevention (“CDC”) is scheduled to expire.² The past several weeks and months have seen governors, state supreme courts, and legislatures implement extraordinary measures to keep people housed. The policy landscape shifts like sand underfoot, but reviewing those early, remarkable emergency orders provides a spark of hope that the shifts can move in a direction that promotes housing stability and, consequently, improved public health.

In this Article, I combine an early analysis of COVID-19 emergency housing policies put in place during the ongoing pandemic with a look to the future and some of the options available to policymakers working to create a more stable rental housing market than the one that existed prior to the health and economic crisis. I aim to answer the following questions, which are relevant both at the present moment and in the months and years to come: What did we do about eviction during this once-in-a-generation pandemic? Why did we do it? Where did we go wrong? And, what should we do next?

In Section II, I begin with a brief overview of the problem of eviction, its definition and characteristics, and what it has to do with health. Eviction is associated with many harms to tenants and falls within two main categories: (1) harms having to do with the acute crisis of removal from one’s home and (2) long-term harms having to do with the “Scarlet E” that an eviction filing leaves on a tenant’s rental history,³ which prevents the tenant from accessing healthy housing later.⁴

Section III examines COVID-19 rental housing policy responses in general, including social distancing in courts, financial assistance, and eviction moratoria. Remarkably, forty-three states and the District of Columbia implemented some form of emergency anti-eviction policy other than or in addition to financial assistance.⁵ In this Section, I outline the contours of what policies were

2. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

3. *Scarlet E: Unmasking America’s Eviction Crisis*, WNYC STUDIOS (June 6, 2020), <https://www.wnycstudios.org/podcasts/otm/scarlet-e-unmasking-americas-eviction-crisis> [<https://perma.cc/FU8V-PR6G>].

4. See generally Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344 (2007); Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequality Among Low-Income Tenants*, 24 GEO. J. POVERTY L. POL’Y 59 (2016); Katelyn Polk, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 NW. J.L. & SOC. POL’Y 338 (2020); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 118 (2012).

5. Emily Benfer et al., *COVID-19 Eviction Moratoria & Housing Policy: Federal (CDC)*,

implemented, thus proving to be possible, in 2020. Section III also discusses the goals of COVID-19 rental housing policy and flaws in policies and programs that prevent the achievement of these goals. I pay particular attention to four types of flaws: (1) intervention that targets an action too late in the eviction process; (2) intervention that only applies to subsets of renters or types of housing; (3) intervention that requires action by tenants; and (4) intervention that postpones, rather than eliminates, risk of eviction.

Three policy regimes are discussed in greater detail in Section IV: the responses of Massachusetts and Austin, Texas, which stand out as exemplary among responses from states, localities, and the federal government's response in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and the CDC's eviction moratorium. I conclude with notes about court actions in Section V and thoughts on how, in the wake of strong anti-eviction measures during a crisis, we might move forward with creating a housing policy regime that supports public health following the pandemic.

Key to any discussion about eviction in the United States is understanding that the hardships caused by housing insecurity are not distributed evenly throughout the American population. Systemic racism has denied Black Americans the key wealth-building activity of homeownership for centuries. Whereas more than three in four non-Hispanic white families own their homes, fewer than half of all Black families are homeowners.⁶ This difference in homeownership contributes to the fact that the median white family in America has ten times the wealth of the median Black family.⁷ The simple demographic truth that a higher proportion of nonwhite than white families are renters means that, by definition, nonwhite and especially Black American households, as a population, will be more exposed to eviction and its harms than white American households. Further, research into the demographic characteristics of evicted tenants and distribution of eviction cases within cities demonstrates that Black households⁸ and Black neighborhoods⁹ experience this form of housing instability

State, Commonwealth, and Territory, GOOGLE, <http://bit.ly/COVID19EvictionFreezeUS> [<https://perma.cc/P2KR-ECGZ>] (last visited Mar. 28, 2021) [hereinafter *COVID-19 Eviction Moratoria & Housing Policy*].

6. *Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020*, U.S. CENSUS BUREAU (Oct. 27, 2020), <https://www.census.gov/housing/hvs/files/currenthvspress.pdf> [<https://perma.cc/5KSA-WRF3>].

7. Christopher Ingraham, *A New Explanation for the Stubborn Persistence of the Racial Wealth Gap*, WASH. POST (Mar. 14, 2019), <https://www.washingtonpost.com/us-policy/2019/03/14/new-explanation-stubborn-persistence-racial-wealth-gap/> [<https://perma.cc/PYV9-BDFM>].

8. Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/> [<https://perma.cc/8WD9-4T2T>]; TIMOTHY A. THOMAS ET AL., THE STATE OF EVICTIONS: RESULTS FROM THE UNIVERSITY OF WASHINGTON EVICTIONS PROJECT § 4.3 (2019), <https://evictions.study/washington/index.html> [<https://perma.cc/6LNF-EAD3>] [hereinafter THE STATE OF EVICTIONS]; Tim Thomas et al., *Baltimore Eviction Map*, EVICTIONS STUDY (May 8, 2020),

at a rate disproportionate to their share of the renting population. These racial inequities will be even more pronounced during the COVID-19 pandemic and corresponding economic crisis.

The [CDC has] estimated that COVID-19 case and hospitalization rates are at least 2.5 and 4.5 times higher, respectively, among Black, Hispanic, and Native American populations than among [w]hite populations. Black individuals have died from COVID-19 at more than twice the rate as [w]hite individuals.¹⁰

At the same time, unemployment rates during the crisis are higher for Black and Hispanic workers than white and non-Hispanic workers.¹¹ This Article considers eviction as a public health issue, but one should keep in mind that this public health burden is particularly and disproportionately borne by Black Americans.

II. WHAT DOES EVICTION HAVE TO DO WITH HEALTH?

The COVID-19 pandemic resulted in an unprecedented health and economic crisis in the United States. Still, it may not be immediately evident why a ban on evictions, accompanied by rental assistance (*i.e.*, economic relief for landlords to recoup lost rental payments), makes sense as a public health response alongside measures like stay-at-home orders, limits on public gatherings, facial covering mandates, or orders designed to increase the supply of personal protective equipment. Eviction bans appear logical as part of the economic response, alongside measures like expanded unemployment insurance, but an immediate link may not be clear between eviction and public health. To see the link, one must consider the fundamental role that housing plays in health, both in the daily lives of renters prior to the COVID-19 pandemic and during the acute crisis of the pandemic.

A. The Eviction Process and Characteristics: Common, Quick, and Traumatic

Legal eviction is the court-ordered removal of a tenant from their home, returning exclusive possession of the rental property to the owner (*i.e.*, landlord). Other forced moves include rental units being condemned; foreclosures (*i.e.*, when a lending institution recovers possession of a home from an owner); so-called “self-help,” “illegal,” or “informal” evictions, which are all terms used to describe when a landlord takes an illegal action to recover possession of the rental unit (*e.g.*, cutting electricity or heat to an apartment or changing the locks); or what is sometimes called a “no cause” eviction (*i.e.*, when a landlord declines to

<https://evictions.study/maryland/report/baltimore.html> [<https://perma.cc/9UPN-U87E>].

9. Desmond, *supra* note 4.

10. Rohan Khazanchi et al., *Racism, Not Race, Drives Inequity Across the COVID-19 Continuum*, 3 JAMA NETWORK OPEN art. e2019933 (2020), at 1.

11. GENE FALK ET AL., CONG. RESEARCH SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC: IN BRIEF 8 (2020), <https://fas.org/sgp/crs/misc/R46554.pdf> [<https://perma.cc/CZ7M-F2G7>].

renew a lease or raises the rent above what the tenant can afford when renewing the lease, thus causing the tenant to need to move). All of these forced moves contribute to housing insecurity and deserve attention from scholars, policymakers, and the public. However, this Article focuses narrowly on the forced move that comes about after an eviction judgment is given by a court. The word “eviction” in this Article refers to a forced move at any point in the legal eviction process.

In 2016, landlords filed an estimated 3.6 million eviction cases in courts across the United States, the equivalent of seven cases per minute.¹² More eviction cases are filed in a typical year than there were foreclosure starts at the height of the Great Recession.¹³ This eviction figure comes not from a government entity tracking the number of eviction cases but from the Eviction Lab at Princeton University because the federal government does not keep track of this measure of housing insecurity, nor do all states.

Of course, not all of the estimated 3.6 million cases filed resulted in the tenant being forced to leave their home. How many of these filings eventually become evictions is an open question. The Eviction Lab cannot clearly determine the legal outcome of every case. Such can remain unclear even when the case disposition information is recorded by the court. For example, some court systems list case outcomes with opaque labels like “disposed.”¹⁴ And even when the Lab can observe a non-opaque outcome on a case, the legal decision does not always comport with the situation on the ground (*i.e.*, whether or not a forced move occurred). Perhaps a tenant, believing that their case is hopeless, leaves before a judgment is entered, in turn causing the landlord to withdraw the case. In that situation, the “dismissed” case disposition might represent a forced move. Other times, a court might enter a judgment for the landlord, but the tenant does not leave the unit. A court might enter a judgment for the landlord even in settled cases or cases with other outcomes.¹⁵

We observe an example of the latter case in what the Eviction Lab calls serial cases or repeated filings and eviction judgments against the same tenant at the same address. These serial cases were first noticed by the Eviction Lab while

12. *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable: Hearing on H.R.1856 and H.R.5187 Before the H. Comm. on Fin. Servs.*, 116th Cong. 3 (2020) (statement of Matthew Desmond, Maurice P. During Professor of Sociology & Principal Investigator, Eviction Lab, Princeton University).

13. Lynn Adler, *U.S. 2009 Foreclosures Shatter Record Despite Aid*, REUTERS (Jan. 14, 2010), <https://www.reuters.com/article/us-usa-housing-foreclosures/u-s-2009-foreclosures-shatter-record-despite-aid-idUSTRE60D0LZ20100114> [<https://perma.cc/S62C-SJ3H>].

14. Adam Porton et al., *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, 31 HOUSING POL’Y DEBATE (forthcoming 2021).

15. Esme Caramello & Annette Duke, *The Misuse of MassCourts as a Free Tenant Screening Device*, BOS. BAR J. (Oct. 21, 2015), <https://bostonbarjournal.com/2015/10/21/the-misuse-of-masscourts-as-a-free-tenant-screening-device/> [<https://perma.cc/GRT6-P6PK>]; Mary B. Spector, *Tenants’ Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 185 (2000).

cleaning administrative court data from South Carolina.¹⁶ At first, it was not clear if these cases were real or mistakes, perhaps duplicates. After all, if a tenant was filed against and ordered by the court to leave in June, how could the “evicted” tenant be evicted again in July and August? But, calls to court clerks and legal aid lawyers in South Carolina revealed that indeed these situations were common for many tenants, and the cases were each real.¹⁷ Some landlords and property managers in South Carolina, Maryland, and other states, cities, and towns with high serial eviction filing rates file eviction cases as a matter of course when a tenant first falls behind on rent. These cases are not uniformly dismissed every time a landlord allows a tenant to stay (*e.g.*, because a tenant comes up with the late rent or the landlord and tenant agree to a payment plan for the debt). Sometimes, these cases are marked as judgments for plaintiff.¹⁸ The presence of serial cases thus debunks the notion that tenants uniformly leave in cases that are tagged in the court’s digital record-keeping system as “judgment in favor of plaintiff.”¹⁹ One can expect the rate at which a judgment for plaintiff results in a forced move (*i.e.*, an eviction) to vary from state to state and to be closer to 100% in states with low serial filing rates.²⁰

As such, attempts to accurately determine the number of evictions that take place in the United States encounter three major hurdles. First, the information is not tracked in a centralized location, sometimes not even at the state level. Second, the information from court records can be opaque or functionally nonexistent, even when one can obtain it. Third, a distance exists between the recorded decision of the court and the reality. Based on what evidence is available, it is safe to say that millions of American households each year are

16. MATTHEW DESMOND ET AL., EVICTION LAB NATIONAL DATABASE: VERSION 1.0, at 27 (2018), <https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf> [<https://perma.cc/XBL4-4ESM>].

17. *Id.*

18. HOUS. ACTION ILL. & THE LAWYERS’ COMM. FOR BETTER HOUS., PREJUDGED: THE STIGMA OF EVICTION RECORDS 6 (2018), <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf> [<https://perma.cc/W9SR-HHS6>] (discussing cases dismissed after a settlement); see Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 99 SOC. FORCES 1 (2020) (discussing judgments entered after settlement).

19. Serial cases also exemplify the fact that eviction, at least for some landlords, is a routine proceeding, in which the court acts as little more than a rubber stamp to compel a tenant to pay rent or get out. Meanwhile, serial cases have tremendous ill effects for tenants. Even if the tenant in a serial eviction case does not lose their home, they now have an eviction filing on their record – perhaps even a judgment as well – which will limit their ability to find high quality housing later. The tenant will likely be required to pay additional fees over and above the rent that was owed, like the landlord’s attorney fees, late fees, and the fee to file the case. Leung et al., *supra* note 18, at 3. And, the tenant will have been forced to shoulder the psychological burden of being days away from losing their home.

20. States with relatively low serial filing rates include Alabama, Florida, Washington, Utah, West Virginia, Oklahoma, Mississippi, Kansas, Indiana, and Illinois. *Id.* at 11.

confronted with court-ordered eviction and even more with forced moves that do not directly involve the civil court system.²¹ Eviction, even setting aside all other types of forced moves from rental properties, is **common**.

To understand the health problems and potential solutions to the eviction crisis, both during the pandemic and following it, one must understand both the typical procedure of an eviction case and some key characteristics of a typical eviction case. The first characteristic is that eviction is common, as discussed above. Eviction is also **quick**. This is a fast-moving legal process, despite its severe consequences in the lives of tenants, and it creates lasting **trauma**. The second characteristic will be addressed in the following discussion of how an eviction case typically moves through the court system. The third characteristic will be addressed in the next subsection, which is on the health impacts of eviction.

Each state outlines procedures for eviction cases – whether calling the process eviction, summary process, unlawful detainer, forcible entry and detainer, or another name in its civil code.²² Depending on the state, further variation may exist between counties, cities, or other judicial boundaries, or procedures may be relatively consistent across the state. What follows is a general outline for a nonpayment of rent case that is not specific to any individual state.

1. Notice to Quit

Across most of the United States, an eviction case begins with the landlord issuing a “notice to quit” or “notice to vacate” to the tenant. The state’s civil code will usually provide specific requirements about the format of this notice (*e.g.*, must be in writing, must be in language of the lease), as well as how many days must pass between the landlord issuing the notice and the landlord filing an eviction case in court. The notice to quit can take many forms. For example, a notice to quit might look like a text message from the landlord reading, “I didn’t get this month’s rent. You have three days to get me \$890 plus a \$45 late fee or I’m filing to evict,” or it can look like an official document printed on brightly-colored paper taped to the door that gives a fourteen-day window before the eviction case is filed.

Some tenants will leave after receiving this notice to quit and before an eviction case is filed. This choice may be the result of confusion – interpreting the notice, which might give two clear options of (1) pay rent or (2) leave, as a legal order to vacate rather than a warning notice in advance of a court case, during which the tenant would have an opportunity to mount a defense. On the other hand, leaving can also be a tenant’s informed decision based on the knowledge

21. See Matthew Desmond et al., *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. FORCES 227, 244 (2015) (describing how informal eviction is twice as frequent as formal eviction).

22. Arkansas also has criminal eviction procedures. See ARK. CODE ANN. § 18-16-101 (2021).

that winning their case is unlikely.²³ By vacating the apartment, they can evade a mark on their credit and rental history records that could become a cause for landlords to reject their rental applications for years to come (indeed, even if the tenant were to win their case).²⁴

2. *Eviction Filing*

Assuming the tenant neither vacates nor pays the remaining rent, the landlord next files an eviction case in the appropriate court (*e.g.*, county, district, municipal, housing) The case type may have a clear label like “eviction,” or it might be something more opaque to the general public, like “unlawful detainer” or “summary process.” Depending on where the case is filed, this action might come with a steep filing fee or additional costs like attorney fees. In some areas, a property manager can represent the landlord, but in others, only either the owner of the unit or the owner’s attorney may appear. In Maryland, filing fees range from \$15 to \$25,²⁵ whereas in Mobile, Alabama, it costs \$256 to file an eviction case.²⁶ Filing the case might be simple to do online, or it might require appearing in person, a relative inconvenience.

3. *Eviction Hearing*

We do not know how many eviction cases nationwide end with a default judgment to the plaintiff, or, in plain terms, the landlord “winning” the eviction case because the tenant does not appear in court. Based on the proportion of default judgments in places in the United States where the data is available, one can assume this number must be in the hundreds of thousands.²⁷ When they do appear in court, tenants most often do not receive legal counsel, while landlords typically are represented by lawyers. As a rule of thumb, one can expect nine out of ten landlords to be represented, but only one in ten tenants.²⁸ Tenants are more

23. See Karen Tokarz et al., *Addressing the Eviction Crisis and Housing Instability Through Mediation*, 63 WASH. U. J.L. POL’Y 243, 256-57 (2020) (discussing tenants’ low rates of success in St. Louis, Missouri.).

24. See Gold, *supra* note 4; see also Polk, *supra* note 4.

25. *District Court of Maryland Cost Schedule*, MD. CTS. (Dec. 2020), <https://www.courts.state.md.us/sites/default/files/court-forms/dca109.pdf> [<https://perma.cc/32B6-WMZT>].

26. Leung et al., *supra* note 18, at 20.

27. See, *e.g.*, REINVESTMENT FUND, RESOLVING LANDLORD-TENANT DISPUTES: AN ANALYSIS OF JUDGMENTS BY AGREEMENT IN PHILADELPHIA’S EVICTION PROCESS 2 (2020), https://www.reinvestment.com/wp-content/uploads/2020/05/ReinvestmentFund_Report-2020_PHL-Evictions-Judgments-by-Agreement-Landlord-Court.pdf [<https://perma.cc/PE6K-6L4H>]; THE STATE OF EVICTIONS, *supra* note 8.

28. *E.g.*, HOUS. ACTION ILL. & THE LAWYERS’ COMM. FOR BETTER HOUS., *supra* note 18; Tokarz et al., *supra* note 23; *Evictions in the Courts: An Analysis of 106,000 Cases from 2006-2016 in Jackson County*, KAN. CITY EVICTION PROJECT (Jan. 24, 2018), <https://static1.squarespace.com/static/59ba0bd359cc68f015b7ff8a/t/5a68e811e4966bee3fb5d6cd/1516824594549/KC+Evi>

likely to win eviction cases when represented, even when representation does not depend on the perceived merits of the case.²⁹

Eviction cases can end with a judgment for the plaintiff (*i.e.*, landlord), judgment for the defendant (*i.e.*, tenant), dismissal, or settlement (otherwise known as a stipulated settlement or simply a “stip”).³⁰ Common settlement stipulations include “pay and stay” or “pay and go” terms, which should avoid a judgment for the plaintiff – though still requiring the tenant to pay the past due rent and, in the latter case, move. Notably, court fees and landlord attorney fees are often shifted to tenants who lose eviction cases or agree to pay and stay stipulations, significantly increasing the tenants’ housing costs.³¹

4. *Writ of Possession Issued*

Following a judgment for the landlord, a writ of possession (sometimes alternatively called a writ of detainer or writ of eviction) is issued to the law enforcement agency tasked with enforcing court-ordered evictions.

5. *Writ of Possession Executed*

In the final stage of the eviction case, local law enforcement executes the writ of possession. This is what television news shows as “an eviction.” A sheriff and someone from a moving company arrive at the tenant’s door, open the apartment, and remove all of the tenant’s belongings into a truck (where the belongings will be held in storage at the tenant’s expense) or onto the curb. Sometimes the tenant has already left by this stage, and the state-paid moving service might remove any belongings left behind in the haste to depart.

From the first notice to the execution of the writ, the eviction process typically takes about a month,³² making it a **quick** legal process that belies the seriousness of the consequences of a case outcome in the plaintiff’s favor. For the landlord, this timeline can mean losing out on one month’s rent, any rent that was

ction+Project++Courts+Analysis.pdf [https://perma.cc/VJ7E-5YT3].

29. See D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013); Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & SOC’Y REV. 419 (2001); Oksana Mironova, *NYC Right to Counsel: First Year Results and Potential for Expansion*, COMMUNITY SERV. SOC’Y (Mar. 25, 2019), <https://www.cssny.org/news/entry/nyc-right-to-counsel> [https://perma.cc/U4CM-R62B].

30. N. R. Kleinfeld, *Where Brooklyn Tenants Plead the Case for Keeping Their Homes*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/landlord-tenant-disputes-housing-court.html> [https://perma.cc/G3HP-67CA].

31. Leung et al., *supra* note 18, at 3–4.

32. See, e.g., Matthew Desmond & Tracy Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1755 (2015); Polk, *supra* note 4.

owed at the beginning of the case,³³ rent for the period of time it takes to find a new occupant for the unit, and any costs of the court proceeding that are not passed to the tenant. For a typical tenant, however, this means going from housed to not having a home in the span of two paychecks – hardly enough time to scrape together move-in costs (e.g., first and last month’s rent and a security deposit, often equal to another month’s rent) in a country where more than half of renters pay more than 30% of their income to rent and utilities every month³⁴ and nearly half of renters have less than \$1000 in savings.³⁵ That is to say that an eviction case can easily cause a family’s living situation to change from housed to homeless – doubled up with friends or family, living in an unaffordable hotel or motel, checking into a shelter if beds are available, or sleeping in a car or on a sidewalk – in less than a month.

B. Effect of Eviction on Individual and Public Health

What effect does eviction have on the health of individuals and families in normal, pre-pandemic times? Research indicates that eviction should be regarded as a **traumatic** experience, given its links to poorer mental health outcomes, including increased likelihood of dying by suicide,³⁶ higher rates of depression among mothers,³⁷ and more.³⁸

Another thread in the literature of health and eviction considers housing quality and ties into the housing vein of the social determinants of health research. When tenants are evicted, or even merely filed against, that interaction

33. Eviction Lab data on judgment amounts – the amount of money that the court orders the tenant to pay to the landlord at the end of the suit, which can include attorney fees, late rent fees, damages, and court fees on top of missed rent – indicates that amounts of rent owed are typically quite low. In a sample of thousands of records across twenty-two states, about one-third of all judgment amounts were for less than the median amount for one month’s rent in that area. Emily Badger, *Eviction Crises that a Few Hundred Dollars Could Solve*, N.Y. TIMES (Dec. 18, 2019), <https://www.nytimes.com/2019/12/12/upshot/eviction-prevention-solutions-government.html> [https://perma.cc/V5QL-WCXE].

34. Press Release, U.S. Dep’t of Hous. & Urban Dev., HUD and Census Bureau Release New American Housing Survey (Sept. 16, 2020), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_147 [https://perma.cc/CJ5X-3AZR].

35. Riordan Frost, *Cash-Strapped During COVID-19*, JOINT CTR. FOR HOUSING STUD. HARV. U. (June 11, 2020), <https://www.jchs.harvard.edu/blog/cash-strapped-during-covid-19> [https://perma.cc/3LBX-LCNM] (analyzing of pre-pandemic data).

36. See Katherine A. Fowler et al., *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005-2010*, 105 AM. J. PUB. HEALTH 311 (2015); 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 COMMUNITY HEALTH 409 (2016).

37. See Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 91 SOC. FORCES 295 (2015).

38. See Hugo Vásquez-Vera et al., *The Thread of Home Eviction and Its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MEDICINE 199 (2017).

with the civil justice system becomes part of their rental history, locking them out of high-quality housing for years to come.³⁹ Many landlords who offer high-quality housing rule out all tenants who have received eviction orders.⁴⁰ This explains why tenants who are evicted land in neighborhoods with much higher levels of crime and poverty compared to tenants whose most recent move was voluntary.⁴¹ At the same time, abundant research has established that poor-quality housing can make you sick.⁴² For example, household mold can cause a variety of respiratory issues,⁴³ and lead paint causes developmental harm to children.⁴⁴ As a result, when evicted tenants are locked *out* of safe and decent housing, they can also be thought of as locked *into* the health risks associated with subpar housing.

Eviction both directly causes health challenges for tenants and indirectly places tenants in situations where they will be exposed to further environmental harms. These health challenges are persistent, haunting tenants for years following their eviction. Eviction should not, though, be considered merely a risk factor for an individual's health. First, because eviction affects racial groups in the United States disproportionately, it should be considered among the factors that make racism a threat to public health.⁴⁵ Second, because evicted people have persistent differences in the ability to access high-quality housing for years following an eviction,⁴⁶ eviction creates a group of "evicted people" who are, as a population, exposed to specific health risks. Third, a small but growing number of neighborhood-level studies find positive correlations between rates of eviction and rates of health-related outcomes in a given neighborhood.⁴⁷ That is to say that

39. Gold, *supra* note 4, at 63; Polk, *supra* note 4.

40. Kleysteuber, *supra* note 4; Desmond, *supra* note 4.

41. Desmond & Shollenberger, *supra* note 32, at 1763.

42. See generally Mary Shaw, *Housing and Public Health*, 25 ANN. REV. PUB. HEALTH 397 (2004); Emily A. Benfer & Allyson E. Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. ONLINE S1 (2017).

43. Dennis Hevesi, *The Turmoil Over Mold in Buildings*, N.Y. TIMES (Mar. 23, 2003), <https://www.nytimes.com/2003/03/23/realestate/the-turmoil-over-mold-in-buildings.html> [<https://perma.cc/H9QA-VK7D>].

44. See generally Emily A. Benfer, *Contaminated Childhood: How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color*, 41 HARV. ENVTL. L. REV. 493 (2017).

45. See generally *New AMA Policy Recognizes Racism as a Public Health Threat*, AMA (Nov. 16, 2020), <https://www.ama-assn.org/press-center/press-releases/new-ama-policy-recognizes-racism-public-health-threat> [<https://perma.cc/A33P-36RW>] (stating the position of the American Medical Association that racism is a threat to public health).

46. Gold, *supra* note 4; Kleysteuber, *supra* note 4; Polk, *supra* note 4.

47. E.g., Lindsey Rose Bullinger & Kelley Fong, *Evictions and Neighborhood Child Maltreatment Reports*, 31 HOUSING POL'Y DEBATE (forthcoming 2021); Aayush Khadka et al., *In Utero Exposure to Threat of Evictions and Preterm Birth: Evidence from the United States*, 55 HEALTH SERV. RES. 823 (2020); Corey Hazekamp et al., *Eviction and Pediatric Health Outcomes*

it is possible that your neighbor's eviction might not only affect your neighbor's health but also your own.⁴⁸ On the other side of the coin, these studies indicate that lowering eviction rates could improve the overall health of residents in a neighborhood.

Further, this bifurcation of the rental housing market into “evicted people, subpar properties” and “never-evicted people, general rental market” does not affect solely the adults who are listed as defendants on the eviction suit but also the children in the household. Indeed, the presence of children has been identified as a risk factor for eviction.⁴⁹ In addition to the above harms that subpar housing can cause to children's health, research links housing instability generally to the types of harm to children's health that can alter the course of the children's lives.⁵⁰ Eviction does not cause one move, but it often a series of at least two moves. First, the eviction causes a move into subpar housing. Then, one or more moves attempting to leave housing of that condition, which makes research on general housing instability all the more relevant for discussions on eviction.⁵¹ Eviction's harms are not limited to the effects of moves on the child's psyche; eviction and the threat of eviction during gestation are associated with negative birth and neonatal health outcomes.⁵² This research into the effect of eviction on children indicates that this state process creates intergenerational cascades of harm.

In sum, eviction is a stressor itself associated with poor health; a barrier to safe, decent housing; a trauma that can reverberate through a child's later years; and potentially a poison to a neighborhood. All of these factors demand that experts and policymakers consider eviction not merely as an issue of individual responsibility and risk, but as a public health concern appropriately addressed through system-wide government intervention.

C. Public Health in a Pandemic

The research cited above could all be said for “normal times.” These times are decidedly abnormal. As of this writing at the end of November 2020, and in the United States alone, more than thirteen million people have been confirmed

in *Chicago*, 45 J. COMMUNITY HEALTH 891 (2020).

48. Cf. Mariana Arcaya et al., *Effects of Proximate Foreclosed Properties on Individuals' Systolic Blood Pressure in Massachusetts, 1987 to 2008*, 129 CIRCULATION 2262 (2014).

49. See Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303 (2013).

50. See generally T. Jolleyman & N. Spencer, *Residential Mobility in Childhood and Health Outcomes: A Systematic Review*, 62 J. EPIDEMIOLOGY & COMMUNITY HEALTH 584 (2008).

51. Desmond et al., *supra* note 20.

52. See Khadka et al., *supra* note 47; Kathryn M. Leifheit et al., *Severe Housing Insecurity During Pregnancy: Association with Adverse Birth and Infant Outcomes*, 17 INT'L J. ENVTL. RES. & PUB. HEALTH 8659 (2020); Corey Hazekamp et al., *Eviction and Pediatric Health Outcomes in Chicago*, 45 J. COMMUNITY HEALTH 891 (2020); Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, JAMA PEDIATRICS (Mar. 1, 2021), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2776776> [<https://perma.cc/L5FS-FNEF>].

to have COVID-19. More than 250,000 of those people have died.⁵³ During this emergency, an acute health problem emerges: evicted people will be at greater risk of contracting COVID-19 due to decreased or non-existent ability to socially distance, wash hands, and wear masks following the eviction. Additionally, each individual who contracts COVID-19 both has the potential to spread the disease to others and has the potential to require assistance from a strained medical system.⁵⁴ This crisis is not theoretical. A recent study estimated that lifting eviction moratoria in the summer of 2020 translated to more than 400,000 excess cases of COVID-19 and 10,700 excess deaths from the illness.⁵⁵ This acute health crisis cannot be separated from the existing eviction crisis, particularly because it shares similar racial disparities due to systemic racism.

II. COVID-19 AND EVICTION POLICY RESPONSES

Next, I consider the eviction-related policy measures that have been implemented by governments at all levels – local, state, and federal – to keep individuals and families safe from COVID-19, to keep families’ housing secure during a period of economic turmoil, and to decrease community spread of the virus. I consider three major groups of eviction-related public health measures: (1) social distancing in housing courts; (2) rental assistance and other financial supports; and (3) eviction moratoria. Many of these measures are tracked on the COVID-19 Housing Policy Scorecard, an online tool from the Eviction Lab and Professor Emily A. Benfer that reports on the current status of statewide emergency housing policy in all fifty states and the District of Columbia.⁵⁶

When surveying judicial, legislative, and executive orders on eviction in the pandemic, one notices right away that the rationales listed by different policymaking bodies for these actions differ from one another. In other words, these officials do not all share the same single problem statement or goal. This could make evaluating the effectiveness of these policies using the same standard less appropriate. The Supreme Court of South Carolina, for example, cited in their order that the COVID-19 pandemic would create “difficulties” for “institutions and individuals” and that “increased housing insecurity and homelessness [would] worsen the threat posed by the illness.”⁵⁷ This order does not define the problem as eviction itself. Instead, it defines the problem as forced

53. *COVID-19 United States Cases by County*, JOHNS HOPKINS U. & MED., <https://coronavirus.jhu.edu/us-map> [<https://perma.cc/W673-F59S>] (last visited Dec. 3, 2020).

54. *See Eviction, Health Inequity, and the Spread of COVID-19*, *supra* note 1; *see also* Justin Sheen et al., *The Effect of Eviction Moratoria on the Transmission of SARS-CoV-2*, at 1 (Jan. 19, 2021) (unpublished manuscript) (on file with the *Indiana Health Law Review*).

55. Leifheit et al., *supra* note 1, at 5.

56. *COVID-19 Housing Policy Scorecard*, EVICTION LAB, www.evictionlab.org/covid-policy-scorecard/ [<https://perma.cc/SZQ8-6AFH>] (last visited Mar. 15, 2021).

57. S.C., *Statewide Evictions and Foreclosures*, 2020-03-18-01 (Mar. 18, 2020), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-03-18-01> [<https://perma.cc/6UZA-TM66>].

moves and one particular outcome of forced moves (*i.e.*, homelessness).⁵⁸ It also specifies that the problem with housing instability in this instance is that it will exacerbate the spread of COVID-19.⁵⁹

To curtail the threat of COVID-19, the Supreme Court of South Carolina paused all eviction enforcement actions and its ability to accept eviction filings, schedule hearings, or issue writs.⁶⁰ The court's order included a similar set of restrictions for foreclosure cases.⁶¹ The rationale presented by the court characterizes the order as both an act of mercy toward individuals in an extreme time and a necessary threat-reducing public safety measure.⁶² This second rationale, that eviction is tied to the public health response, is articulated even more clearly in some other orders. For example, a March directive for implementing executive orders states plainly that "[e]victing Montanans from their homes during the emergency will only worsen the [S]tate's ability to respond to the emergency."⁶³

In another example, an executive order in Indiana that contained an eviction moratorium articulated a slightly different rationale. The Indiana order sought "to avoid the serious health, welfare, and safety consequences that may result if Hoosiers are evicted or removed from their homes"⁶⁴ The order did not explicitly specify the population that would experience these serious health, welfare, and safety consequences (*e.g.*, all Hoosiers and residents of neighboring states).⁶⁵ However, in the absence of another population, one can assume that it is the Hoosiers who are evicted or otherwise removed from their homes who would suffer these deleterious consequences. As such, the order articulates a rationale that, in this emergency, the State should intervene to protect individuals who might be exposed to risks to their health, welfare, and safety by being evicted.

Unlike South Carolina's approach, Indiana does not clearly reference a risk to the public, which is inherent in residents losing access to housing.⁶⁶ Also, the Indiana order does not explicitly tie housing to the public health struggle against the COVID-19 pandemic.⁶⁷ Although South Carolina mentioned "difficulties"

58. *See id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *See id.* ("In recognition of the difficulties the COVID-19 pandemic may have on institutions and individuals").

63. Mont. Exec. Order Nos. 2-2020 & 3-2020 (Apr. 13, 2020), <https://dphhs.mt.gov/Portals/85/Documents/Coronavirus/LowIncomeRentAssistanceDirective.pdf> [<https://perma.cc/A3KN-JYMR>].

64. Ind. Exec. Order No. 20-06 (Mar. 19, 2020), https://www.in.gov/gov/files/EO_20-06.pdf [<https://perma.cc/28XR-CB7J>].

65. *See id.*

66. *See id.*

67. *See id.*

that could include financial strain,⁶⁸ neither order made the argument that preventing a given household's eviction during the pandemic, which is a time of extreme financial stress, shields that household from long-term harm. Both the South Carolina and Indiana orders were issued early in the pandemic – in the middle of March – and applied to all renters and eviction cases. The orders differ slightly in how they frame the problem and its solution, but the main solution is the same: prevent anyone from being evicted because anyone being evicted would cause serious negative consequences.

As the pandemic wore on, new orders more often limited protection to tenants who could demonstrate financial difficulties due to COVID-19. This approach implies a different principle. Instead of it being imperative to reduce all evictions to as near zero as possible, allowing tenants only to be removed if the safety or life of another person is at risk, the principle is that COVID-19 should not be a reason why anyone is evicted. This principle implies concern about what economists call a “moral hazard.”⁶⁹ Specifically, the concern that if the punishment for not paying rent or losing one's home is removed, people will simply stop paying rent. This splits tenants facing eviction into two groups: those deserving and undeserving of protection.

This approach to emergency housing policy has a number of flaws. First, the moral hazard argument deteriorates when considering that the money will come due eventually and the debt could well be unaffordable. Renters are aware of this fact, that the moratorium does not make rent a “free lunch.” Even as eviction moratoria blanketed much of the United States and unemployment claims skyrocketed,⁷⁰ more than one in ten renters told census surveyors that they were “not at all confident” that next month's rent would be paid on time.⁷¹ Also, industry groups reported that the vast majority of renters stayed up-to-date on rent.⁷²

Second, programs or policies that apply only to certain tenants require those tenants either to prove or to self-certify that they qualify. In the former case, this

68. S.C., *Statewide Evictions and Foreclosures*, 2020-03-18-01 (Mar. 18, 2020), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-03-18-01> [<https://perma.cc/6UZA-TM66>].

69. *See Definition of 'Moral Hazard,'* ECON. TIMES, <https://economictimes.indiatimes.com/definition/moral-hazard> [<https://perma.cc/QEH3-422V>] (last visited Mar. 24, 2021).

70. *See About 30 Million Workers Are Collecting Jobless Benefits*, N.Y. TIMES, <https://www.nytimes.com/live/2020/07/23/business/stock-market-today-coronavirus#roughly-one-in-five-workers-are-collecting-unemployment-benefits> [<https://perma.cc/95Q3-HUPX>] (last updated July 24, 2020).

71. *The Census Phase 2 Household Pulse Survey and Rental Housing During the Pandemic*, PD&R EDGE, <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-092820.html> [<https://perma.cc/3JPF-PQLD>] (last visited Dec. 4, 2020) (showing data for early September 2020).

72. Press Release, Nat'l Multifamily Hous. Council, *NMHC Rent Payment Tracker Finds 90.6 Percent of Apartment Households Paid Rent as of October 20* (Oct. 22, 2020), <https://www.nmhc.org/news/press-release/2020/nmhc-rent-payment-tracker-finds-90-6-percent-of-apartment-households-paid-rent-as-of-october-20/> [<https://perma.cc/KU35-3BDM>].

often requires documentation that tenants may not have, such as proof of loss of income or documentation proving that the tenant applied for every available rental assistance program.⁷³ This means that there would be tenants who fulfill the qualifications for the program or policy, but who are not able to *prove* that they fulfill the qualifications. Thus, they would be locked out of receiving assistance.

Third, many of these programs and policies require affirmative action on the part of the tenant in order to claim the right or receive assistance. For example, an early eviction moratorium in California required tenants to inform their landlords of their COVID-19-related financial distress within seven days of missing rent in order to receive protection from eviction,⁷⁴ and the CDC eviction moratorium requires tenants to fill out a form and deliver it to their landlords.⁷⁵ This, again, has the result that many tenants who are intended to be covered by the order are not covered. Not all qualifying tenants will be aware of the new emergency measure.

When discussing the relative strengths or weaknesses of the emergency programs and policies below, I start with a premise that every person in the United States should be housed. No person should be without shelter during this pandemic. This is not only a moral stance but also one rooted in the public health reality that every family that is evicted during the pandemic is at increased risk for contracting COVID-19, a risk that not only affects them but also affects their neighbors and community. This risk to the community is the result of both the chance that an evicted person with COVID-19 could pass the virus to others and because limited medical resources (*e.g.*, ventilators, ICU beds, and medical staff) have caused leading medical and public health experts to worry that the United States' medical system will reach capacity, forcing rationing of care.⁷⁶

With this in mind, this Section generally considers a few types of policies and programs that were implemented during the pandemic and whether they worked. The Section then considers a few example emergency policy regimes in different parts of the United States.

A. Social Distancing Measures in Courts

In mid-March, as the United States became aware of unchecked community

73. See, *e.g.*, Bryce Covert, *Despite the CDC's Eviction Ban, Thousands of Tenants Are Losing Their Homes*, NATION (Nov. 24, 2020), <https://www.thenation.com/article/society/evictions-tenants-covid/> (stating that some courts are holding evidentiary hearings to examine tenants' declarations regarding lost work and efforts made in purportedly seeking rental assistance).

74. Cal. Exec. Order No. N-37-20 (Mar. 27, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf> [<https://perma.cc/A9NU-ZE5D>].

75. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

76. Reed Abelson, *Covid Overload: U.S. Hospitals Are Running Out of Beds for Patients*, N.Y. TIMES (Nov. 27, 2020), <https://www.nytimes.com/2020/11/27/health/covid-hospitals-overload.html> [<https://perma.cc/R3TK-A3Z9>]; *e.g.*, *An Open Letter to the People of Wisconsin*, U. WIS. HEALTH, <https://coronavirus.uwhealth.org/an-open-letter-to-the-people-of-wisconsin/> [<https://perma.cc/H4N2-KM88>] (last visited Mar. 15, 2021).

spread of the novel coronavirus that causes COVID-19, courts and other public buildings began to shut their doors. Many courts across the country implemented emergency closures in the spring, but nearly all courts “reopened” to allow eviction proceedings by the end of 2020, whether in person or by video or phone conferencing.⁷⁷ Video conference proceedings might appear to widen access to justice relative to in-person court by removing the barrier of getting to the courthouse, but, in fact, many tenants lack access to the technology required for video conferences.⁷⁸ Plus, even when the video link technology works smoothly on both ends, research indicates that video conference hearings might result in worse outcomes for tenants compared to in-person hearings.⁷⁹

Video conference proceedings are used to reduce the likelihood of a tenant, judge, court staff person, or advocate being exposed to COVID-19 at the courthouse or during the proceeding, though there remains the chance of exposure if any of these parties must be in a public place to take the video call (*e.g.*, a judge who dials in from a courtroom or a tenant who joins a call from a place with public Wi-Fi). At least one court relocated to a convention center to support social distancing between people before, during, and after eviction proceedings.⁸⁰

These measures reduce the risk of transmission of COVID-19 during the pandemic, but they do not respond to the public health risk inherent in removing people from their homes. While courts should avoid gathering large numbers of people in the courthouse, attending to the congregation problem without acknowledging the public health risk inherent in allowing eviction cases to proceed fails to see the forest for the trees.

77. See *Judiciary Preparedness for Coronavirus (COVID-19)*, U.S. CTS. (Mar. 12, 2020), <https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19> [<https://perma.cc/A83K-C2K2>].

78. *E.g.*, Chris Arnold, *Zoom Call Eviction Hearings: ‘They’ll Throw Everything I Have Out On The Street,’* NPR (June 19, 2020), <https://www.npr.org/2020/06/19/880859109/zoom-call-eviction-hearings-they-ll-throw-everything-i-have-out-on-the-street> [<https://perma.cc/33BG-8Y3C>]; *cf.* Mark Lieberman, *Laptop Delays, Zoom Glitches, Equity Gaps: Remote Learning Faces Big Challenges*, EDUC. WK. (Aug. 24, 2020), <https://www.edweek.org/leadership/laptop-delays-zoom-glitches-equity-gaps-remote-learning-faces-big-challenges/2020/08> [<https://perma.cc/6Z57-6CHZ>].

79. Lorelei Laird, *Videoconferencing’s Promise of Increased Access to Justice Has a Disconnect in Immigration Courts*, A.B.A.J. (July 1, 2019), <https://www.abajournal.com/magazine/article/videoconferencings-access-to-justice-immigration-courts> [<https://perma.cc/NHY2-AU6F>] (discussing videoconferencing in immigration court); Christina Goldbaum, *Videoconferencing in Immigration Court: High Tech Solution or Rights Violation?*, N.Y. TIMES (Feb. 12, 2019), <https://www.nytimes.com/2019/02/12/nyregion/immigration-court-video-teleconferencing.html> [<https://perma.cc/W9PL-U5V9>]; *cf.* Aaron Hass, *Videoconferencing in Immigration Proceedings*, 5 PIERCE L. REV 59 (2006).

80. Kriston Capps, *The Columbus Convention Center Is Now a Pandemic Housing Court*, BLOOMBERG CITYLAB (June 18, 2020), <https://www.bloomberg.com/news/articles/2020-06-18/how-do-you-hold-housing-court-in-a-pandemic> [<https://perma.cc/NEZ3-PHPY>].

B. Financial Assistance

Financial assistance plays a key role in preventing evictions during the COVID-19 pandemic. One problem with eviction moratoria is that tenants who miss rent during the covered period may well still have rental debt at the end of the moratorium, even if they become financially stable enough to pay rent moving forward. For example, consider a service worker who is laid off in April and misses rent in May and June while she waits to begin receiving unemployment. She is not able to pay those two months of rental debt, even when she receives benefits or resumes working later in the summer. When one in four of American households who rent pays more than half of the household's income to rent and utilities each month,⁸¹ coming up with an additional month or two of rent over the course of a short period of time is not possible for many. Tenants with outstanding rental debt following the expiration of the eviction moratorium then face eviction or civil debt collection proceedings.

Financial assistance is necessary for tenants to come out on the other side of the moratorium without these insurmountable debts. The expanded unemployment insurance payments funded through the CARES Act are one example of financial assistance offered during the pandemic. The extra \$600 per week kept the rent paid for millions of out-of-work tenants.⁸² The federal government also issued a one-time \$1,200 stimulus check to every American.⁸³

More commonly, though, financial assistance comes in the form of rental assistance paid directly to landlords. The National Low Income Housing Coalition ("NLIHC") is tracking rental assistance programs during the pandemic. As of October 2020, it had identified 438 rental assistance programs totaling nearly \$4 billion in funding.⁸⁴ Four major problems have become apparent with respect to rental assistance. First, the programs are woefully underfunded.⁸⁵ Four

81. JOINT CTR. FOR HOUS. STUDIES, HARVARD U., AMERICA'S RENTAL HOUSING 2020, at 4 (2020), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf [<https://perma.cc/DG6K-KMX2>].

82. Mary K. Cunningham et al., *Don't Overlook the Importance of Unemployment Benefits for Renters*, URB. INST. (Apr. 23, 2020), <https://www.urban.org/urban-wire/dont-overlook-importance-unemployment-benefits-renters> [<https://perma.cc/4MMB-VY85>].

83. Kenneth Terrell, *Stimulus Checks: Who Is Eligible and How Much Will They Be?*, AARP (Mar. 11, 2021), <https://www.aarp.org/politics-society/advocacy/info-2020/coronavirus-stimulus-checks.html> [<https://perma.cc/Z5HE-9QLV>].

84. REBECCA YAE ET AL., NLIHC RESEARCH NOTE: EMERGENCY RENTAL ASSISTANCE PROGRAMS IN RESPONSE TO COVID-19 3 (2020), <https://nlihc.org/sites/default/files/Emergency-Rental-Assistance-Programs-3.pdf> [<https://perma.cc/5E4S-NBUA>].

85. *E.g.*, Elizabeth Trovall, *\$15 Million in Rent Relief Claimed in Less than 2 Hours, as Tenant Demand Creates Lag in Response*, HOUS. PUB. MEDIA (May 15, 2020), <https://www.houstonpublicmedia.org/articles/news/houston/2020/05/13/369448/houstons-15-million-rent-relief-fund-drained-in-under-two-hours> [<https://perma.cc/525Z-A8QP>]; Leon Fooksman, *Applications for Housing Assistance in Coral Springs Closed Minutes After Opening Monday*, TAP INTO CORAL SPRINGS (Aug. 24, 2020), <https://www.tapinto.net/towns/coral-springs/sections/government/articles/applications-for-housing-assistance-in-coral-springs-closed-minutes-after-opening-Monday>

billion dollars in funding pales in comparison to the \$100 billion that NLIHC estimates would be required to keep tenants housed through this crisis.⁸⁶ Second, narrow eligibility requirements and strenuous application processes make it more difficult for tenants in need to access financial assistance.⁸⁷ These eligibility requirements sometimes include the requirement that the landlord already has filed to evict before the tenant can apply for assistance, a stipulation that requires tenants be branded with the “Scarlet E” to access help even if the landlord would prefer not to involve the courts.⁸⁸ Third, not all programs cover both rental arrears (*i.e.*, unpaid, past-due rent) and future rent payments, nor do programs cover enough months of each. Only 4% of the programs tracked by NLIHC extended further than six months,⁸⁹ even as unemployment remains stubbornly high, other benefits (*e.g.*, extended unemployment insurance) that could pay rent expire, and schools and other childcare facilities remain closed in many parts of the country.⁹⁰

The fourth problem with rental assistance programs concerns landlord behavior. There have been reports of landlords not agreeing to participate in rental assistance programs, sometimes because participation in the program (*i.e.*, accepting the taxpayer money) comes with restrictions like not filing to evict the tenant for a certain number of days.⁹¹ On the other end, at least one landlord was found to have evicted his tenant even after a rental assistance program paid the tenant’s rental arrears.⁹² The scale of these problems is not known. Still, given the enormous impact that eviction can have in a tenant’s life, these concerns about landlord behavior may be a sufficient reason to investigate cash assistance – programs like the one-time stimulus payment and expanded unemployment insurance – as an alternative to rental assistance programs.

C. Eviction Moratoria: Many Opportunities for Intervention

Different actors control various parts of the eviction process, which allow states, cities, and the federal government many points of entry to introduce

[<https://perma.cc/J2HH-3U4L>].

86. ANDREW AURAND ET AL., NLIHC RESEARCH NOTE: THE NEED FOR EMERGENCY RENTAL ASSISTANCE DURING THE COVID-19 AND ECONOMIC CRISIS 2 (2020), <https://nlihc.org/sites/default/files/Need-for-Rental-Assistance-During-the-COVID-19-and-Economic-Crisis.pdf> [<https://perma.cc/Q6UW-GFVS>].

87. YAE ET AL., *supra* note 84, at 5-6; *Rental Relief Programs in Major Cities and Counties in Texas: What We Learned from Nine Local Governments Across the State*, TEXAS HOUSERS 6-7 (July 27, 2020), <https://texashousers.org/wp-content/uploads/2020/07/Rental-relief-recommendations-v4.0-wo-es.pdf> [<https://perma.cc/MJ4P-WK4G>].

88. YAE ET AL., *supra* note 84, at 6.

89. *Id.* at 8.

90. As of writing in November 2020.

91. *See generally id.* (discussing the program requirements, including an agreement by landlords to drop eviction cases and late fees in exchange for assistance).

92. Matthew Desmond, *The Rent Eats First, Even During a Pandemic*, N.Y. TIMES (Aug. 29, 2020), <https://www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html> [<https://perma.cc/9GX6-94YK>].

interventions that interrupt evictions during the crisis. Among other housing-related actions, during the COVID-19 pandemic, governors suspended the statutes giving causes of action for non-emergency eviction cases,⁹³ banned eviction filings,⁹⁴ and forbade the execution of eviction orders.⁹⁵ State court systems continued all eviction cases,⁹⁶ stopped taking new eviction filings,⁹⁷ ordered eviction hearings not to be scheduled or heard,⁹⁸ and stayed eviction judgments and writs.⁹⁹ At least one major public safety department announced that they would not serve writs of possession.¹⁰⁰ Legislatures made it illegal to evict someone for nonpayment of rent during the emergency.¹⁰¹ Forty-three out of fifty states, plus the District of Columbia, implemented some form of eviction-prevention measures other than or in addition to economic supports.¹⁰²

To discuss the diversity in eviction moratoria in this subsection and the following, I use the framework from the COVID-19 Housing Policy Scorecard (the “Scorecard”).¹⁰³ The Scorecard categorizes interventions into five categories.¹⁰⁴ The first three roughly correspond to the five chronological stages of the eviction process listed above: (1) *Initiation* covers the notice and filing of the order; (2) *Court Process* covers hearings and whether eviction judgments or

93. See *A Survey on Restrictions on Eviction and Foreclosure Remedies*, KING & SPAULDING, <https://www.kslaw.com/pages/a-survey-of-restrictions-on-eviction-and-foreclosure-remedies> [<https://perma.cc/TQ3W-XJF2>] (last visited Mar. 28, 2021).

94. E.g., Minn. Exec. Order No. 20-79 (July 14, 2020), [https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20\(002\)_tcm1055-440501.pdf](https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20(002)_tcm1055-440501.pdf) [<https://perma.cc/ASH6-ECXA>].

95. See *A Survey on Restrictions on Eviction and Foreclosure Remedies*, *supra* note 93.

96. E.g., Va., Fifth Order Modifying and Extending Declaration of Judicial Emergency in Response to COVID-19 Emergency (June 1, 2020), <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/9/2020/06/Supreme-Court-of-Virginia-Order-Modifying-and-Extending-Declaration-of-Judicial-Emergency.pdf> [<https://perma.cc/Q7FQ-NWYW>].

97. See Ann O’Connell, *Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus*, NOLO, <https://www.nolo.com/evictions-ban> [<https://perma.cc/77CG-P3XF>] (last updated Mar. 23, 2021).

98. E.g., Haw., In the Matter of the Judiciary’s Response to the COVID-19 Outbreak, SCMF-20-0000152 (Mar. 16, 2020), https://www.courts.state.hi.us/wp-content/uploads/2020/03/031619_scmf-20-152_In_Re_COVID-19.pdf [<https://perma.cc/G753-Q24Z>].

99. See *A Survey on Restrictions on Eviction and Foreclosure Remedies*, *supra* note 93.

100. E.g., *Public Safety Sheriff Division Temporarily Suspends Eviction Activities*, HAW. DEP’T PUB. SAFETY (Mar. 17, 2020), <https://governor.hawaii.gov/newsroom/latest-news/psd-news-release-sheriff-division-temporarily-suspends-eviction-activities/> [<https://perma.cc/CD6X-CUKW>].

101. See *A Survey on Restrictions on Eviction and Foreclosure Remedies*, *supra* note 93.

102. *COVID-19 Eviction Moratoria & Housing Policy*, *supra* note 5.

103. Emily A. Benfer et al., *COVID-19 Housing Policy Scorecard Methodology*, EVICTION LAB (Apr. 20, 2020), <https://evictionlab.org/covid-housing-scorecard-methods/> (describing the Eviction Lab’s full methodology with scoring details) [<https://perma.cc/6XHB-UA2X>] [hereinafter *COVID-19 Housing Policy Scorecard Methodology*].

104. *Id.*

writs are stayed; and (3) *Enforcement* covers whether law enforcement is permitted to physically carry out the eviction order. Each also corresponds to a different actor: measures in the Initiation category, once implemented, curtail actions taken by the landlord; Court Process corresponds to the courts; and Enforcement corresponds to law enforcement officers. Orders that integrate one or more measures from these three categories can be referred to as eviction moratoria because these orders contain direct blocks to the eviction process.¹⁰⁵ The other two categories on the Scorecard, *Short-Term Supports* and *Tenancy Preservation Measures*, track measures that support housing stability but do not constitute eviction moratoria (e.g., implementing a rental assistance program, sealing or masking eviction cases, or banning late fees – which can artificially raise rental arrears, making rental assistance programs more expensive for the state).¹⁰⁶

Three supportive measures on the Scorecard are unscored: whether the state mandated landlords to file an affidavit certifying that the property was not “covered” under the CARES Act federal eviction moratorium when filing to evict and whether utility providers were banned from shutting off service due to nonpayment or required to restore service previously disconnected due to nonpayment.¹⁰⁷ The first of these measures is not scored because it merely tracked whether the state was taking a step to follow federal law. The latter two are not scored due to jurisdictional differences between states that prevent state actors from creating these measures as a binding policy for all utilities.

Not all eviction moratoria produce equally effective results. Though it will not be possible to craft a full reckoning of which policies were more effective and which were less effective until after the pandemic has concluded and more data have been collected, preliminary evidence strongly indicates that interventions that blocked earlier stages in the eviction process were more effective at reducing eviction filings than interventions that blocked later stages.¹⁰⁸ In other words, late interventions like blocking enforcement of writs of eviction do not produce a complete chilling effect that discourages all eviction filings. Blocking eviction notices and filings, rather than just enforcement of eviction orders, is key because tenants move out at all stages of the eviction process, beginning with the first notice to quit. Still, across the country, initial data from the collection of court filings indicate that the eviction moratoria of all types worked and are working to reduce eviction filings.¹⁰⁹ Where eviction moratoria remain as of this writing, eviction filings are low, and where local eviction moratoria have been phased out,

105. *Id.* Three measures in these categories – specifically the measures requiring certification that a property was not subject to the CARES Act federal moratorium, tolling court deadlines, and sealing eviction records – do not constitute eviction moratoria.

106. *See id.*

107. *See id.*

108. *See* Hepburn & Louis, *supra* note 1; *Eviction Filings During and After Local Eviction Moratoria*, *supra* note 1.

109. *See id.*

eviction filings have immediately risen.¹¹⁰

Generally speaking, eviction moratoria implemented near the beginning of the crisis were short-term but comprehensive (*e.g.*, executive or judicial orders blocking all eviction filings or all hearings for thirty days). As the pandemic wore on, more eviction moratoria were introduced with restrictions (*e.g.*, only protecting tenants that could demonstrate financial difficulties caused by the pandemic). In the summer, states began phasing out eviction moratoria at the same time that rental assistance programs began accepting applications. By the fall, most eviction moratoria still in place were long-term, like the New Jersey moratorium that will remain in place until forty-five days after the expiration of the state of emergency, or extended monthly like clockwork, as is the case for orders in Illinois and Minnesota.¹¹¹ At some point during the pandemic, all but seven states implemented a statewide eviction moratorium of some kind.¹¹² Only fourteen states and the District of Columbia still have eviction moratoria in place as of November 30, 2020.¹¹³

D. Weak Points in Pandemic Housing Responses

As discussed above, emergency housing policy orders were, and still are, riddled with holes that compromise their effectiveness at reducing the number of forced moves due to evictions that occur during the pandemic. This subsection briefly summarizes four common flaws that have prevented housing stability orders from keeping as many people housed as possible. In addition to these flaws, the timing of an order also affects the order's success. Orders that began well after the pandemic or ended before the economic crisis ended and aid was distributed (a point in time that has not been reached by this writing) necessarily cannot be as successful as orders that cover more of the crisis time period.

1. Intervention Targets Action Too Late in the Process

Some eviction moratoria only block the enforcement of an eviction order. This creates several problems. First, tenants move out at all points in the eviction process, so allowing nearly the entire eviction process to run out introduces the risk that tenants will move after receiving the notice to quit, the filing, or immediately following the hearing. This defeats the purpose of the order in keeping people from moving, doubling-up with other families, or becoming homeless, all of which introduce potential for the tenant to contract COVID-19 and expose others to the illness. This downside could be prevented if such a moratorium created a “chilling effect” so pervasive that landlords opted not to file at all. However, data on eviction filings shows that the chilling effect was not this pervasive. For example, in Florida, the governor signed a series of executive

110. Leifheit et al., *supra* note 1; see Hepburn & Louis, *supra* note 1; see *Eviction Filings During and After Local Eviction Moratoria*, *supra* note 1.

111. *COVID-19 Eviction Moratoria & Housing Policy*, *supra* note 5.

112. *Id.*

113. *COVID-19 Housing Policy Scorecard*, *supra* note 56.

orders that included eviction moratoria.¹¹⁴ The last of these orders, in place for the months of August and September, were enforcement-only eviction moratoria that postponed only enforcement of eviction orders and only for households that had experienced financial hardship due to the pandemic.¹¹⁵ During the last month of the order, September 2020, more than 900 eviction cases were filed in Duval County, Florida, home to Florida's capital, Jacksonville.¹¹⁶

Two other problems emerge because of this flaw. If the intervention targets an action after the initial filing, tenants are not protected from the long-term harm of an eviction filing blocking access to safe and healthy housing. Additionally, allowing the entire court process to play out limits tenants' ability to secure rental assistance that could prevent the eviction.

2. Intervention Only Apply to Subsets of Renters or Types of Housing

Other programs and policies fail because they do not apply universally to all tenants. For example, the City of Boston announced to great fanfare an "eviction moratorium," which was in place through the end of 2020 and applied only to public housing.¹¹⁷ This measure, which protects some of our most economically vulnerable neighbors from eviction, is important, but one must remember that for every low-income renter who receives housing assistance, there are three others who do not.¹¹⁸ Boston's so-called "eviction moratorium" leaves renters in the far larger private, unassisted rental market without protection. Flaws in policies narrowly targeting tenants who have experienced financial hardship due to the pandemic are discussed above.

3. Intervention Requires Action by the Tenant

This problem often accompanies interventions that only apply to subsets of renters or types of housing. If tenants must take an action to receive a right or benefit, there will be tenants who do not take the action because they are not

114. Fla. Exec. Order No. 20-180 (July 29, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-180.pdf [<https://perma.cc/B5HG-8YM3>]; Fla. Exec. Order No. 20-211 (Aug. 31, 2020), <http://www.flchamber.com/wp-content/uploads/2020/09/EO-20-211.pdf> [<https://perma.cc/QB63-PGPC>].

115. Fla. Exec. Order No. 20-211.

116. *Eviction Tracking System*, EVICTION LAB (Dec. 12, 2020), <https://evictionlab.org/eviction-tracking/> [<https://perma.cc/3SV9-ZR67>].

117. Press Release, Mayor Martin J. Walsh & the Bos. Hous. Auth., Mayor Walsh, Boston Housing Authority Extend Moratorium for Nonessential Evictions Through 2020 (July 10, 2020), <https://www.bostonhousing.org/en/News/Mayor-Walsh,-Boston-Housing-Authority-extend-morat.aspx> [<https://perma.cc/2NFU-L7UW>].

118. *Three Out of Four Low-Income At-Risk Renters Do Not Receive Federal Rental Assistance*, CTR. ON BUDGET & POL'Y PRIORITIES (Aug. 2017), <https://www.cbpp.org/three-out-of-four-low-income-at-risk-renters-do-not-receive-federal-rental-assistance> [<https://perma.cc/4JCB-6YCT>].

aware of the order. A state or city could attempt to bridge this information gap by implementing a costly and difficult outreach and education campaign. Indeed, governments at all levels should take tenant education seriously, even if tenant action is not needed to receive the protection. During the COVID-19 emergency, however, when time is of the essence, it is contrary to the public good to wait for a tenant to learn about what might be a quite complex new law, evaluate if they qualify for the protection or program, gather any documentation, apply or otherwise submit documentation, and wait for the application to be evaluated, or for an evidentiary hearing to take place. This is not to mention that if a tenant must take an action to inform the landlord that they will invoke their right not to be evicted or to apply for rental assistance, the state runs the risk of bad action by the landlord.

For example, at one point, California's eviction moratorium required tenants to have experienced financial distress due to COVID-19 and to report this to their landlords.¹¹⁹ A landlord could, though, file to evict and take their chances for whether the landlord would appear in court to claim that the filing was unlawful – either out of ignorance of the law or willfully breaking the law. This is, in essence, a moral hazard argument, alleging that the tenant will break the law. However, unlike this tenant moral hazard argument, for which little evidence has surfaced during the pandemic, news organizations have identified hundreds of instances where landlords illegally filed evictions against tenants covered by the CARES Act.¹²⁰

Some types of programs always seem to require a request or application on the part of the tenant, like rental assistance. But if for the sake of argument, we assume as a premise that successful programs do not require tenants to jump through hoops, wait for applications to be evaluated, and the like, then another road emerges: cancel all rental debt¹²¹ (e.g., suspend the cause of action statutes for nonpayment of rent eviction and pass a law that rental debt from the pandemic cannot be retrieved through the eviction or small claims court process) and create a landlord bailout fund to which landlords apply to recoup lost rent. Such a program might even require the landlord to go to the tenant to certify that the landlord has fulfilled obligations related to the condition of the unit and that the landlord is requesting the appropriate amount of money based on the agreed-upon rent.

119. Cal. Exec. Order No. N-37-20 (Mar. 27, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf> [<https://perma.cc/A9NU-ZE5D>].

120. E.g., Jeff Ernsthause et al., *Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic*, PROPUBLICA (Apr. 16, 2020), <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic> [<https://perma.cc/9AYD-A3BC>].

121. See Keeanga-Yamahtta Taylor, *Cancel the Rent*, NEW YORKER (May 12, 2020), <https://www.newyorker.com/news/our-columnists/cancel-the-rent> [<https://perma.cc/D2DN-XXBR>]; see also H.R. 6515, 116th Cong. § 2 (2020).

4. *Intervention Postpones the Risk of Eviction*

Any eviction moratorium that is not accompanied by financial support postpones but does not eliminate the risk of eviction. Successful interventions require both an eviction moratorium – a broad measure that eliminates the immediate risk of eviction without requiring intervention by the tenant – and financial support to assist the tenant in paying any debts. Financial support without an eviction moratorium fails because the support can take a considerable amount of time to come through, which is a time during which a landlord may file for eviction. Not all tenants at risk of eviction will successfully apply for assistance, and not all landlords will take the money, especially if they are able to remedy the rent loss by evicting the tenant. An eviction moratorium without financial support fails because the moratorium will one day end, and tenants who have accumulated rental debt may well be unable to pay the debt off. Thus, they will face eviction. These policies, financial support and eviction moratorium, are two sides of the same coin. Financial supports are discussed at greater length above.

III. EXAMPLE POLICIES

In this Section, I consider a few different emergency anti-eviction policy regimes implemented at different levels of government. This small sample of policy responses does not represent the range of all responses available during the pandemic. This Section instead illustrates what the above ideas looked like in practice in different states. This Section also explores how a one-size-fits-all policy regime would not only fail in every state due to differences in governmental powers and politics but also is not necessary. States, local governments, and the federal government have many paths to the same goal of reducing evictions during the pandemic.

A. *Massachusetts*

Massachusetts implemented the strongest anti-eviction protections in the country according to the Scorecard, scoring 4.15 out of 5 stars.¹²² The high-scoring suite of measures was in place from April 20, 2020, to October 17, 2020.

The road to the strongest policy in the country took more than a month following the first wave of stay-at-home orders. On March 13, 2020, the Massachusetts Housing Court issued a standing order that continued all non-emergency cases until April 21, 2020.¹²³ City governments in Cambridge and Somerville also issued orders preventing evictions from being enforced during the state of emergency, which prevented writs of eviction that had already been

122. *COVID-19 Housing Policy Scorecard*, *supra* note 56.

123. Mass., Temporary Modifications to Court Operation Arising from the Coronavirus (COVID 19) Outbreak, Standing Order 2-20 (Mar. 13, 2020), <https://www.mass.gov/doc/housing-court-standing-order-2-20-temporary-modifications-to-court-operations-arising-from-the/download> [<https://perma.cc/U63R-E9ZP>].

issued from being enforced.¹²⁴ The Massachusetts Supreme Court, that same month, ordered that only emergency cases that could not be heard remotely should be heard in person, and all others should be remote.¹²⁵ In turn, the Housing Court updated their standing order and clarified that emergencies, in this instance, were situations like temporary restraining orders when a landlord illegally locks out a tenant or shuts off a tenant's heat.¹²⁶ At the beginning of April 2020, the Housing Court extended these measures to the beginning of May 2020.¹²⁷

Meanwhile, advocates in Massachusetts lobbied for more protections, and the Massachusetts legislature drafted stronger measures.¹²⁸ A bill began circulating in the first two weeks of April 2020, and it rapidly passed both chambers and was signed into law by the governor, with an effective date of April 20, 2020.¹²⁹ The new law would be in force for forty-five days following the expiration of the state of emergency, and it included a provision that permitted the governor to extend the law.¹³⁰ At the time this law came into effect, my colleagues and I considered this to be a generously long timeline.

124. *City of Cambridge Issues Emergency Temporary Eviction Enforcement Order*, CITY CAMBRIDGE (Apr. 3, 2020), <https://www.cambridgema.gov/covid19/News/2020/04/eviction-moratorium> [<https://perma.cc/9EG5-GXNT>]; *Somerville Issues Eviction Moratorium, Orders Unit Showing to Cease*, SOMERVILLE TIMES (Mar. 30, 2020), <https://www.thesomervilletimes.com/archives/98644> [<https://perma.cc/6XUG-F7JL>].

125. Mass., Order Limiting In-Person Appearances in State Courthouses to Emergency Matters That Cannot Be Resolved Through a Videoconference or Telephonic Hearing, OE-144 (Mar. 17, 2020), <https://www.mass.gov/doc/repealed-sjc-order-limiting-in-person-appearances-in-state-courthouses-to-emergency-matters/download> [<https://perma.cc/79KF-CKMD>].

126. Mass., Supplement to Housing Court Standing Order 2-20 Relating to the Coronavirus (COVID-19) Outbreak, Standing Order 3-20 (Mar. 17, 2020), <https://www.mass.gov/doc/housing-court-standing-order-3-20-supplement-to-housing-court-standing-order-2-20-relating-to/download> [<https://perma.cc/6DWD-ZBM2>].

127. Mass., Supplement to Housing Court Standing Order 2-20 and 3-20 Relating to the Coronavirus (COVID-19) Outbreak, Standing Order 4-20 (Apr. 3, 2020), <https://www.mass.gov/doc/housing-court-standing-order-4-20-supplement-to-housing-court-standing-orders-2-20-and-3-20/download> [<https://perma.cc/3SWS-ED4J>].

128. See Erin Tiernan, *Eviction Filings Off to Slow Start, Court Data Reveal*, BOS. HERALD (Nov. 2, 2020), <https://www.bostonherald.com/2020/11/02/eviction-filings-off-to-slow-start-court-data-reveal/> [<https://perma.cc/BCD9-8AJ6>].

129. MASS. GEN. LAWS ch. 65, § 3 (2020).

130. MASS. GEN. LAWS ch. 65, §§ 6, 7 (2020).

Table 1: Statewide eviction-prevention measures effective in Massachusetts on May 1, 2020¹³¹

INITIATION	COURT PROCESS	ENFORCEMENT	SHORT TERM SUPPORTS	TENANCY PRESERVATION
<ul style="list-style-type: none"> ✓ Landlords cannot give notices to quit ✓ Landlords cannot file for eviction for any non-emergency reason 	<ul style="list-style-type: none"> ✓ Court deadlines are tolled for the duration of the Act ✓ Courts cannot schedule or hold non-emergency eviction hearings ✓ Eviction orders cannot be issued and existing orders are stayed ✗ Eviction cases are not sealed or masked 	<ul style="list-style-type: none"> ✓ Law enforcement cannot enforce an order to remove a tenant if issued for a non-emergency reason 	<ul style="list-style-type: none"> ✓ Eviction prevention measures extend past the end of the state of emergency ✓ Utilities under the jurisdiction of the Department of Public Utilities cannot shut off service due to nonpayment of bills ✗ Orders do not give a grace period to pay past-due rent ✗ Orders do not prohibit reporting of missed payments to credit bureaus ✓ Foreclosure proceedings are blocked 	<ul style="list-style-type: none"> ✗ Landlords can still charge late fees ✗ Landlords are not prohibited from raising rent ✓ New funding is made available for statewide rental assistance programs ✗ Tenants are not guaranteed counsel in eviction cases

The Massachusetts housing policy regime was highly effective at reducing eviction filings. The Boston Eviction Tracking System site – which covers the Greater Boston Area as far north as Revere, as far south as West Roxbury, and as far west as Newton – only saw one or two eviction filings per week during the

131. This chart summarizes all statewide measures in force in Massachusetts on May 1, 2020.

effective dates of the Massachusetts law, with a few outliers of up to five filings and one week with sixteen filings near the end of the effective dates.¹³² In August 2020, landlords filed eleven eviction filings in Boston; in a typical year, one would expect to see around 780 eviction filings.¹³³ Massachusetts also made significant investments in rental assistance programs for low-income renters.¹³⁴ According to the NLIHC database of COVID-19 rental assistance programs, statewide assistance programs received an influx of \$125 million to support households earning up to 80% of the area median income (“AMI”) that had experienced financial hardship due to the pandemic.¹³⁵ Dozens of cities additionally created new funds for COVID-19 rental assistance with different requirements for assistance and payments covered.¹³⁶

On October 17, 2020, the Massachusetts law expired, and the overall statewide policy regime dropped to a 0.5-star ranking – all scored supports removed except for the new funding for rental assistance.¹³⁷ As of November 30, 2020, no new statewide measures have been implemented by the Massachusetts legislature, executive branch, or judicial system that would raise the State’s score on the Scorecard. A few isolated supports remained in Massachusetts cities, like a ban on filing eviction cases against residents of public housing in Boston¹³⁸ or bans on eviction enforcement in Cambridge and Somerville that had been implemented prior to the law and remained afterward.¹³⁹

In Massachusetts, landlords are required to issue a two-week notice to quit prior to filing for eviction,¹⁴⁰ so landlords could not file to evict through the end of October 2020. During the first three weeks of November 2020, landlords filed 171 eviction cases in the Greater Boston Area alone.¹⁴¹ This number is about half of the caseload that one would expect to see for the first three weeks of November, in this area and in a typical year.¹⁴² That said, these are not normal

132. *Eviction Tracking System*, *supra* note 116.

133. *Id.*

134. *Id.*

135. *State and Local Rental Assistance*, NAT’L LOW INCOME HOUSING COALITION, <https://nlihc.org/rental-assistance> [<https://perma.cc/NE7W-RPHA>] (last visited Mar. 24, 2021); *see* Nat’l Low Income Hous. Coal., *NLIHC COVID-19 Rental Assistance Database*, GOOGLE, <https://docs.google.com/spreadsheets/d/1hLfybfo9NydIptQu5wghUpKXecimh3gaoqT7LU1JGc8/edit#gid=79194074> [<https://perma.cc/MVD3-UNG2>] (last updated Mar. 24, 2021).

136. *See generally State and Local Rental Assistance*, *supra* note 135.

137. *COVID-19 Housing Policy Scorecard*, *supra* note 56.

138. Press Release, Mayor Martin J. Walsh & the Bos. Hous. Auth., *supra* note 117.

139. *Cambridge Amends Emergency Temporary Eviction Enforcement Order and Creates Requirements for Showings of Occupied Dwelling Units*, CITY CAMBRIDGE (July 23, 2020), <https://www.cambridgema.gov/covid19/News/2020/07/cambridgeamendsemergencytemporaryevictionenforcementorder> [<https://perma.cc/AQ6Z-UTJ8>]; *see Somerville Issues Eviction Moratorium, Orders Unit Showing to Cease*, *supra* note 124.

140. MASS. GEN. LAWS ch. 186, § 11 (2021).

141. *Eviction Tracking System*, *supra* note 116.

142. *Id.*

times, so a 50% reduction may not be an appropriate metric for success. Rather than compare to a typical year, the November filings can be compared to the month prior. In October 2020, landlords filed thirty-eight cases.¹⁴³ Despite there being no significant improvement in the pandemic or economic recovery between October and November 2020 that would make it possible for more Massachusetts residents to pay rent,¹⁴⁴ Massachusetts policymakers permitted the eviction caseload to increase by at least 450%.¹⁴⁵

B. Austin, Texas

Eviction-limiting actions in Texas were issued from the Texas Supreme Court. On March 19, 2020, the court suspended proceedings in eviction cases and stayed execution of writs until mid-April.¹⁴⁶ These provisions were later extended until May 18, 2020, and May 25, 2020, respectively, and were not extended or re-issued after the May expirations.¹⁴⁷ The Texas Supreme Court also issued directives designed to ensure compliance with the federal CARES Act and CDC eviction moratorium.¹⁴⁸ In late September 2020, the State also made available \$171 million, mostly in funding from the CARES Act, for an Eviction Diversion Program, which would pay off up to six months of back rent for eligible renters whose landlords filed to evict them.¹⁴⁹

143. *Id.*

144. See Press Release, Exec. Office of Labor & Workforce Dev., Massachusetts Weekly Unemployment Claimant Data 11-12-20 (Nov. 12, 2020), <https://www.mass.gov/news/massachusetts-weekly-unemployment-claimant-data-11-12-20> [https://perma.cc/B7QR-m2xt]; see generally MASS. DEP'T OF PUB. HEALTH, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH COVID-19 DASHBOARD - WEEKLY COVID-19 PUBLIC HEALTH REPORT 3-23 (2020), <https://www.mass.gov/doc/weekly-covid-19-public-health-report-november-27-2020/download> [https://perma.cc/56XL-QMRV].

145. *Eviction Tracking System*, *supra* note 116.

146. *Texas Renters Cannot Be Evicted At Least Until April 19, State Supreme Court Says*, CBS DFW (Mar. 31, 2020), <https://dfw.cbslocal.com/2020/03/31/texas-renters-evicted-state-supreme-court/> [https://perma.cc/W4JZ-FPA3].

147. *Order Prohibiting Residential Evictions in Texas Extended Through May 18*, CBS DFW (Apr. 29, 2020), <https://dfw.cbslocal.com/2020/04/29/order-prohibiting-evictions-texas-extended-may-18/> [https://perma.cc/4VRK-SXZM].

148. Tex., Fifteenth Emergency Order Regarding the Covid-19 State of Disaster, 20-9066 (May 14, 2020), <https://www.txcourts.gov/media/1446543/209066.pdf> [https://perma.cc/HA3V-9852]; Tex., Twenty-Fifth Emergency Order Regarding the Covid-19 State of Disaster, 20-9109 (Sept. 17, 2020), <https://www.txcourts.gov/media/1449728/209109.pdf> [https://perma.cc/QPN4-Z726].

149. Tex., Twenty-Seventh Emergency Order Regarding the Covid-19 State of Disaster, 20-9113 (Sept. 25, 2020), <https://www.txcourts.gov/media/1449812/209113.pdf> [https://perma.cc/276P-AM4G]; Juan Pablo Garnham, *Texas Will Spend \$171 Million in Federal Coronavirus Relief Funds to Help Renters Avoid Evictions*, TEX. TRIB. (Sept. 25, 2020), <https://www.texastribune.org/2020/09/25/texas-rent-help-evictions/#:~:text=Texas%20is%20using%20%24171%20million,fund%20legal%20services%20for%20Texans> [https://perma.cc/265C-AJRZ].

On the local level, Travis County and the county seat, the City of Austin, implemented more extensive eviction moratoria that worked in tandem to stop pandemic evictions. On March 26, 2020, the Austin City Council adopted an ordinance requiring landlords to offer a sixty-day grace period to tenants who had not paid rent on-time prior to issuing a notice to vacate; this ordinance has been extended multiple times, and currently is set to expire at the end of 2020.¹⁵⁰ The same day, in a separate order, the Mayor of Austin prohibited the issuance of notices to vacate for non-emergency eviction cases.¹⁵¹ This order has been extended multiple times.¹⁵² Though in the extension issued on September 30, 2020 the order was narrowed to apply only to nonpayment of rent cases where the monthly rent of the unit is \$2,475 or less or the tenant is qualified for protection under the CDC eviction moratorium.¹⁵³ Such is currently set to expire at the end of 2020.¹⁵⁴

The County Judge and Justices of the Peace further issued orders limiting evictions, beginning in the spring.¹⁵⁵ These orders were nearly identical to the city orders in scope, only differing in the specific actions prohibited in accordance with the bodies' different jurisdictions. As such, the order from the County Judge built upon the relevant Texas Supreme Court order, incorporating the order, adding provisions prohibiting issuance of notices to quit and enforcement of writs, and instituting a penalty for noncompliance with the order.¹⁵⁶ The order has been extended multiple times simultaneously with the separate City of Austin executive order; when the order was re-issued on September 30, 2020, to extend protections through the end of the year, it was narrowed to only prohibit the specified eviction actions in nonpayment of rent cases where the monthly rent of the unit is \$2,475 or less or the tenant is qualified for protection under the CDC

150. Alyssa Gourd, *Austin City Council Extends Renter Protections Related to Eviction Notices Through Dec. 31*, KXAN (Sept. 17, 2020), [https://www.kxan.com/news/local/austin/austin-city-council-extends-renter-protections-related-to-eviction-notices-through-dec-31/#:~:text=My%20Personal%20Information-,Austin%20City%20Council%20extends%20renter%20protections%20related%20to%20eviction%20notices,31&text=AUSTIN%20\(KXAN\)%20%E2%80%94%20On%20Thursday,issue%20a%20notice%20to%20vacate](https://www.kxan.com/news/local/austin/austin-city-council-extends-renter-protections-related-to-eviction-notices-through-dec-31/#:~:text=My%20Personal%20Information-,Austin%20City%20Council%20extends%20renter%20protections%20related%20to%20eviction%20notices,31&text=AUSTIN%20(KXAN)%20%E2%80%94%20On%20Thursday,issue%20a%20notice%20to%20vacate) [https://perma.cc/M2J8-T4LN].

151. Christopher Neely, *Austin's Multilayered Eviction Protections to Be Extended Until at Least March, Leaders Say*, COMMUNITY IMPACT NEWSPAPER (Dec. 10, 2020), <https://communityimpact.com/austin/central-austin/coronavirus/2020/12/10/austins-multilayered-eviction-protections-to-be-extended-until-at-least-march-leaders-say/> [https://perma.cc/MM23-YSEL].

152. *See id.*

153. KUT Staff, *Covid-19 Latest: City of Austin Extends Ban on Evictions Through the End of 2020*, KUT (Sept. 30, 2020), <https://www.kut.org/health/2020-09-30/covid-19-latest-city-of-austin-extends-ban-on-evictions-through-the-end-of-2020> [https://perma.cc/JBYV-YHJ2].

154. *Id.*

155. Kate Goodrich & Jackson Walker, *Evictions in Travis County Suspended Through the End of the Year Due to COVID-19*, JD SUPRA (Oct. 5, 2020), <https://www.jdsupra.com/legalnews/evictions-in-austin-travis-county-61870/> [https://perma.cc/W2F8-9M3K].

156. *See id.*

eviction moratorium.¹⁵⁷ Very similarly, the Justices of the Peace for Travis County issued a standing order prohibiting non-emergency eviction cases from being heard, any writs of possession from being issued, and any previously-issued writs of possession from being executed. This order has been extended multiple times; when the order was re-issued on September 24, 2020, it was narrowed to only prohibit the specified eviction actions in nonpayment of rent cases where the monthly rent of the unit is \$2,475 or less or the tenant is qualified for protection under the CDC eviction moratorium.¹⁵⁸

Table 2: Local and state eviction-prevention measures effective in Travis County, Texas on September 1, 2020

INITIATION	COURT PROCESS	ENFORCEMENT	SHORT TERM SUPPORTS	TENANCY PRESERVATION
<ul style="list-style-type: none"> ✓ Landlords cannot give notices to quit ✓ Landlords cannot file to evict for non-emergency reasons 	<ul style="list-style-type: none"> ✓ Court deadlines are tolled ✓ Courts cannot schedule or hold non-emergency eviction hearings ✓ Eviction orders cannot be issued and existing orders are stayed ✗ Eviction cases are not sealed or masked 	<ul style="list-style-type: none"> ✓ Law enforcement cannot enforce an order to remove a tenant if issued for a non-emergency reason 	<ul style="list-style-type: none"> ✗ Eviction prevention measures do not extend past the end of the state of emergency ✓ Utilities under the jurisdiction of the Department of Public Utilities cannot shut off service due to nonpayment of bills ✓ Orders give a grace period to pay past-due rent ✗ Orders do not prohibit reporting of missed payments to credit bureaus ✗ Orders do not block foreclosure proceedings 	<ul style="list-style-type: none"> ✗ Landlords can still charge late fees ✗ Landlords are not prohibited from raising rent ✓ New funding is made available for statewide rental assistance programs ✗ Tenants are not guaranteed counsel in eviction cases

In total, three different bodies in the Austin-Travis County area issued

157. *See id.*

158. *See id.*

separate, overlapping eviction moratoria. These eviction moratoria overlapped with the statewide eviction moratorium temporally and in terms of scope but extended past the state moratorium in both respects as well. In other words, the local moratoria lasted longer and included additional protective measures. The result is a coherent and nearly water-tight eviction moratorium. Between the time that the first eviction moratorium (the Texas Supreme Court order) went into effect on March 19, 2020, and the most recent date with data available as of this writing, only 617 eviction cases have been filed in Travis County, or about sixteen per week.¹⁵⁹ This is higher than the number of evictions per week in Boston during the Massachusetts eviction moratorium, but still constitutes a decline in case volume of more than 90% relative to a typical year.

The City of Austin operated two emergency financial relief assistance programs: (1) Relief in a State of Emergency (“RISE”), which was funded at \$15 million for round one and \$10 million for round two; and (2) Relief for Emergency Needs for Tenants (“RENT”), which was funded at \$1.2 million for round one and \$17 million for round two.¹⁶⁰ RISE offered direct financial support: \$2000 grants to people living in Austin and Travis County whose household income was below 200% of the federal poverty line, who had experienced financial impact due to COVID-19, and who had not received more than \$1000 in assistance from another source in the past month.¹⁶¹ Eligible households who applied in the one-week window for the second round were chosen to receive the money by lottery,¹⁶² as even a pot of \$10 million was not enough to go around.¹⁶³ Applications for the program closed in September 2020;¹⁶⁴ as of the end of November 2020, there has not been a third round of RISE.

RENT offered traditional rental assistance: money paid to the landlord for rent.¹⁶⁵ Applications for the first round of funding were accepted for a week in early May 2020.¹⁶⁶ The second round, with more than ten times the funding,

159. *Eviction Tracking System*, *supra* note 116.

160. *See* Nat’l Low Income Hous. Coal., *supra* note 135.

161. *COVID-19 Relief in a State of Emergency (RISE) Fund*, CITY AUSTIN, <http://www.austintexas.gov/article/covid-19-relief-state-emergency-rise-fund> [<https://perma.cc/8SXB-56VR>] (last visited Dec. 3, 2020).

162. *Id.*

163. *See id.*

164. KUT Staff, *COVID-19 Latest: Austin Reopens Relief Grant Program for Nonprofits, Hutto to Offer Free Testing*, KUT (Sept. 21, 2020), <https://www.kut.org/health/2020-09-21/covid-19-latest-austin-reopens-relief-grant-program-for-nonprofits-hutto-to-offer-free-testing> [<https://perma.cc/38UL-J2UR>].

165. *RENT Assistance for Austin Tenants Affected by COVID-19*, HOUSING AUTHORITY CITY AUSTIN, <https://austin.covidrenthelp.org/Home/Faqs> [<https://perma.cc/PP8M-ZFW2>] (last visited Dec. 4, 2020).

166. Andy Jechow & Jerry Quijano, *City Providing \$1.2 Million in Rental Assistance for Austinites Affected by the Pandemic*, KUT (May 1, 2020), <https://cbsaustin.com/news/local/city-of-austin-issuing-12m-in-residential-rental-assistance-amid-coronavirus-pandemic> [<https://perma.cc/6858-HPF8>].

opened for applications in August 2020.¹⁶⁷ For both rounds, tenants needed to have a household income of less than 80% of the AMI and demonstrate a negative financial impact from COVID-19 to be eligible, but the precise geographic boundaries of where one needed to live to receive aid shifted between the first and second rounds.¹⁶⁸ As of the end of November 2020, the application (available in nine languages) is still open for RENT 2.0, which in October 2020 was expanded from paying up to three months of rent to covering up to six months of rent.¹⁶⁹ The application has remained open because the city has struggled to get the money out the door.¹⁷⁰ By contrast, in neighboring San Antonio, city officials estimated in late September 2020 that they would exhaust \$50 million in rental assistance funding by the end of that month.¹⁷¹ An October 2020 memorandum to Austin City Council members makes clear the significance of six months of rent payments: the average household income of an applicant for RENT was just \$15,000.¹⁷² Still, landlords could opt out of the program. If a landlord refused to participate, or simply did not fill out the paperwork within forty-eight hours of being contacted by the program administrators, the tenant would not receive assistance.¹⁷³

Despite challenges like slow rent relief payments, Austin's COVID-19 housing response has been remarkable for its scope and comprehensiveness. Texas's statewide moratorium expired in May 2020 and never included a filing ban, but in Travis County, tenants have continuously been protected from eviction filings since April 2020. Unlike the state eviction diversion program, which requires tenants to have received an eviction filing (one that might follow them for years regardless of the outcome of the case) in order to apply for six months of assistance, Austin's rent relief program permits tenants to pay rent before the situation progresses to a court filing. Austin's response should serve as a model for other local governments to follow in keeping their residents housed, particularly in states with weak or nonexistent state-level eviction-

167. Audrey McGlinchy, *The City's Got Millions to Help Austinites Pay Rent, but Giving It Away Is Harder Than Expected*, KUT (Oct. 22, 2020), <https://www.kut.org/austin/2020-10-22/the-citys-got-millions-to-help-austinites-pay-rent-but-giving-it-away-is-harder-than-expected> [https://perma.cc/UR9U-ALN7].

168. Arden Ward, *City of Austin Launches \$17M Rent Relief Plan Amid Coronavirus Crisis*, CULTUREMAP AUSTIN (Aug. 17, 2020), <https://austin.culturemap.com/news/city-life/08-17-20-city-of-austin-launches-17m-rent-relief-plan-amid-coronavirus-crisis/> [https://perma.cc/T2LM-DS78].

169. Audrey McGlinchy, *Concerned That Money Will Go Unspent, Austin Makes Changes to Its Rent Help Program*, KUT (Nov. 2, 2020), <https://www.austinmonitor.com/stories/2020/11/concerned-that-money-will-go-unspent-austin-makes-changes-to-its-rent-help-program/> [https://perma.cc/L2WP-7NMS].

170. *Id.*

171. Garnham, *supra* note 149.

172. Memorandum from Rosie Truelove, Dir., Hous. & Planning Dev., to Mayor and Council Members (Oct. 30, 2020), <http://www.austintexas.gov/edims/pio/document.cfm?id=349480> [https://perma.cc/CR3J-4S5B].

173. *COVID-19 Relief in a State of Emergency (RISE) Fund*, *supra* note 161.

blocking emergency policies and programs.

C. Federal Interventions

1. CARES Act

The federal CARES Act, which was signed into law on March 27, 2020, included several key supports that helped to reduce the number of eviction cases filed in the United States during the pandemic.¹⁷⁴ First, the CARES Act included an eviction moratorium that protected millions of renting households from eviction filings between March 27, 2020, and July 25, 2020.¹⁷⁵ Second, the Act appropriated funding to help renters stay current on rental payments, specifically an extra \$600 per week to supplement state unemployment benefits, other expanded unemployment insurance provisions, a one-time payment of \$1200 (enough to cover one month of median rent in the vast bulk of counties in the United States),¹⁷⁶ and a large appropriation for grants that states could use for rental assistance.¹⁷⁷ The CARES Act did not, however, include an enforcement mechanism or a penalty for landlords who violated the order. It also did not establish clear or comprehensive national standards for how rental assistance programs should be administered (*e.g.*, forbidding, recommending, or requiring that tenants be permitted to self-certify fulfillment of eligibility requirements).¹⁷⁸

As such, the implementation of the CARES Act resembled a patchwork of protections across the nation. Landlords could not, for the reason of nonpayment of rent, issue a notice to quit or file to evict tenants residing in covered properties for the duration of the Act. Following the expiration of the Act, landlords were required to give a thirty-day notice to quit, meaning that the earliest that landlords could issue notices to quit to tenants in covered properties was August 25, 2020.¹⁷⁹ Put simply, “covered properties” under the CARES Act are any and all properties that receive federal funds or are financed by the federal government.¹⁸⁰ However, more than a dozen specific housing programs fell under the “covered properties” definition in the Act, making it challenging to determine whether any

174. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

175. *Id.*

176. John W. Schoen & Lorie Konish, *Where Your Coronavirus Stimulus Check Will Go Furthest, Based on US Rents*, CNBC (Apr. 1, 2020), <https://www.cnbc.com/2020/04/01/where-your-coronavirus-stimulus-check-will-go-furthest-based-on-rents.html> [https://perma.cc/6QKY-8JNU].

177. *See The CARES Act Provides Assistance for State, Local, and Tribal Governments*, U.S. DEP'T TREASURY, <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> [https://perma.cc/PE3Z-PKLT] (last visited Mar. 28, 2021).

178. *Id.*

179. *See* Grace Gregson et al., *Implications of the CARES Act for Landlords and Residential Tenants*, JD SUPRA (Apr. 15, 2020), <https://www.jdsupra.com/legalnews/implications-of-the-cares-act-for-65433/> [https://perma.cc/KNT3-2BP3].

180. *Id.*

given unit was a covered property.¹⁸¹ While a tenant likely would know if they received a Section 8 voucher, the tenant might not know if the landlord received tax credits under the Low Income Housing Tax Credit Program, or if the landlord's mortgage was backed by Freddie Mac.¹⁸² No centralized database existed for covered properties.¹⁸³ Plus, the federal government could not even determine how many properties were covered, let alone which properties those were; the Atlanta branch of the Federal Reserve estimated that anywhere between 28.1% and 45.6% of occupied units were covered properties.¹⁸⁴

In some states, like Texas as discussed above, landlords were required to certify that a unit was not “covered” by the CARES Act moratorium when filing to evict a tenant from that unit.¹⁸⁵ This informed landlords about the Act, which in theory created a penalty for non-compliance with the Act (perjury) and aided the court in ensuring that landlords were complying with federal law. In others, such certification was not required by the court, nor was a fact-finding process to determine whether the filing was allowable under the law.¹⁸⁶ In these places, the CARES Act could be a tree falling unnoticed in a forest.

Early evidence indicates that the CARES Act did prevent an unknown number of eviction cases from being filed during the effective period.¹⁸⁷ When the CARES Act expired, eviction filings went up in most sites tracked on the Eviction Lab's Eviction Tracking System that were not covered by a local or state moratorium.¹⁸⁸ It is not possible to say, at least at this time, how many eviction filings were avoided or how many were avoided by particular provisions in the Act. The supplementary unemployment insurance – the extra \$600 per week for people receiving unemployment benefits – ended on August 31, 2020, coinciding with the expiration of the CARES Act eviction moratorium. At this point in late summer, businesses were also opening across the country, giving the impression

181. *See Does A New Federal Law Protect You from Eviction?*, NAT'L LOW INCOME HOUSING COALITION., <https://www.nhlp.org/wp-content/uploads/Federal-Tenant-Notice-NHLP-AHJ-NLIHC.pdf> [<https://perma.cc/6YVM-XJEE>] (last visited Mar. 24, 2021).

182. *See id.*

183. Sarah Stein & Nisha Sutaria, *Housing Policy Impact: Federal Eviction Protection Coverage and the Need for Better Data*, FED. RES. BANK ATLANTA, <https://www.frbatlanta.org/community-development/publications/partners-update/2020/covid-19-publications/200616-housing-policy-impact-federal-eviction-protection-coverage-and-the-need-for-better-data.aspx> [<https://perma.cc/KX57-8E75>] (last visited Nov. 30, 2020).

184. *Id.*

185. *COVID-19 Housing Policy Scorecard*, *supra* note 56. Eighteen states implemented a policy requiring landlords to certify that the unit was not subject to the CARES Act when filing to evict: Arizona, Arkansas, Georgia, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, and Vermont. *Id.*

186. *See id.*

187. Hepburn & Louis, *supra* note 1; *Eviction Filings During and After Local Eviction Moratoria*, *supra* note 1.

188. *Id.*

that the pandemic was “over” or that it was time to return to “business as usual.” All of these factors likely played a role in the lower number of eviction filings prior to August 25, 2020, and the elevated filings numbers following that date.

2. *CDC Order and CDC Order Redux*

Soon after the expiration of the CARES Act, on September 1, 2020, the CDC announced a new eviction moratorium that would be in effect from September 4, 2020, to December 31, 2020.¹⁸⁹ The moratorium relied on a statute allowing the CDC director to take necessary measures to prevent the spread of communicable diseases when the CDC director deemed local measures to be insufficient.¹⁹⁰ Unlike the CARES Act, the CDC eviction moratorium did not have a financial assistance component, nor was it accompanied by new financial assistance from Congress.¹⁹¹ The main thrust of the order is contained in a single sentence:

Under this Order, 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.¹⁹²

Exceptions to the blanket ban on evictions included any cause other than nonpayment of rent.¹⁹³ The order initially applied everywhere falling under the federal government’s jurisdiction except American Samoa (which did not have any cases of COVID-19 at the time of September 4, 2020) and states and local areas with more protective measures in place (*e.g.*, Massachusetts or Austin, Texas).¹⁹⁴ Whereas the CARES Act had covered *properties* – and tenants could not always determine on their own whether their unit was a covered property – the CDC order covered *people*, with eligibility requirements that hinged on information tenants could be expected to know about themselves, to which tenants could attest without having to provide documentation.¹⁹⁵ To qualify for protection under the order, tenants needed to certify, generally speaking, that they expected to make less than \$99,000 in 2020 and were doing their best to pay rent during the pandemic.¹⁹⁶

The CDC order defined “eviction” and “evict” in this way: “any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a

189. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

190. *Id.*

191. *See id.*

192. *Id.*

193. *See id.*

194. *Id.*

195. *See id.*

196. *Id.* at 55,293.

covered person from a residential property.”¹⁹⁷ On its face, this appeared quite broad. Initial analysis by NLIHC and some courts indicated that this would cover all parts of the eviction process controlled by the landlord, from issuing a notice to quit to requesting a writ of eviction.¹⁹⁸ As such, the CDC moratorium would provide more substantial protection from eviction – and thus would apply – in the bulk of American states and territories. This interpretation also comported with the order’s Statement of Intent, which instructed that the order should be interpreted in such a way as to mitigate the spread of COVID-19.¹⁹⁹ As discussed above, for an eviction moratorium to be the most effective in preventing residential mobility and thus potential COVID-19 spread, it must stop the eviction process at the earliest stage possible.²⁰⁰

In early October, after the eviction moratorium had already taken effect, however, the CDC issued a frequently asked questions (“FAQ”) flyer that stated that the order was *not* intended to “terminate or suspend the operations of any state or local court,” nor “prevent landlords from starting eviction proceedings.”²⁰¹ The order did not clarify how permitting eviction proceedings to begin comported with the stated goal of mitigating evictions.²⁰² Rather, the order appeared to anticipate a scenario where writs of eviction would tee up at a sheriff’s office until January 1, 2021, when they would suddenly all become active at once. The FAQ flyer additionally clarified that landlords could challenge the veracity of tenant declarations in court and did not have to take them at face value.²⁰³ In sum, what initially appeared to be a quite strong ban on eviction filings for most tenants experiencing financial hardship due to COVID-19 has turned into, at best, a half-measure: a postponement of eviction by a few months, for a few well-informed tenants who land before well-informed judges and magistrates.

Between the day that the CDC eviction moratorium went into effect and November 27, 2020 (the last day with data available as of this writing), 55,180 eviction cases have been filed in the twenty-seven cities included in the Eviction

197. *Id.*

198. Matthew Goldstein, *How Does the Federal Eviction Moratorium Work? It Depends Where You Live*, N.Y. TIMES (Sept. 16, 2020), <https://www.nytimes.com/2020/09/16/business/eviction-moratorium-renters-landlords.html> [<https://perma.cc/FV39-NAEF>].

199. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. at 55,293.

200. *Id.* at 55,292.

201. *HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19: Frequently Asked Questions*, CTR. FOR DISEASE CONTROL & PREVENTION 1, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf> [<https://perma.cc/U8V2-D63Z>] (last visited Jan. 17, 2021).

202. *See* Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. at 55,296.

203. *HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19: Frequently Asked Questions*, *supra* note 201.

Tracking System.²⁰⁴

IV. A WORD ABOUT COURTS

The courts' ability to respond to the pandemic and to institute reforms that ensure improved access to justice for tenants is obviously much more limited than that of the legislatures or governors. Courts, after all, do not write the law. Even still, court systems have many measures available to them, depending on the powers given to courts in different states. During the pandemic, courts stopped accepting filings, stopped holding hearings, continued cases, and stayed writs and judgments.²⁰⁵ These emergency measures shielded tenants from immediate harm during the pandemic. Some courts and judges also worked to ensure that federal emergency orders were followed and that renters and landlords were aware of the orders (*e.g.*, sending copies of the CDC tenant declaration along with the notice of an eviction filing, requiring landlords to certify along with an eviction filing that the property in question was not covered by the CARES Act, or asking from the bench if the tenant was aware of or qualified for the protections in the CDC moratorium). Meanwhile, other courts appeared to do little to ensure that landlords followed the federal orders.²⁰⁶

Looking ahead, courts have many options available to them to reduce fallout from the pandemic and its accompanying economic crisis. Courts can seal or mask eviction records, concealing the tenants' names and addresses from when the case is filed onward and mitigating the harm that the record does to a tenant in later years.²⁰⁷ Courts can create mediation programs that run alongside the eviction system and permit landlords to sit down with tenants and mediators prior to, or hopefully instead of, filing for eviction.²⁰⁸ Courts can partner with law schools to build out housing law clinics, increasing the fraction of tenants who receive legal assistance during their case. Courts can advocate for the right to counsel to be implemented in their states, cities, and counties. These are not

204. *Eviction Tracking System*, *supra* note 116. These twenty-seven cities are: Austin, Texas; Boston, Massachusetts; Bridgeport, Connecticut; Charleston, South Carolina; Cincinnati, Ohio; Cleveland, Ohio; Columbus, Ohio; Ft. Worth, Texas; Gainesville, Florida; Greenville, South Carolina; Hartford, Connecticut; Houston, Texas; Indianapolis, Indiana; Jacksonville, Florida; Kansas City, Missouri; Memphis, Tennessee; Milwaukee, Wisconsin; Minneapolis-St. Paul, Minneapolis; New York, New York; Philadelphia, Pennsylvania; Phoenix, Arizona; Pittsburgh, Pennsylvania; Richmond, Virginia; South Bend, Indiana; St. Louis, Missouri; Tampa, Florida; and Wilmington, Delaware. *Id.*

205. *COVID-19 Eviction Moratoria & Housing Policy*, *supra* note 5.

206. Matthew Goldstein, *As Evictions Loom, Lawyers Are Gearing Up to Help*, N.Y. TIMES (Aug. 24, 2020), <https://www.nytimes.com/2020/08/24/business/tenants-lawyers-eviction-moratorium.html> [<https://perma.cc/227A-YMQK>] (describing the CARES Act); Goldstein, *supra* note 158 (describing the CDC eviction moratorium).

207. *See, e.g.*, Michael C. Zogby & Kaitlyn E. Stone, *A Litigator's Guide to the 2020 New Jersey Rule Amendments*, NAT'L L. REV. (Sept. 8, 2020), <https://www.natlawreview.com/article/litigator-s-guide-to-2020-new-jersey-rule-amendments> [<https://perma.cc/H34M-4EKB>].

208. *E.g.*, Tokarz et al., *supra* note 23.

extreme measures, despite how rarely the measures are taken across the country. Courts must not simply leave housing to the legislature. As the emergency measures during the pandemic have shown, all branches of government have a role to play in keeping people housed in this country.

V. MOVING FORWARD: CONSIDERING EVICTION SYSTEM REFORM THROUGH HEALTH JUSTICE

At some point in the near future, the last remaining eviction moratoria will end. For a brief moment in May 2020, more than half of renters were covered by some form of state eviction ban, in addition to a targeted federal ban and many local bans.²⁰⁹ These actions were taken as emergency steps to prevent an acute catastrophe, recognizing both that America was facing an economic meltdown and that this particular byproduct of the economic crisis would further the health crisis. As the crisis wore on, however, this early commitment to stabilizing the economic situation and preventing further negative health impacts fell to the wayside. As of this writing in November 2020, COVID-19 infections are increasing at a rate greater than in March 2020, yet the vast majority of renters live in states with little or no protection from eviction (defined as states with under 1.5 stars on the Scorecard). Eviction courts across the country are resuming business as usual, despite the fact that the pandemic has yet to subside or that “business as usual” *already* represented a severe housing crisis.

The pandemic forced policymakers to take dramatic, expedited action to stabilize the American rental housing market in the spring and summer. The continued pandemic forces policymakers to confront the choice of whether to return to a worsened status quo – the crises of the past few years and months – now in the middle of winter, with renters’ savings and relief aid exhausted, or whether to build long-term programs to move into a better future. Physicians are guided by the Hippocratic principle of “[f]irst, do no harm.”²¹⁰ What if housing policy was similarly guided by a principle of *first, keep people housed*? Eviction presents numerous health risks, yet even amidst this once-in-a-generation emergency, relief measures are designed to ward off moral hazard: executive orders forbidding eviction filings included explicit warnings that renters were still on the hook for rent; rental assistance programs designed to keep low-income families from becoming homeless included such onerous documentation and application requirements that the program staff worried that they would not be able to spend all of their federal dollars.²¹¹ These measures are haunted by a phantom unsavory tenant from whom policymakers must protect the landlord and the taxpayer. American housing policy treats rental housing first as an investment and income-generating scheme for landlords, and second as homes for renters.

There is another way. The current best practice in homelessness response is

209. *COVID-19 Eviction Moratoria & Housing Policy*, *supra* note 5.

210. Robert H. Shmerling, *First, Do No Harm*, HARV. HEALTH PUB. (Oct. 13, 2015), <https://www.health.harvard.edu/blog/first-do-no-harm-201510138421> [<https://perma.cc/FG5A-S7SH>].

211. *E.g.*, McGlinchy, *supra* note 167.

a “housing first” policy: do not require people without housing to get sober or get a job or even just wait to secure housing for them. Start with housing and supply wraparound services to support them, resolving the other issues.²¹² A policy of “First, keep people housed” should be even easier to implement: the population the policy serves already by definition has housing. All the policy regime must do is assist in keeping those people housed and accessing higher-quality housing.

How do we keep people housed? We raise barriers to filing for eviction so that landlords must treat eviction as a tool of last resort, rather than a rent-collection strategy when a tenant misses a payment. This might look like raising filing fees, establishing a floor for nonpayment eviction claims to eliminate evictions over small sums of money, or requiring an out-of-court mediation process prior to filing. We make housing more affordable, which can look like building new housing, funding rental assistance or housing vouchers, or implementing rent control, but can also look like raising the minimum wage to a living wage. We support tenants through the eviction process by establishing the right to counsel in housing cases – guaranteeing that all people receive adequate legal counsel when their home is at risk. We mitigate the harm done by eviction by removing requirements that renters have an eviction-free record to apply for government housing assistance and sealing or masking more eviction cases. None of these policies is extreme or impossible, and nearly all can be done at the local or state level. Indeed, the fact that so many states and cities, as well as the federal government, stepped up to institute extraordinary anti-eviction measures during the early days of the pandemic should indicate that where there is a will, there is a way to keep people housed. Can we keep that will to keep people housed as the pandemic continues and, eventually, ends?

Eviction is common, quick, and traumatic. Eviction is a public health crisis. Eviction is at once life-altering for the tenant and routine for the landlord. None of this is inevitable. We must not allow it to remain the case. The health of our neighbors and communities depends on it.

212. See generally *Fact Sheet: Housing First*, NAT’L ALLIANCE TO END HOMELESSNESS (Apr. 2016), <http://endhomelessness.org/wp-content/uploads/2016/04/housing-first-fact-sheet.pdf> [<https://perma.cc/LV9U-CXKP>].