

05/05/2021 MINUTE ORDER. Before the Court is the defendants' 57 Emergency Motion for a Stay Pending Appeal of this Court's 53 May 5, 2021 Order vacating the national eviction moratorium at 86 Fed. Reg. 16,731. In this emergency motion, the defendants request an immediate administrative stay to give this Court time to consider and rule upon its motion to stay this case pending appeal. Alternatively, the defendants request that the Court stay its 53 May 5, 2021 Order as to all parties except for the plaintiffs. Defs.' Emergency Mot. for a Stay Pending Appeal at 1 n.1, 8-9, Dkt. 57. Although the plaintiffs have not yet filed an opposition to the defendants' motion, which was filed at 6:54 p.m. this evening, the defendants represent that the plaintiffs oppose the motion. Id. at 1 n.1. In order to give the Court time to consider the merits of the defendants' 57 Emergency Motion for a Stay Pending Appeal, and the plaintiffs time to file an opposition to the motion, the Court will grant the defendants' request for a temporary administrative stay.

This Minute Order should not be construed in any way as a ruling on the merits of the defendants' motion. The Court notes, however, that, as the Court has explained, see Mem. Op. at 19, Dkt. 54, the law in this Circuit is clear: where a court concludes that an agency has exceeded its statutory authority, as this Court has done here, see Mem. Op. at 17, vacatur of the rule is the proper remedy in this Circuit. See Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs, 145 F.3d 1399, 1409 (D.C. Cir. 1998). Based on this clear authority, courts in this Circuit do not restrict vacatur only to those plaintiffs before the Court. See, e.g., O.A. v. Trump, 404 F. Supp. 3d 109, 152-53 (D.D.C. 2019). Indeed, the government has been unable to point to a single case in which a court in this Circuit has done so. See Mot. Hr'g Rough Tr. at 31.

Accordingly, it is ORDERED that the Court's 53 May 5, 2021 Order is administratively STAYED. It is further ORDERED that the plaintiffs shall file any opposition to the defendants' motion on or before May 12, 2021, and the defendants shall file any reply within four days of the date the plaintiffs' opposition is filed. So Ordered by Judge Dabney L. Friedrich on May 5, 2021. (lcdlf1)
(Entered: 05/05/2021)