



Race and Eviction During the Pandemic

INTRODUCTION

The COVID-19 pandemic altered almost all aspects of life, including judicial proceedings. In response to the need for social distancing to keep users of the justice system safe, courts rapidly instituted unprecedented public health precautions that participants in the court system described as chaotic.¹ Courts delayed and deferred cases. They also undertook a period of experimentation with remote and virtual operations.

Few if any areas of law were untouched, but landlord-tenant law was especially disrupted. Early in the pandemic, some states and then the federal government put in place broad moratoria on (most) evictions, so that a large class of legal cases was indefinitely put on hold. This Policy Spotlight reviews novel national survey data of attorneys, judges and other court personnel, as well as individuals who had courts experiences during the pandemic. We asked about how people’s housing situations were affected by the pandemic, with special attention to differences across racial groups in this regard.

Documenting recent experiences should help to inform discussion of what is likely to happen next, as the rental housing market transitions back to normal now that the eviction moratoria have been lifted. A substantial backlog of eviction cases means that the range of innovations in

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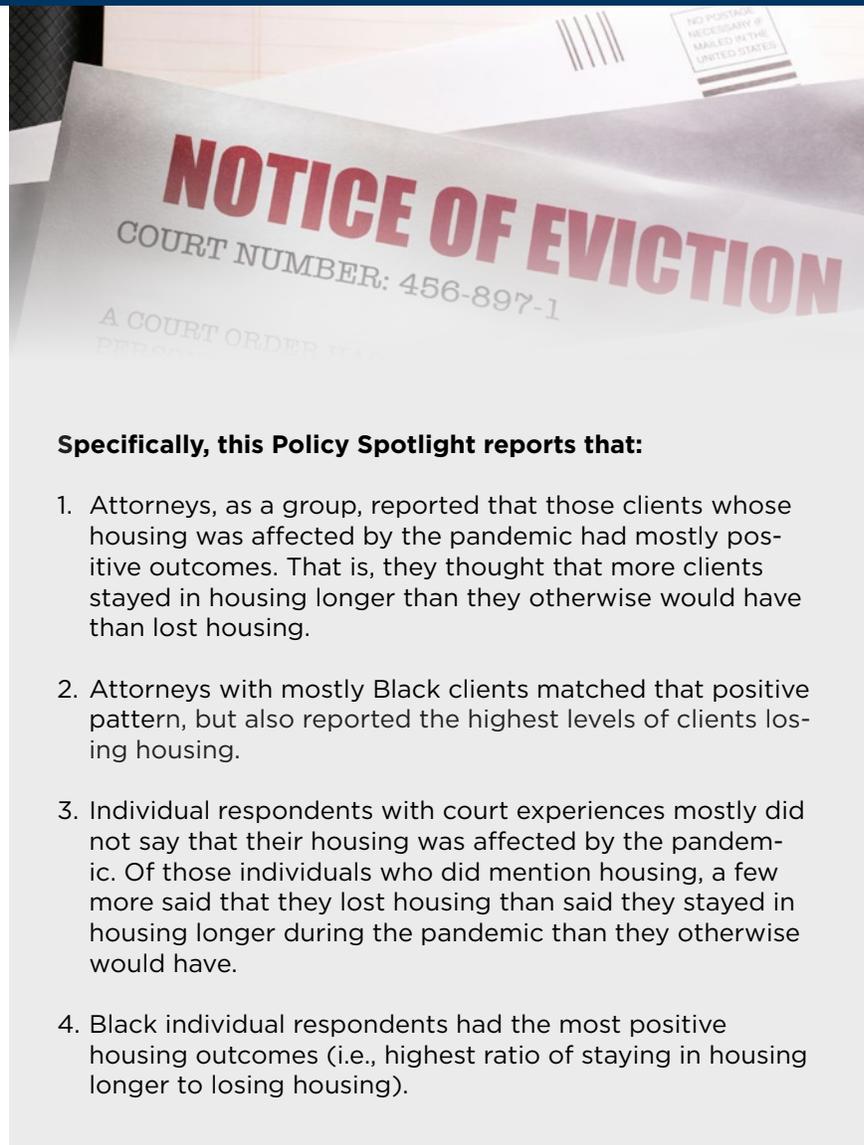


court procedures will continue to influence outcomes for the foreseeable future.

When eviction moratoria were first broached as a response to COVID-19, racial disparities were a recurring concern. U.S. House of Representatives Speaker Nancy Pelosi said, “Housing security is a matter of justice, as structural racism puts communities of color unfairly at risk of being rent-burdened or homeless.”² There were widespread fears that African American communities would be hit hardest by COVID-19’s impact on housing security.³

Our survey evidence presents a more mixed picture about eviction and race. Attorneys we surveyed believed that the eviction moratoria generally succeeded in keeping people in their homes, though some lost housing just the same. Attorneys with mostly Black clients reported the highest levels of clients losing their housing. At the same time, of individuals we surveyed, African Americans reported the most positive housing outcomes among respondents—that is, they had the highest ratio of staying in housing longer to losing housing. Making sense of these and other findings points to variations in the experiences as well as perceptions of different groups during the pandemic.

Contrary to the predictions, and notwithstanding attorneys’ impressions, Black respondents reported the best experiences. Now that moratoria have been lifted, this surprising result warrants continued attention. It is important to monitor whether patterns that pre-dated the pandemic, that gave rise to concerns about a disproportionate effect on people of color, in fact reemerge—and determine the reality for African American communities.



Specifically, this Policy Spotlight reports that:

1. Attorneys, as a group, reported that those clients whose housing was affected by the pandemic had mostly positive outcomes. That is, they thought that more clients stayed in housing longer than they otherwise would have than lost housing.
2. Attorneys with mostly Black clients matched that positive pattern, but also reported the highest levels of clients losing housing.
3. Individual respondents with court experiences mostly did not say that their housing was affected by the pandemic. Of those individuals who did mention housing, a few more said that they lost housing than said they stayed in housing longer during the pandemic than they otherwise would have.
4. Black individual respondents had the most positive housing outcomes (i.e., highest ratio of staying in housing longer to losing housing).

In 2016, across the United States, there were more than 2.35 million eviction filings, which resulted in 898,479 evictions, displacing approximately 2.3 million individuals.

EVICTIONS BEFORE THE PANDEMIC

Eviction of tenants is a fairly routine part of the American housing market. In 2016, for instance, across the United States, there were more than 2.35 million eviction filings,

which resulted in 898,479 evictions,⁴ displacing approximately 2.3 million individuals.⁵ Eviction laws vary substantially by state in terms of the grounds on which eviction is permissible, the time periods for notification and response, and so on. Failure to pay rent in a timely manner is the most common reason tenants are evicted.

Certain details about eviction procedures merit mention. First, failure to pay rent is not the sole basis on which eviction can occur. Additional grounds for eviction include conducting illegal activities at the property, violating occupancy limits and other terms of the lease, and willfully damaging the property. Second, while landlords can

initiate eviction proceedings by serving an eviction notice, a court must issue an eviction order before tenants may be removed from or prevented from entering the property. However, it is not clear if the need for a court order is widely understood: some tenants, lacking legal advice or experience, might depart upon being notified that an eviction filing has been made or even just because the landlord has threatened legal proceedings.⁶ Third, a large proportion of all eviction filings do not lead to court hearings because settlements and mediations are common in eviction cases. Fourth, when an eviction case does reach court, tenants are substantially more likely than landlords to represent themselves (to appear *pro se*).⁷ Moreover, tenants without legal assistance do markedly less well in eviction cases: having a lawyer helps hold onto housing.⁸

Eviction rates vary somewhat across racial-ethnic groups. For instance, a recent study of data from more than 1,000 counties over the years 2012-2016 estimated that the percentages of renters to be evicted differed by race: 3.4% for Black renters, 2.0% for White renters, 1.8% for Latino renters, and 1.4% for Asian renters.⁹

FEDERAL AND STATE EVICTION MORATORIA

Soon after the COVID-19 pandemic began, the federal government imposed a national eviction moratorium. In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES”), which established a 120-day eviction moratorium applicable to properties that “participated in federal assistance programs or were subject to federally backed loans.”¹⁰ On September 4, 2020, the U.S.



Centers for Disease Control and Prevention (“CDC”) imposed an eviction moratorium for tenants who made declarations of financial need and lived in counties with documented COVID-19 cases.¹¹ Initially set to expire on December 31, 2020, the CDC’s moratorium was extended three times: through March 31, June 30, and July 31, 2021. Despite some tweaking of conditions, it effectively applied nationwide for the duration. On August 3, 2021, in response to the Delta variant, the CDC issued a new moratorium, to expire on October 3. However, on August 26, 2021, in a case brought by an organization of realtors, the U.S. Supreme Court affirmed a federal district court judgment vacating the moratorium as beyond the CDC’s authority.¹²

The federal eviction moratorium applied to all tenants who met the moratorium’s income and other eligibility criteria and lived in counties with “substantial or high rates of community transmission” of COVID-19.¹³ Tenants had to provide their landlords with a signed declaration of eligibility showing that the tenant had made “all efforts to obtain

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governmental rental assistance” or was “facing risks of homelessness or overcrowded housing conditions upon eviction.”¹⁴ Significantly, the moratorium prohibited evictions “only for nonpayment of rent and related fees” and had no effect on eviction on other grounds.¹⁵ The moratorium also did not relieve tenants of their obligation to pay rent which therefore continued to accumulate even though eviction did not occur.¹⁶ Importantly, even as the federal moratorium prohibited eviction of tenants from housing, it did not itself bar landlords from initiating eviction proceedings in court and obtaining an eviction

order that could *later* be implemented. Nonetheless, many courts simply stopped processing eviction cases covered by the moratorium.

In addition to the federal eviction moratorium, states also imposed their own moratoria under state law. For example, on March 20, 2020, in accordance with the Illinois Emergency Management Agency Act,¹⁷ Governor J.B. Pritzker ordered all state, county, and local law enforcement officers to cease enforcement of eviction orders for residential properties for the duration of the Gubernatorial Disaster Proclamation.¹⁸ Like its federal counterpart, Governor Pritzker's executive order specified that the state's eviction moratorium should not be construed as "relieving any individual of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual may have under tenancy or mortgage."¹⁹ Illinois' residential eviction moratorium was extended several times through October 3, 2021, when it expired.²⁰

Today, a backlog of eviction cases is working its way through the courts. The

dynamics seem to vary a good deal by state, and even within states. Cook County, Illinois for example, was seeing pre-pandemic levels of eviction filings by summer of 2022, but it remains to be seen if the upward trend will continue.²¹

SECOND-HAND VIEWS OF THE PANDEMIC'S EFFECTS ON HOUSING

In the spring and early summer of 2021, we fielded parallel surveys of attorneys and court personnel (including judges and court administrators) to gauge their assessments of how accessible courts were during the pandemic, and particularly to understand how shifts to virtual judicial hearings impacted court access and case processing. We contacted leaders of over 200 bar associations around the country—both general-practice associations and specialty organizations in a variety of areas of law including criminal, consumer, housing, and litigation—and asked them to circulate our survey to their members. In collaboration with the National Center for State Courts, we also circulated the survey to judges and court personnel. In addition, we advertised the survey

through judges' associations and a variety of professional networks covering court clerks, legal aid agencies, legal clinics, medical-legal partnerships, and alternative dispute resolution organizations. Between March 15 and July 1, 2021, we received about 1,000 survey responses from lawyers. Between March 8 and July 28, 2021, about 450 court personnel submitted survey responses.

Surveying individuals who had been parties—litigants—in court during the pandemic was more difficult. Ultimately, we contracted with Qualtrics to obtain a sample of respondents who reported having been a party to a court proceeding (as distinct from participating as a juror, attorney, or court staff member).²² Between November 18 and December 12, 2021, 2,797 Qualtrics panelists were invited to our survey; 582 indicated that they had been a party in court and were willing to respond to our survey.

The surveys administered to litigants, court personnel, and attorneys were nearly identical in content. Each survey sought to determine the court experiences of litigants and the outcomes of judicial proceedings during the pandemic. Mindful that courts were experimenting with procedural innovations that minimized personal contact—particularly by holding court sessions online—we asked all respondents a series of questions about how the experiences of litigants and other court users compared to court experiences before the pandemic.

The survey directly probed housing issues. As part of a large battery of questions about possible case outcomes, we asked about individuals losing housing during the pandemic and, immediately thereafter,



about their staying in housing longer than would ordinarily be expected.

For court personnel and attorneys, the survey asked:

Please indicate how often you witnessed each of the following outcomes occur during the use of pandemic-related protocols [between March and August 2020/after September 2020]. In other words, for how many litigants would the following have been different if there had not been a pandemic?

- Litigants lost housing.
- Litigants remained in housing longer than they otherwise would have.

We asked respondents to answer the above question twice, once for the period March through August of 2020 and once for September 2020 or later. For brevity, we refer to these periods as “early” and “later.”

In answering, respondents were asked to choose one of the following options (they could also elect to skip the question):

- This is relevant to my case types, but I’ve never seen this happen.
- This happened in a few of my relevant cases.
- This happened in a moderate number of my relevant cases.
- This happened in quite a few of my relevant cases.
- This happened in most or all of my relevant cases.
- Not applicable to my situation or case type(s).
- I don’t know.

Table 1. Attorneys’ Impressions of Pandemic Effects on Clients’ Housing, Early

		Remained in housing longer				
		DK/NA	None, few	Some	Many, all	
Lost housing	DK/NA	803	19	3	9	
	None, few	14	81	13	66	80%
	Some	0	9	7	2	8%
	Many, all	3	6	3	14	12%
			50%	11%	39%	n = 1052

Source: Original survey data

We note, at the outset, that the question wording was deliberately general. We did not specifically ask about eviction, and exactly what “relevant to my case type” meant was left to attorneys to discern. Because we believe that attorneys involved in a wide variety of case types could learn about their clients’ housing status, the results below do not reflect responses only by those lawyers who reported practicing landlord-tenant law. Of course, people can lose housing for reasons others than eviction.²³ Nonetheless, we think that most respondents would have interpreted the question as bearing on eviction (or not) of tenants.

Table 1 shows how attorneys answered the two housing questions for the early period, with frequency counts for each answer combination and, in the margins, the corresponding percentages computed from only those who gave an answer to the given question. In tandem, the two items do not generate a sharp estimate of the proportion of clients that attorneys believed had their housing affected by the pandemic, but they do provide useful information.

A majority of attorneys declined to estimate the proportions of their clients whose housing was affected by the pandemic, as the top-left cell (803) reveals. For the others, for simplicity of presentation, we combined the first two and last two of the five ordered categories (abbreviated to “none” and “few” and “many” and “all”, respectively, here). The modal response for those who did not skip the question as unknown or irrelevant, however, was to say that few or none of their clients were affected either way (n = 81). Overall, the skew towards “none, few” was larger for losing housing (80%) than for remaining in housing longer (50%). (A small number (14, in the bottom-right cell) gave the slightly confusing response that many or all of their clients lost housing *and* many or all stayed longer in housing. That combination could signify the view that clients lost housing, but more slowly than would have been usual.) On the whole, then, the attorneys perceived the pandemic’s effect on clients’ housing as somewhat positive, i.e., as having extended housing somewhat more often than eliminating it.

Table 2 shows that the later period looks very similar. The percentage seeing few or none losing housing nudged up to 86%, and the percentage for none or few remaining longer climbed to 55%. Many respondents gave identical answers for the two periods, but insofar as we detect a time shift, it was towards no pandemic effects on housing.

Table 3 shows how court personnel responded to the same questions about housing for the early period. Putting aside the large number of court personnel who offered no information, the pattern is again positive. Most thought that few litigants lost housing and that many or all stayed in housing longer than they otherwise would have. Implicitly, their collective verdict was, again, that the moratoria largely worked to the benefit of tenants, as intended.

DIFFERENCES BY TENANTS' RACE: THE ATTORNEYS' VIEWS

Did attorneys perceive differences in housing outcomes according to their clients' racial or ethnic identities? Survey respondents were able to describe their clients in terms of ethno-racial composition, income level, and so on, by answering a series of questions. Following the U.S. Census, we included racial categories of Black or African American, American Indian or Alaska Native, Asian, White, Native Hawaiian or other Pacific Islander, and Other. And like the Census, we separated questions about speaking Spanish (as mother tongue) from questions about racial categories. See appendix for wording.

For all items, the survey asked what proportion of clients fit the description, and choices

Table 2. Attorneys' Impressions of Pandemic Effects on Clients' Housing, Later

		Remained in housing longer				
		DK/NA	None, few	Some	Many, all	
Lost housing	DK/NA	875	12	2	4	
	None, few	7	72	15	43	86%
	Some	0	5	2	3	6%
	Many, all	0	4	1	7	8%
			55%	12%	34%	n = 1052

Source: Original survey data

Table 3. Court Personnel's Impressions of Pandemic Effects on Clients' Housing, Early

		Remained in housing longer				
		DK/NA	None, few	Some	Many, all	
Lost housing	DK/NA	378	7	2	14	
	None, few	5	14	7	34	88%
	Some	1	0	1	3	7%
	Many, all	0	1	0	2	4%
			26%	12%	62%	n = 469

Source: Original survey data

were: none or very few; less than half; about half; more than half; and nearly all or all.

Many respondents declined to answer either question, leaving the ethno-racial composition of their clients unknown. Because respondents answered for each racial group separately, some combinations, such as multiple selections of "all" or exclusive selection of "none", were puzzling. These we combined with missing data as "unknown." With fairly small numbers of respondents, we focused on White, Black, Hispanic and their interaction. Hence, we formed 6 mutually exclusive and exhaustive categories of attorney,

according to the ethnic mixes of their clients. Our 1,052 respondents are coded as follows:

- U:** 743 unknown (71% of sample)
- W:** 161 mostly White (15% of sample, 53% of the not-unknown subset)
- B:** 67 mostly Black, not mostly Hispanic (6%, 22%)
- &:** 20 mostly Black and mostly Hispanic (2%, 7%)
- H:** 39 mostly Hispanic, not mostly Black (4%, 13%)
- O:** 15 all other mixes (1%, 5%)

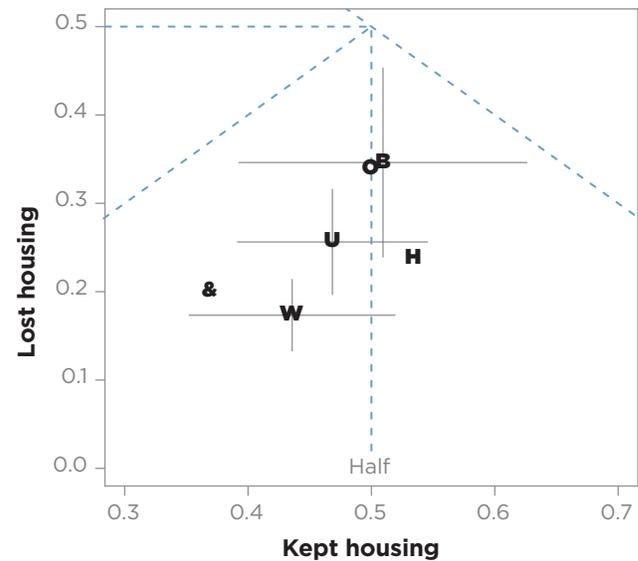
To be clear, a given client could be regarded by a lawyer (and him or herself) as, for instance, Black and Hispanic. The 20 or so lawyers we classify as having mostly Black and mostly Hispanic clients might have few or many clients fitting both of those descriptions individually. One lawyer with only Spanish-speaking Black clients and another with equal mixes of non-Black Hispanic clients and non-Hispanic Black clients could both fall into this category.

Rather than create separate tables modelled on Tables 1-3 for each of these subsets of attorneys, we now simplify the two housing variables. We recode the responses (i.e., those abbreviated as none, less than half, about half, more than half, and all) to 0, 1/4, 1/2, 3/4, and 1, respectively. In other words, we assume that our respondents understood the response options to have “interval” properties such that the difference between any two adjacent ordered responses is always the same. The numerical values of 0, 1/2, and 1 very naturally correspond to “none”, “half” and “all,” but placing “less than half” and “more than half” at midpoints is convenient, if not strictly implied by the vague wording. This coding thus entails a strong, albeit common, assumption about respondents’ understanding of the response meanings. We can then compute means (simple averages). With the additional strong assumption that the respondents can be treated as a simple random sample from the full population of attorneys in the United States, we can precisely describe our uncertainty about estimates by computing confidence intervals.

Figure 1 shows the mean values on this 0-1 scale for both the lost-housing and kept-housing items, separately for groups of attorneys with distinct clients’ racial profiles. The markers are abbreviations for the categories broached above: “U” for “uncertain”; “W” for “White”; “B” for “Black”; “H” for “Hispanic”; “O” for “Other”; and “&” for “both Black *and* Hispanic”. To illustrate our uncertainty



Figure 1. Attorneys’ views on how many clients lost or kept housing



about precision, we added grey crosses showing (independent) 95-percent confidence intervals for each value. To reduce clutter, keeping the figure readable, we show only select confidence intervals. Such intervals convey the inherent uncertainty about estimates from samples. There is a range of plausible values for each quantity of interest, and these ranges are more sensible objects for comparison than are the exact point estimates.

Note that the two questions about housing are not mutually exclusive: an attorney can report that some clients lost housing while other clients kept housing longer than they otherwise would have. Neither are they exhaustive: for instance, an attorney believing that none of his or her clients had housing status affected by the pandemic could select “none” for both prompts (or could, instead, decline to answer either question). When we plot individual responses or means, we expect data to fall in the right triangle defined by the two axes and by the NW-SE diagonal line. Figure 1 shows a subsection of this triangle, with the downward-sloping dashed grey line marking the diagonal boundary (for respondents all of whose clients had housing affected in some manner). The upward sloping grey dashed line shows equal values, and so corresponds to symmetrical keeping- and losing- effects. All of the markers fall below that line, signifying that the attorneys saw more cases of clients keeping housing than losing it. The “B” marker shows that attorneys with predominantly Black clients, on average, thought that

about half of their clients kept housing while some number between half and less than half lost it.

The confidence intervals for the attorneys with mostly Black clients and those with mostly White clients overlap on the kept-housing dimension (horizontal) but not on the lost-housing dimension (vertical). We are thus confident that attorneys representing mostly Black clients saw more clients lose housing than did attorneys with mainly White clients—but we are not sure that these attorneys differed in regard to clients keeping housing. The intervals for the largest subset, those for whom client race is unknown, overlap with those for both B and W on both dimensions. In turn, we would not declare with confidence that the estimated differences (between U and B and between U and W, that is) are meaningful rather than originating in unavoidable sampling error or noise inherent in estimating unknown proportions from limited data.

The small numbers of respondents likewise means that we cannot confidently infer different experiences for attorneys representing largely Hispanic clients (as compared to either those with mostly White or those with mostly Black clients). Likewise, the slightly puzzling location of “&,” relatively far from both “B” and “H” should not obscure that our uncertainty about this estimate, from so few respondents, is quite high, and we are not confident that those attorneys genuinely differ from their counterparts represented by the B and H markers.

In short, then, the data suggest, first, that all attorneys saw more clients keep housing than lose it. In respect to tenant race, the

only gap large enough to meet conventional standards of statistical significance is that those attorneys with mainly Black clients saw more clients losing housing than did those attorneys with mainly White clients.

An important qualification is that this difference between groups of attorneys need not reflect differences in the experiences of clients themselves based on their race. That is, attorneys with more Black clients can have clients whose experiences with housing were worse even if the attorneys’ Black clients in fact had better, not

worse, experiences than did the same attorneys’ White clients. This is so because the survey result provides evidence of group experiences, not that of specific individuals. The faulty assumption that aggregate data necessarily reveal individual associations is sometimes coined “the ecological fallacy.” See the example in the box below.

Because we also conducted surveys of individual litigants, we have another set of reports to help assess whether different racial groups had different housing experiences during the pandemic.

The Ecological Fallacy

For a concrete illustration of how group observation may not track with the experiences of particular individuals, consider the simple dichotomy of losing housing or not. Suppose that an attorney with 7 Black clients and 3 White ones says that half of his clients lost housing, while another with 3 Black and 7 White clients says that less than half of his clients lost housing.

Together, those two reports might seem to suggest that Black clients fared worse, since the aggregate report was worse from the attorney with the higher share of Black clients.

But the first report could be based on 3 White and 2 Black clients having lost housing and the second on 4 White and 0 Black clients having lost housing. The clients’ experience, in turn, would then be 70 percent of Whites losing housing and only 20 percent of Blacks losing housing.

We do not, of course, assert or assume that the difference above need arise from such a pattern, wherein the non-Black clients of attorneys most of whose clients were Black did especially badly.

We merely note that it is unwise to assume that aggregated data reveal individual-level disparities directly, and that the indeterminacy arises from aggregation rather than from the use of imprecise categorizations such as “less than half” or “more than half.”

FIRST-HAND REPORTS ON HOUSING OUTCOMES FROM LITIGANTS

When surveying individuals with pandemic court experience, we again followed the Census-Bureau norm of separating questions about speaking Spanish and race. That is, we asked about Hispanic heritage in one question and then separately let respondents choose as many of the five census bureau race categories as they liked. Again, limited data preclude exploring all possible comparisons. One way to recode the responses into a set of mutually exclusive and exhaustive categories is as follows:

1%	(8)	No response
55%	(320)	White only, not Hispanic
21%	(122)	Black only, not Hispanic
15%	(89)	Hispanic (any races)
8%	(46)	All other (non-Hispanic Asian, American Indian, Pacific Islander, others, mixes)

The residual category is diverse. Some might prefer not to place Hispanic heritage ahead of race as we did with our third category. But with a relatively small data set, there is very limited statistical power to explore all racial-ethnic variation.

Our survey of litigants very closely tracked the surveys used for attorneys and court personnel in scope and topic. We again asked about a range of outcomes, including both “I lost housing” and “I remained in my housing longer than I otherwise would have.” As with the attorneys’ questions, there is some ambiguity in the short phrases we employed. Respondents

were cued to be thinking about case outcomes and legal options, so that something like a house fire would presumably not come to mind. On the other hand, survey researchers should always guard against assuming that all respondents read each question closely, and understand it exactly as the question-writer intended.

With that caveat, 30 respondents chose “I remained...,” 36 chose “I lost...,” and 5, a bit surprisingly, chose both of those options. (It is possible that a given individual might have been involved in two eviction processes during a multi-month period, with different outcomes, or that this combination conveyed a *delayed* loss of housing.) The racial

compositions of these groups are shown in Table 4.

There is little sign that Black respondents fared worse than others, as they were over-represented in the kept-housing set and under-represented among those saying that they lost-housing. With so few respondents having selected any housing outcome, it is perhaps also useful to examine the full distributions for each racial group, including the majorities who reported no pandemic effects on housing. Table 4 shows probabilities of racial categories, conditional on housing outcomes. Table 5 shows, instead, estimated probabilities of each outcome (including none) separately for each racial group.

Table 4. Racial Profiles for Distinct (Self-Reported) Housing Outcomes

	Lost housing	Remained in housing longer	Both responses
White	69% (25)	40% (12)	40% (2)
Black	3% (1)	30% (9)	--
Hispanic	14% (5)	23% (7)	40% (2)
Other	14% (5)	7% (2)	20% (1)
N =	36	30	5

Source: Qualtrics panelists

Table 5. Self-Reported Housing Outcomes by Race

	Lost housing	Remained in housing	Both	No response	N =
White	8% (25)	4% (12)	1% (2)	87% (281)	320
Black	1% (1)	7% (9)	0% (0)	92% (112)	122
Hispanic	6% (5)	8% (7)	2% (2)	84% (75)	89
Other	11% (5)	4% (2)	2% (1)	83% (38)	46

Source: Qualtrics panelists

In sharp contrast to the reports by attorneys, White litigants reported the worst outcomes, and Black respondents the best. Despite the rather small sample size, this difference achieves statistical significance at conventional levels. For instance, if we estimate an ordered probit model to predict probabilities of losing housing, both or neither, and keeping housing, with only racial-category variables as predictors, and White as the baseline group, the t statistics are small for Hispanic (1.6) and other (-0.4) but large for Black (3.0). The data thus suggest comparable experiences across non-Black respondents but markedly better outcomes for Black respondents.

DISCUSSION

While our attorney survey hinted at the possibility that during the pandemic Black tenants were less well protected against eviction than White tenants, we find the opposite pattern in self-reports by individuals who had court cases in 2020 and 2021. There is often good reason to prefer direct reports to second-hand ones, and so one might conclude that the individuals are surely better informed than the attorneys, and that the moratoria assisted Black Americans most. On the other hand, with conflicting conclusions, one need not necessarily endorse one and reject the other. Our survey samples are independent, and so we should not expect high conformity in responses: with the remote possibility of a fluke exception, the attorneys did not represent the individual litigants who answered the survey (most tenants, recall, are not represented by counsel). Accounts that harmonize the results are also conceivable. For example, attorneys might have focused on how clients fared in comparison



to other clients, while individual litigants focused instead on prior experiences or their own expectations. An attorney might thus have viewed a client as more vulnerable or to have suffered a greater loss than the client herself perceived.

More generally, it is worth keeping in mind the oddity of a period of moratorium. As we emphasized above, eviction processes were not stopped dead by state or national moratoria over the last few years. First, landlords everywhere could evict tenants on some grounds, such as damage to property. It is not fully

clear how many courts heard such cases over the pandemic period, but some did. Second, landlords could begin the eviction process even knowing that courts would not immediately act on their notices, and, as noted above, sometimes tenants vacate without ever being ordered to do so by a court.²⁴

Expectations about racial disparities in these reports should be set by the pre-pandemic baseline. In light of the claim broached above that Black Americans were somewhat more likely to be evicted than White Americans, pre-pandemic, the meaning of “remained in housing longer [during the pandemic] than they would have otherwise” might, itself, reflect past gaps. An intervention that greatly reduces the volume of eviction orders—a moratorium on court proceedings, for instance—could convert a pre-pandemic White-Black gap into a higher level of “kept housing longer” responses from Black respondents during the anomalous period (the moratoria).

Yet again, however, that expectation depends on further assumptions. The simple

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bivariate racial gaps in eviction rates broached above could be spurious, in the sense that they originate in other racial disparities, such as rental-payment reliability. The analysis in the prior work we cited was unconditional, so that the key gaps were between shares of the rental population and shares of the population facing and experiencing eviction. In other words, the authors made no estimates of the shares of the renters who were *evictable* for violating their leases in any manner. In turn, whether or not an intervention such as a moratorium on court hearings should produce differences in reports of retaining or losing housing across racial groups would depend critically on *which* differences explain the original racial gap, and whether these are associated with persistent loss of housing even after a systemic intervention. Without knowing whether gaps in eviction rates across races originate in gaps in, for instance, ability to pay or likelihood of violating occupancy limits, one cannot form precise expectations about what should be the effects of a temporary moratorium on select cases.

A distinct qualification relates to the nature of our data. We sought attorneys willing to discuss their experiences in court—in-person or remote—during the pandemic. Their reports on clients' housing experiences need not be about outcomes of eviction hearings, even if the question was framed in that manner. Our mass sample, in turn, was generated by asking a full battery of questions about experiences in court only of those who reported having had a court experience after the pandemic started. Since evictions were, in most cases, not making it to court in locales with moratoria (which included the whole of the nation for the



period of the federal moratoria), our sample was not necessarily the best set of people to report on eviction per se. Again, much depends on some subtle assumptions about how narrowly respondents understood our questions, plus fine details about which sorts of eviction cases actually took place, and where. Lacking such data, we merely flag some distinct possible interpretations of the findings.

Accordingly, in a sequel, we will explore a larger dataset of survey responses produced by the Census Bureau, reporting on expectations and anxiety about eviction through 2020 and 2021. Those data should shed light on post-moratorium eviction experiences, clarifying the significance of our conclusions

In turn, whether or not an intervention such as a moratorium on court hearings should produce differences in reports of retaining or losing housing across racial groups would depend critically on which differences explain the original racial gap, and whether these are associated with persistent loss of housing even after a systemic intervention.

about housing during the pandemic. We have indirect evidence of Black tenants having fared worse than White tenants in regards to pandemic eviction, but first-hand accounts pointing the opposite way. We are not sure that the predicted racial differences showed up during the pandemic. What differences might arise as court proceedings become more normalized are hard to predict, either from knowledge of pre-pandemic patterns or from analysis like the foregoing. The housing market at present is affected by the backlog of eviction cases that built up over the course of the pandemic. Moreover, there are some signs that the moratoria, while protecting renters in the short-run, also shrunk the supply of rental housing, as some landlords have sold properties and gotten out of the rental business.²⁵

Finally, our analysis above was deliberately narrow, and limited by the fact of most evictions having been delayed in the pandemic period. One critical issue in the near future are how eviction cases take place—whether online or in-person or some of each. Research on how online proceedings differ from virtual is only now coming forth²⁶, and in the case of eviction, features like the fairly high pre-trial settlement rate and high rate of tenant self-representation seem likely to interact with proceeding mode.

APPENDIX: EXACT SURVEY ITEMS

Attorneys and Court Personnel

Housing Outcomes

Please indicate how often you witnessed each of the following outcomes occur during the use of pandemic-related protocols [between March and August 2020/after September 2020]. In other words, for how many litigants would the following have been different if there had not been a pandemic?

- Litigants lost housing
- Litigants remained in housing longer than they otherwise would have

Response options: none or almost none; less than half; about half; more than half; almost all or all; not applicable to my situation

Clients' Race

We'd like to get a sense of the census categories of your typical client base. Please give us your best estimate of the proportion of your clients over the past year that typically fall into each category below. We know that you may not always have all of this information about your clients, but please do your best to estimate.

- Hispanic, Latinx, or of Spanish origin
- Not Hispanic, Latinx, or of Spanish origin

Response options for each row: none or very few; less than half; about half; more than half; all or nearly all; I don't know

- Black or African American
- Native Indian or Alaska Native
- Asian
- White
- Native Hawaiian or other Pacific Islander
- Other

Response options for each row: none or very few; less than half; about half; more than half; all or nearly all; I don't know

Individual Litigants

Court Experience

Since March 2020, have you personally had any experience with a court of law (whether in-person, by-phone, or online) because of a legal matter in which you have been involved? (In answering this question, please exclude any experience you may have had as an attorney representing somebody else, as a judge or other court employee, or as a juror.)

Housing Outcomes

Next, we'd like to know how your legal options and the outcome of your case may have been affected during the pandemic. Please indicate which of the following outcomes has occurred in your case, due to the pandemic or pandemic-related protocols. (select all that apply)

I lost housing

I remained in my housing longer than I otherwise would have

Race

- Are you Hispanic, Latinx, or of Spanish origin?
- How do you identify your race? (Please select all that apply.)

American Indian or Alaska Native
Asian

Black or African American

Native Hawaiian or other Pacific Islander

White

Other: []

ENDNOTES

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¹³ “The CDC’s Federal Eviction Moratorium,” *Congressional Research Service* 1-3, <https://perma.cc/DT9X-NM8M> (last updated Aug. 31, 2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 20 ILCS 3305/7.

¹⁸ Ill. Exec. Order No.2020-10 (Mar. 20, 2020), <https://perma.cc/J46E-PSAX>.

¹⁹ *Id.*

²⁰ Ill. Exec. Order No. 2021-23 (Sept. 17, 2021), <https://perma.cc/4H5R-5DRJ>; Jerry Nowicki, “Illinois Will Let Eviction Moratorium Expire Oct. 3,” *Chicago Daily Law Bulletin*, Sept. 21, 2021, <https://perma.cc/GSY3-RDNK>.

²¹ Grace Asiegbu, “Did pandemic relief avert an eviction crisis in Chicago? The full picture remains murky,” *Injustice Watch*, July 22, 2022, <https://perma.cc/FM34-HLEK>.

²² The exact question was: “Since March 2020, have you personally had any experience with a court of law (whether in-person, by-phone, or online) because of a legal matter in which you have been involved? (In answering this question, please **exclude** any experience you may have had as an attorney representing somebody else, as a judge or other court employee, or as a juror.)”

²³ The most obvious other example is probably having one’s home foreclosed upon by a lender because of non-payment of a mortgage. Other examples would include losing housing when released from incarceration or when at divorce a jointly owned house is awarded to one’s spouse.

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Publisher's Notes

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Pg. 1 - Lady Justice Statue, #533050578 by Meinzahn

Pg. 1 - Worried young man, #919384612 by Martin Prescott

Pg. 2 - Eviction notice, #1298071829 by Bill Oxford

Pg. 3 - Lawyer meets client, #1125718925 by SDI Productions

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