

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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CONEY ISLAND PREP; LESLIE-BERNARD
JOSEPH; HOUSING WORKS, INC.; CHARLES
KING; MARK LEVINE; and ALEXANDRA
GREENBERG,

Case No. 20-cv-9144

Plaintiffs,

**ORDER TO SHOW CAUSE
FOR PRELIMINARY
INJUNCTION**

-against-

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES; ALEX M. AZAR II, *in
his official capacity as Secretary of Health and
Human Services*; DR. ROBERT KADLEC, *in his
official capacity as Assistant Secretary of Health and
Human Services*; CENTERS FOR DISEASE
CONTROL AND PREVENTION; DR. ROBERT R.
REDFIELD, *in his official capacity as Director for
the Centers for Disease Control and Prevention*,

Defendants.

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Upon the Complaint of plaintiffs in the above-captioned action dated October 30, 2020, the Declaration of Kahlil C. Williams dated October 30, 2020 and all exhibits attached thereto, the additional supporting Declarations, each dated October 30, 2020, and the supporting Memorandum of Law dated October 30, 2020, and upon all other pleadings and proceedings had herein in support of Plaintiffs' motion for a preliminary injunction, it is hereby:

ORDERED, that defendants in the above-captioned action (“Defendants”) show cause before this Court at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007, in Courtroom _____, before Judge _____ at _____ on November _____, 2020, why Plaintiffs’ motion should not be granted and an Order to Show Cause should not be entered pursuant to Rule 65 of the Federal Rules of Civil Procedure:

1. Requiring Defendants, within 20 days of the signing of this Order, to complete unmet obligations pursuant to the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019, Pub. L. No. 116-22, 133 Stat. 905 (2019) (the “Pandemic Preparedness Act”) and other federal statutes, including:

- a. As to Defendants’ biosurveillance duties,
 - i. the convening, by Secretary Azar, of a withheld public meeting “for purposes of discussing and providing input on the potential goals, functions, and uses of the network” and to include representatives from federal, state, local and tribal health agencies, public and private sector expertise, and other stakeholders, 42 U.S.C. § 247d-4(c)(5)(B);
 - ii. the publication, by Secretary Azar, of a missing and/or withheld Biological Threat Detection Report on “the capabilities of detection systems in use by Federal departments and agencies,” including their ability to support corresponding state and local efforts, P.L. 116-22, 133 Stat. 905, 924–25;
 - iii. the publication, by Secretary Azar, of missing and/or withheld “technical and reporting standards, including standards for interoperability” of data collection and sharing between and among federal, state, local, tribal, and private organizations, 42 U.S.C. § 247d-4(b)(2)-(3); and
 - iv. the provision, by Secretary Azar of withheld time for notice and public comment on such standards, *id.* § 247d-4(b)(3); *see also* 5 U.S.C. § 533;
- b. As to Defendants’ duties to disclose other reports or information to the public,
 - i. the publication, by Secretary Azar, of all missing and/or withheld of four annual reports on the nation’s “health,” “health care,” “health resources,” and their use, *id.* § 242m(a)(1-2) (citing 42 U.S.C. § 242(k)(b)(1)), *id.* § 242m(c);
 - ii. the publication, by Secretary Azar, of all missing and/or withheld “national disease prevention data profiles,” purposed towards “increasing public awareness of the prevalence, incidence, and any trends in the

preventable causes of death and disability in the United States,” *id.* § 242p(a);

- iii. the collection, by Secretary Azar, of all missing and/or withheld reports submitted to HHS annually from state and local entities receiving federal funding for health security and surge capacity, and the publication of all such reports, *id.* § 247d-3a(i)(1)(E), (j) and § 247d-3b(i)(1);
- iv. to publish, by Secretary Azar, all missing and/or withheld annual Threat-Based Reviews of the Strategic National Stockpile (“SNS”), with respect to the sufficiency of its medical countermeasure supply, *id.* § 247d-6b(a)(2) (citing 42 U.S.C. § 300hh-10), *see also id.* § 247d-6b(c)(3)(B);
- v. to publish, by Secretary Azar, all missing and/or withheld “material threat determinations” of the Strategic National Stockpile and all assessments of the “availability and appropriateness” of the Strategic National Stockpile’s countermeasures to meet such threats, *id.* § 247d-6b(c)(2)(A), (c)(3)(A-B);
- vi. the publication, by Secretary Azar, of all missing and/or withheld reports on the implementation of recommendations by the Federal Experts Security Advisory Panel (“FESAP”) regarding biological agents, toxins, and their countermeasures, *id.* 42 § 262a(k)(2)(A);
- vii. the publication, by Secretary Azar, of all missing and/or withheld annual National Healthcare Quality and Disparities Reports, *id.* § 299a-1(a)(6);
- viii. the publication, by Assistant Secretary Kadlec, of all missing and/or withheld strategy and implementation plans regarding medical countermeasures (“Countermeasures SIP”), *id.* § 300hh-10(d);
- ix. the publication, by Assistant Secretary Kadlec, of all missing and/or withheld five-year budget plans based on the priorities set forth in the Countermeasures SIP, *id.* § 300hh-10(b)(7);
- x. the publication, by Secretary Azar, of all missing and/or withheld reports from the Office of Minority Health’s activities, including the extent to which such activities have been effective in improving the health of racial and ethnic minority groups, *id.* § 300u-6(f)(1);
- xi. the publication, by Secretary Azar, of a missing and/or withheld report containing recommendations related to maintaining an adequate national blood supply, P.L. 116-22, 133 Stat. 905, 929;
- xii. the publication, by Secretary Azar, of a missing and/or withheld report on international coordination during recent public health emergencies with respect to the research and advanced research on, and development of, qualified pandemic or epidemic countermeasures, P.L. 116-22, 133 Stat. 905, 959;

- c. As to Defendants' duties to provide opportunities for participation to the public:
 - i. the convening, by Secretary Azar, of a withheld meeting to discuss genomic engineering technologies, health security, and potential countermeasures to include "representatives from academic, private, and nonprofit entities" and "other stakeholders," P.L. 116-22, 133 Stat. 905, 958-59;
 - ii. the withheld solicitation and integration, by Assistant Secretary Kadlec, of public input from relevant state, local, tribal and territorial stakeholders in preparation of the Countermeasures SIP, *id.* § 300hh-10(d)(2)(H).
2. Reversing the wrongful transfer of the collection and reporting of Covid-19 case data to the HHS Protect database; and compelling such collection and reporting to be made publicly available through the National Healthcare Safety Network ("NHSN") at the Centers for Disease Control and Prevention ("CDC").
3. Compelling Defendants to conduct a regulatory flexibility analyses with respect to all rulemaking related to Covid-19 data collection, 5 U.S.C. §§ 601 *et seq.*
4. Compelling Defendants to provide formal notice and a period for public comments, 5 U.S.C. § 533, with respect to the rulemaking that transferred data reporting and collection.
5. Compelling Defendants to provide formal notice and a period for public comments, 5 U.S.C. § 533, with respect to all rulemaking related to Covid-19 data collection.
6. Compelling Defendants to perform such data collection as is necessary to meet their statutory obligations above.
7. Retaining jurisdiction over the above-captioned action until the duties and obligations set forth in this Order are met.

ORDERED, that Defendants' papers in response to this Order shall be filed by November 9, 2020, that any reply papers shall be filed by Movants by November 16, 2020, and that a hearing on Plaintiffs' application for a preliminary injunction shall be held on November 23, 2020.

ORDERED, that the Court's electronic filing of the Order by ECF in the above-captioned actions shall be deemed good and sufficient service and notice thereof.

Dated: October ____, 2020

New York, New York

SO ORDERED

UNITED STATES DISTRICT JUDGE