

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, :

Plaintiffs, : No. 2020 - \_\_\_\_\_

-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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**DECLARATION OF CHARLES KING**  
**IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

I, Charles King, under penalty of perjury, state as follows:

1. I am the CEO and a founder of Housing Works, Inc. (“Housing Works”) a community-based, not-for-profit organization dedicated to ending the dual crises of homelessness and AIDS through the provision of lifesaving services, relentless advocacy and entrepreneurial businesses that sustain our efforts.

2. I have spent my career in the fight against HIV/AIDS, as a minister, organizer and advocate. I served on the governing body of UNAIDS as a member of the NGO Delegation to

the Programme Coordinating Board and was Co-Chair of the New York State End of AIDS Task Force. I am currently the Co-Chair of the Ending the Epidemic Subcommittee of the New York State AIDS Advisory Council; Co-Chair of ACT Now: End AIDS, a national ending the epidemic Coalition; and Co-Chair of the Visioning Committee of the National AIDS Housing Coalition. I hold both a Doctorate of Laws and a Masters of Divinity from Yale University and am an ordained Baptist Minister.

3. I am a resident of Manhattan, New York, and live at the Housing Works facility, StandUp Harlem House.

4. Since 1990, Housing Works has directly served more than 30,000 men, women, and children living with HIV/AIDS and other chronic conditions, who are homeless, formerly homeless, or formerly incarcerated. We provide a full range of services, including but not limited to health and mental health care, addiction counseling and treatment, supportive housing, legal services, job training and advocacy.

5. The outbreak of Covid-19 in New York City forced significant changes on Housing Works' programs. As soon as practicable, we moved all staff to work remotely, excepting essential health care and housing staff. Additional responses included limiting in-person health care, mandating safety and distancing protocols, innovating remote services, and closing our businesses among other efforts. We also took proactive steps to partner with the city to play an active role in combating the pandemic and protecting those most vulnerable to it. As CEO, I have been intimately involved in these strategic and operational decisions.

6. The overlapping crises triggered and revealed by the pandemic—an unready and underfunded public sector, disparities in wealth and health, the legacies of bias along race, class, gender, and sexual orientation—track dynamics that similarly exacerbated the AIDS epidemic in

America. Due to Housing Works' leadership fighting HIV/AIDS, it has significant expertise responding to infectious diseases like Covid-19 and understands the collateral ways public health crises can inflict further damage on those already bearing too much. Then as now, Housing Works stands on the frontlines on behalf of disenfranchised New Yorkers facing the gravest health risks.

7. Approximately 92% of the people participating in Housing Works' services are Black and/or Latinx and face disproportionate likelihood of exposure and death from Covid-19.

#### **Covid-19 Actions and Partnerships**

8. The pandemic has forced the City to reconsider stale models for addressing homelessness and to reconceive of its approach to mitigating outbreaks in congregate housing. Warehousing people in mass shelters—or criminalizing homelessness and forcing people to cycle through criminal justice facilities for minor crimes—both these approaches are threats to public health in normal times and especially during the Covid-19 pandemic. Housing Works has long advocated against congregate shelters and for new models of supportive housing that provide independence and dignity. That advocacy gained new urgency once Covid-19 arrived, and we have called for the depopulation of city shelters and criminal justice facilities, like those on Rikers Island, in the face of this new health threat.

9. In April, at the peak of New York City's first outbreak, Housing Works approached the City's Department of Social Services and offered to manage Covid-19 shelters on behalf of homeless persons infected or exposed to the virus. We worried that homeless New Yorkers faced stigma from two directions: they could be seen to spread the virus if they lived on the streets, and they could also potentially not be welcome at city shelters. Of particular concern were homeless persons who tested positive for Covid-19 in city shelters, who were relocated to

hospitals for treatment, and who after treatment were unlikely to be allowed back into the shelter system for fear of spreading the infection; as a result, they would be effectively rendered homeless again by the virus.

10. As a result, we opened a Covid-19 shelter in a city hotel to isolate homeless persons positive for Covid-19. For approximately the first month, I personally ran the shelter after the intended manager came down with Covid-19 just a few days before it was set to open. Thanks to our partnership with the City, homeless patients discharged from hospitals have been referred to this shelter, which together can house approximately 130 people and provide both medical and behavioral health services. Since its initial opening, our Covid-19 shelter has served 552 people.

11. In July 2020, we partnered with the Mayor's Office for Criminal Justice ("MOCJ") offering health and mental health services to MOCJ hotels for formerly incarcerated men granted early release due to high Covid-19 risks in state prisons, including Rikers Island, and who were homeless or had no other place to live.

12. We also partner with the city Department of Homeless Services to provide health and behavioral health services in three additional hotels. We are working to open a stabilization hotel for homeless living in city streets and on subways in order to mitigate the personal and public health risks they pose.

13. In July, the City asked us to provide Covid-19 testing to City supportive housing facilities—residences that serve HIV-positive persons, victims of domestic violence, and others—and we promptly built a testing and tracing team within our healthcare staff. In partnership with Health and Hospitals, we expanded to offer community Covid-19 testing sites of

our own—free Covid-19 testing to the public through each of our clinical facilities and health centers. To date, we have performed nearly 3000 Covid-19 tests.

14. The present mandate from the City Department of Health and Mental Health is that all New Yorkers receive testing regardless of whether they have symptoms or are at risk of exposure, and the free testing offered at our clinics and health centers is essential to the City meeting that mandate.

15. The program has given us insight into the strengths and weaknesses of the country's present testing capabilities. As a city, New York's testing supplies have improved from the peak of its surge. As of several weeks ago, between NYC Health and Hospitals and its community partners like Housing Works, we have been able to perform approximately 25,000 tests a day and to keep that volume of tests well-supplied.

16. The problem, of course, is that at present we are not supplied to scale further, and it is unclear whether the present system can handle a larger outbreak requiring, for example, 50,000 or 100,000 tests daily. While testing numbers in New York City on the whole have remained beneath thresholds warranting greater concern—i.e. the seven-day average positive test results has largely stayed below two percent—several neighborhoods have seen severe spikes in their case numbers and the daily rate of positive tests is rising citywide. For example, 25 percent of positive test results surfacing in the last few weeks have been largely concentrated in the same ten zip codes; their seven-day average is greater than four percent, and as much as fifteen percent of those communities are potentially Covid-19 infected. Those trends threaten to start the City's second surge, and I am not confident that we are sufficiently supplied to handle the volume of testing required by another outbreak.

17. The problem of delayed results is an equally significant issue. Ideally, we could be using rapid testing with 15-minute validated results; we want to know if someone is ill immediately, so that they can go directly into isolation. Any minute, hour, day longer is a moment they are potentially transmitting the virus asymptotically to family, loved ones, and anyone else they encounter. At present, the rapid tests available in the United States have not been well-validated, and to my understanding the federal government has not invested sufficiently in research and development of such tests.

18. Instead, we are still using nasal swabs which are difficult to administer and take time to process. The fastest results we have been able to administer through our partnership with Health and Hospitals is three days, and we only guarantee results in five days. Some testing is better than no testing, but this delay of itself presents a public health risk, especially should the City face a second surge this fall/winter as we expect.

19. Additionally, Housing Works has helped to distribute necessary PPE to frontline health workers and others at risk. In April, Housing Works teamed up with Art Science Research Laboratory (ASRL), a New York City-based organization that was the main PPE supply operation for uniform services during the World Trade Center 9/11 recovery operation, to distribute personal protective equipment to New Yorkers during the pandemic. Through our efforts, we have distributed over 3 million pieces of PPE including gowns, protective suits, gloves, masks, and face shields, and this has gone to over 170,000 people including health care workers, homeless service providers, homeless people, patients, and low-income people living in public housing. In October, we distributed masks to homeless children attending public schools.

**Covid-19 Working Group-New York**

20. Since March 4th of this year, Housing Works—along with several other community organizations and health advocates including Treatment Action Group, PrEP4All, the National Black Leadership Commission on Health, Callen Lorde, and the Latino Commission on AIDS—pooled their resources to form the Covid-19 Working Group-New York (“CWG-NY”).

21. The CWG-NY is a coalition of doctors, healthcare professionals, scientists, community workers, activists, and epidemiologists committed to a rapid and community-oriented response to the Covid-19 pandemic and to addressing its disproportionate impact on vulnerable and marginalized communities in New York City—including homeless individuals, incarcerated populations, and those living with chronic health conditions.

22. The CWG-NY has worked to identify key policy concerns for those particularly vulnerable to complications from Covid-19 and the socioeconomic impact of physical distancing and other containment and mitigation strategies. The group proposed solutions including but not limited to overcoming unique barriers to health care services, safe isolation spaces, and important income and safety net services for marginalized New Yorkers. The CWG-NY is also focused on diagnostics, treatment, prevention and vaccine pipelines for COVID-19, with members bringing their unique expertise on community-led research advocacy for other infectious diseases such as HIV, Hepatitis C, and tuberculosis. This includes advocacy on behalf of Black and Latinx New Yorkers for whom health care equity had long been denied and on whose behalf further mitigation efforts were therefore necessary.

23. As of June, Housing Works and members of the CWG-NY—in response to the dramatic Covid-19 health disparities experienced by Black and Latinx New Yorkers, the history of over-policing and mass incarceration of Black and Latinx New Yorkers, and the recent incidents of police violence experienced by people demonstrating for racial justice—have

advocated for policy to address the public health crises arising from racism. As a result, Housing Works is well-acquainted with the gaps in data and transparency with respect to the public health of communities of color, omissions which have only grown more severe with the onset of Covid-19.

24. In addition to policies addressing chronic over-policing, our recommendations have largely addressed the need for improved data transparency, testing, and contact tracing in order to direct isolation, treatment, and preventative care to communities of color. These measures included better tracking of the disparate impact of Covid-19 on Black and Latinx New Yorkers in order to tailor services to address inequities; racial equity and inclusion in development and implementation of public health programs; concrete plans to improve the health of communities of color including safe isolation housing ; and accurate, transparent data on the public health response in order to monitor and evaluate such efforts.

### **Healthcare Services**

25. Housing Works Community Healthcare is comprised of a network of providers and facilities throughout Manhattan and Brooklyn. Before, during, and after the Covid-19 pandemic, our healthcare services aim to reach our clients near where they live in order that they can access care and make it routine without it becoming a burden.

26. Our medical services include but are not limited to primary medical care, sexual health services, wellness & prevention, behavioral and mental health care, substance abuse counseling and treatment, youth prevention services, adult day health care, case management, and pharmacy services.

27. The outbreak of Covid-19 has required significant adaptation of our healthcare programs, and we have shifted as many services as possible to be delivered remotely. However,

this effort has brought with it a number of significant challenges: we have had to trust our patients to honestly report what they weigh, their heart rate, their blood pressure, and other vital statistics. We have had to trust their adherence to courses of medication and self-care that are critical to management and mitigation of their chronic and often life-threatening health conditions.

28. As an example, treatment of HIV/AIDS requires intensive medicine regimes to which patients must rigorously adhere—such as suboxone which may trigger significant side effects or adverse reactions. Medical research tells us that supervising the first doses of a patient’s medication can significantly improve their adherence and avoid unmonitored negative reactions. We are taking extensive new measures now to administer the first doses at a distance and proactively engage our patients to ensure we are closely monitoring their progress to avoid the adverse outcomes the research warns against.

29. Among the most significant adjustments were required in our Adult Day Health Care programs. Adult Day Health Care is an integrated medical and psychosocial program for people with serious chronic conditions. It began serving patients with HIV/AIDS but has since expanded to include patients with other chronic conditions, including behavioral health conditions that impose challenges for patients’ management of their medical care. The program runs from morning to the afternoon, and patients receive one or more services throughout the day, as well as breakfast and lunch (and additional portions offered should patients wish this to be their third daily meal). Some of our patients have as many as three overlapping conditions that they are treating concurrently. Many come in and spend the entire day receiving care and support. Many rely on the program for nutrition and food support.

30. Due to Covid-19, we have had to truncate the majority of our Adult Day Health Care offerings. Most health care that was once available through these centers is now administered remotely. We now supervise group and individual mental health counseling remotely and offer meals for patients to pick up. None of the other benefits that come with the socialization and community support that these day-long visits allow are possible to substitute at a distance.

31. With respect to substance abuse interventions, our treatment, harm reduction, and needle exchange programs have remained open and in-person throughout the pandemic, and where possible, we have encouraged patients to receive treatment remotely. All other substance abuse services have been delivered remotely.

32. We have seen the impact of all these changes on our clients as well. There has been decreased participation in group and individual mental health therapy sessions; this work requires interpersonal connection, and some have had difficulty achieving that remotely. There has been a rise in overdoses among our clients, some of which have been accidental and some of which have not. Absent in-person guidance, we have noted decreased adherence to vital medications in patients' HIV/AIDS treatment regimes.

### **Housing**

33. We believe that providing stable housing is healthcare and is the first step toward living a long and healthy life. Housing Works' supportive housing is available to homeless New Yorkers living with HIV/AIDS and other chronic conditions: including but not limited to individuals living with HIV; people of transgender experience living with HIV; single men and women with active substance use issues; HIV-positive single women recently released from a correctional setting; and HIV-positive unstably housed LGBTQ youth from ages 18-24. We also

offer supportive, affordable housing for families where the head-of-household is living with HIV. After residents have stabilized, we connect them to the specific lifesaving services that they need and coordinate with their healthcare providers.

34. Because our supportive housing facilities serve people with HIV/AIDS and other chronic conditions, our residents are especially vulnerable to adverse outcomes should they be exposed to Covid-19.

35. As a result, it has been a priority to keep our supportive housing facilities open throughout the pandemic, and we have taken the necessary precautions to do so.

36. We have supplied our residential aids with sufficient PPE so that they can work on-site and on their same schedule and that our clients do not see an interruption in staffing support. We have imposed new rules and truncate the programs we offer to our residents. We have mandated strict social distancing measures in common areas and require masks to be worn by residents at all times they are not in their unit. We have also suspended nearly all group activities. Visitors were not allowed from mid-March through July, and in August we started to allow residents to name up to three people who could visit and become part of their “pod.”

37. Again, none of the other benefits that come with the socialization and community support that our housing facilities are intended to promote are possible to substitute under strict social distancing guidelines.

#### **Other Direct Services**

38. Much of Housing Works other direct services have also been impacted by the Covid-19 pandemic.

39. All clients enrolled in Housing Works Community Healthcare's case management services are eligible for free legal services. Additionally, through the HIV Law Project, Housing

Works offers free legal assistance to qualified New York City residents living with HIV in housing, government benefits, and immigration. During the pandemic, we have had to significantly truncate the way we conduct such services: unless the courts require us to attend in person, we have had to divert all of our legal services remotely, including client intake and counseling.

40. The Housing Works Ready for Work (RFW) program is designed to prepare people living with chronic illness for careers and to empower them with job readiness and life skills. RFW is available to individuals who are actively engaged in case management. The program is a combination of classroom lessons and paid on-the-job internship. These help clients build the skills needed to enter the workforce including time-management, teamwork and creative problem-solving. All of these activities have become remote to the degree possible or have been suspended until they can be conducted safely.

### **Advocacy**

41. Through our advocacy offices in New York City, Albany, Washington D.C., Haiti and Puerto Rico, Housing Works fights for funding and legislation to ensure that all people living with HIV/AIDS have access to quality housing, healthcare, HIV prevention information and other life-sustaining services, as well as legal protections from stigma and discrimination. We are a grassroots organization committed to the use of non-violent civil disobedience in order to further our mission.

42. The Covid-19 pandemic has burdened our advocacy work significantly. We have of course had to be far more careful about travel. It has been challenging to secure safe housing for everyone who wishes to participate in actions in Washington, D.C. Albany, NY or New York City but who do not reside there. Transportation has also been complicated by the pandemic: our

traditional method of using buses to bring large groups to state and federal capitals presents unsafe risk of transmission, and trains and private cars are a burdensome expense.

43. For example, this month, we held a civil action outside the United State Supreme Court to bring awareness to its decision to decline *certiorari* of a case involving a Kentucky county clerk who refused to grant marriage licenses to same sex couples. Typically, we would have been able to rally at least 200 people to such an event, but this time we could only produce 20 due to the obstacles presented logistically.

44. Lawmakers themselves are also presenting barriers to the public. Two years ago, when fighting to preserve the Affordable Care Act, Housing Works helped scores of people travel in groups to the nation's capital. Those who could not get appointments could still access lawmakers' offices and demand to see the principal or be heard by a staff member. Today, demonstrations must be held at significant distance from official buildings. Visitors require an appointment and must be escorted as they enter and exit, which means they cannot arrive impromptu. Public servants who wish to avoid the public they serve can hide behind Covid-19 protocols. These safety measures, while prudent, prevent engagement and demonstrations in front of those public officials who we most need to reach. This is true at City Hall in New York, in Albany, and in Washington, D.C.

### **Entrepreneurship**

45. Housing Works pioneered the concept of social enterprise—businesses whose profits fund the mission of a parent not-for-profit organization. This self-sustaining model provides employment opportunities to the community in addition to fundraising. Our acclaimed Housing Works Thrift Shops, which span Manhattan and Brooklyn, and our Housing Works Bookstore Cafe in lower Manhattan provide crucial funds towards our mission.

46. Due to Covid-19, however, we have had to shut down all of our retail outlets, thrift stores and bookstore in compliance with city and state guidelines. We have closed two of the thrift stores permanently as a result of financial pressures imposed by Covid-19.

47. Today, some of the guidelines have been lessened: our thrift stores are permitted to open at a quarter of its full capacity, still significantly reducing their profitability and the funds we expect to raise through them. Our Bookstore Café remains closed until guidelines and our best judgement permit otherwise. In an effort to recoup lost fundraising opportunities, we have expanded our online sales and fundraising efforts through our eShop, auctions, and online bookstore.

48. We have also cancelled our annual fundraising events, through which we typically raise well over one million dollars, until safe gatherings can be permitted

### **Our Injuries Generally**

49. It is my understanding that the federal government has withheld from Housing Works and me a number of duties to public disclosure and participation to which we are entitled: 1) recent legislation passed on a bipartisan basis requires the development and implementation of a federal biosurveillance network, providing for participation in and the creation of a network for “near real-time” information during a public health emergency, deadlines for which have not been met; 2) a number of reports and public disclosures that relate to the nation’s preparations and response to public health emergencies, the nation’s underlying public health, health disparities along race and ethnicity, and Covid-19 specifically; and 3) opportunities to participate in the regulatory and rulemaking process whereby we can contribute our experience on the frontlines of the pandemic proving testing, tracing and isolation/quarantine support, as well as

other lifesaving programs and supportive services, for those most vulnerable to the direct and collateral costs of the pandemic.

### **Our Need for Pandemic Biosurveillance**

50. Due to the government's failure to perform its obligations, Housing Works and I have been denied critical information as to the nation's surveillance capacity and opportunities to participate in the development and design of its biosurveillance infrastructure—important opportunities to lend our experience and advocate on behalf of our community of partners, clients and patients.

51. In responding to the Covid-19 pandemic, New York and the nation have suffered from failed efforts at biosurveillance—the capacity to test and trace the progress of an infectious disease through a community. Housing Works has stood on the frontlines of this effort, seeking to ensure that underserved New Yorkers, especially among the homeless and other vulnerable populations with chronic conditions, can have the testing and medical support that they need during this time of crisis. Our ability to provide this care has been hindered by the quality of tests and by our ability to integrate into and benefit from the data and knowledge gained in other jurisdictions.

52. As an entity providing Covid-19 testing and performing contact tracing within our patient population, we are sorely disappointed to see the federal government fail its biosurveillance mandate thus far, and we would enthusiastically participate in any efforts of the government to meet the deadlines it has missed and prepare for those to come—in order to ensure that we, our community, and the nation at large are served by our government as the law intends.

### **Our Informational Injuries**

53. As to the reports and information that the government has failed to provide, we at Housing Works consider these essential to our ongoing lifesaving operations as well as our specific programs responding to Covid-19. Knowledge as to disease prevalence and co-morbidities is directly relevant to our day-to-day health care programs which include but are not limited to primary care, HIV/AIDS treatment, substance abuse treatment, and pharmacy services, as well as other wellness and preventative services. This information is also relevant to our Covid-19 care, whether these be patients who seek treatment through our health centers or those we meet through supportive housing, isolation and quarantine hotels, or Covid-19 testing. The prevalence of other diseases and co-morbidities—many of which are known to complicate Covid-19 infection—shapes our understanding of the wider public health risks, helps us plan for adverse eventualities, and informs our staffing, training and procurement protocols.

54. The same can be said for information with respect to understanding the nation's health care capacity and health resources use. As an organization, our mission is to serve those people most likely to fall through the gaps left by other public and private health entities. Comprehensive data with respect to the ongoing efforts, capacity and impact of other programs help us understand how to tailor our own to ensure we direct resources where there is the greatest need and benefit to our clients. This is especially necessary in our response to Covid-19 where so much of the country is still operating with too few resources or having to stretch those they have to do more than intended. For example, understanding federal planning and supplies of medical countermeasures can help us anticipate and prepare for shortfalls in specific areas, or position us to advocate for their targeted deployment where they can have the greatest impact.

55. As an organization, we make routine efforts to keep abreast of the latest public health information. We look carefully at the information released by public health agencies

whether those be routine reports or ad hoc data and guidance, and prepare briefs for our health care staff and management accordingly. Our health staff convenes twice weekly to be briefed on the latest relevant information and protocols. With respect to Covid-19, these include but are not limited to the latest information on testing, vaccines, and transmission.

56. Such information is not just nice to have, but materially changes the way we operate. For example, once we learned Covid-19 was transmissible through the eyes, we supplied and mandated the use of face shields. We sourced and mandated the use of P100 masks after learning the virus was aerosolized.

57. Our conduct and best practices ripple through other organizations with whom we partner and who trust us to keep abreast of the latest public health information and best practices. So our conduct, provided it is well-informed, can have positive downstream effects as well.

### **Our Procedural Injuries**

58. HHS and its subagencies like the CDC have also denied Housing Works and its leadership important opportunities to engage in their deliberations on regulation and guidance to which we routinely take advantage. They have an obligation to provide formal notice and the opportunity for public comment with respect to agency rules that are substantive or legislative in nature, and by refraining from their rulemaking duties they have effectively denied us the corresponding participation to which we are entitled.

59. For example, recent legislation mandates Secretary Azar and the CDC issue were supposed to have issued standards for data-sharing across federal, state, local and other entities; and these are substantive rules to which the public is entitled notice and comment. Housing Works regularly takes advantage of notice and comment opportunities such as this, led by our legal team, and we make our comments available so that other organizations in our community

can use them as models for their own response. The Secretary's failure here not just harms Housing Works, but robs our network of allies and partners of the opportunity to coordinate effective advocacy.

60. Equally, recent legislation requires Secretary Azar and the CDC to convene a public meeting so that health officials and experts could give counsel and advice on the potential goals, functions, and uses of federal biosurveillance. Such a program is intended to provide the public with near real-time information in the event of public health emergencies like the present pandemic. The public meeting is intended to include stakeholders from state and local health organizations to which Housing Works and its leadership certainly qualify. Regardless of whether Housing Works or myself were to be invited, we would be certain to leverage our relationships with city, state, and private health entities in order to ensure our perspective informed such a meeting. As frontline health providers for vulnerable patient populations during the pandemic, we are among the stakeholders best qualified to participate in any relevant convening that would inform the policy or rulemaking process.

61. In the shadow of Covid-19—given the racial and ethnic disparities already shaping health outcomes in our community and given the way these overlay with poverty and other forms of inequality—the federal government's denial of Housing Works' procedural rights not only silences our organization. The federal government has closed the door to the thousands of people we serve and represent—thousands who are presently suffering from the federal government's poor policies and neglect.

I swear under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: October 28, 2020

  
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CHARLES KING