

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONEY ISLAND PREP, *et al.*,

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, *et al.*,

Defendants.

No. 20 Civ. 9144 (VM)

DECLARATION OF DIANE FOLEY, MD

I, DIANE FOLEY, pursuant to the provisions of 28 U.S.C. § 1746, declare, under penalty of perjury, as follows:

1. I am the Acting Principal Deputy Assistant Secretary for Health at the U.S. Department of Health and Human Services (“HHS” or the “Department”). I serve as principal advisor to the Assistant Secretary for Health (the “ASH”) on the Office of the ASH (“OASH”) programs and activities, and I act on behalf of the ASH in meetings and other situations with senior officials in the Department, other Federal agencies, the Congress, and other public and private entities.

2. I make this declaration based on my personal knowledge, information acquired by me in the course of performing my official duties, information supplied to me by federal government employees, and government records.

3. I have reviewed portions of documents filed in the above-captioned case, including the Complaint, Dkt. No. 1 (“Compl.”), and the Memorandum of Law in Support of Plaintiffs’ Motion for a Preliminary Injunction, Dkt. No. 7 (“PI Mem.”) in which Plaintiffs allege

that HHS has not met certain statutory obligations. This declaration responds to one of those allegations.

4. Plaintiffs' filings address the statutory requirement that HHS "prepare and publish, by June 24, 2020, a report on the adequacy of the national blood supply, as required by Section 209 of the Pandemic Preparedness Act, 133 Stat. 905, 929." PI Mem. at 22; *see also* Compl. ¶ 47(d). The statute requires that this report be submitted to Congress. 133 Stat. 905, 929. On March 23, 2020, OASH published a notice in the Federal Register, soliciting public comments on this report. *See* 85 Fed. Reg. 16,372 (Mar. 23, 2020). In April, OASH published a notice in the Federal Register announcing an extension of the period of public comment to June 21, 2020 in response to requests for an extension from interested parties. *See* 85 Fed. Reg. 19,950 (Apr. 9, 2020). HHS is currently working on the report, incorporating feedback from the public comments it received, and it anticipates submitting the report to Congress in January 2021.

5. I am not aware of any way in which this report on the adequacy of the national blood supply would have had any direct impact on the Government's COVID-19 response.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, D.C.
November 16, 2020


DIANE FOLEY, MD