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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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October 9, 2020

The Honorable Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

We are concerned that you may have provided misleading testimony during the Select Subcommittee's October 2, 2020, hearing with respect to whether the Trump Administration is pursuing a herd immunity strategy to combat the coronavirus. In your testimony, you denied that the Trump Administration is pursuing such a "strategy," but just three days later you met with four outspoken proponents of this approach. You wrote that they provided a "strong reinforcement of the Trump Administration's strategy." Afterward, the Department of Health and Human Services (HHS) "refused to comment" on "whether the Trump administration is shifting to a herd immunity strategy."¹ We write to seek clarity about whether the Administration is responding to the coronavirus pandemic with a herd immunity strategy, which public health experts have warned could lead to the death of more than two million Americans.

Achieving herd immunity prior to distribution of a vaccine would entail allowing the coronavirus to spread freely until a sufficient percentage of the population has contracted the disease to reduce the possibility of further spread.² Dr. Anthony Fauci has said such a strategy is "a bad idea," explaining that "if everyone got infected, the death toll would be enormous and totally unacceptable."³ Scientists estimate that approximately 70 percent of Americans—more than 200 million people—would need to be infected by the coronavirus to reach the herd immunity threshold absent a vaccine.⁴ Such widespread transmission could lead to the deaths of

¹ *Trump Advisers Consult Scientists Pushing Disputed Herd Immunity Strategy*, Politico (Oct. 6, 2020) (online at www.politico.com/news/2020/10/06/trump-herd-immunity-scientists-426911).

² Mayo Clinic, *Herd Immunity and COVID-19 (Coronavirus): What You Need to Know* (June 6, 2020) (online at www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/herd-immunity-and-coronavirus/art-20486808).

³ *'The Death Toll Would Be Enormous,' Fauci Says of Herd Immunity to Coronavirus in the U.S.*, CNBC (Aug. 13, 2020) (online at www.cnbc.com/2020/08/13/the-death-toll-would-be-enormous-fauci-says-of-herd-immunity-to-coronavirus-in-the-us.html).

⁴ Mayo Clinic, *Herd Immunity and COVID-19 (Coronavirus): What You Need to Know* (June 6, 2020) (online at www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/herd-immunity-and-coronavirus/art-20486808).

between half a million and more than two million Americans.⁵ Millions more would battle prolonged illnesses and profound disabilities as a result of infection with the coronavirus.⁶

Despite the horrific consequences of such a policy, President Trump has expressed support for pursuing herd immunity, stating, “you’ll develop herd—like a herd mentality” and saying, “it’s going to be herd-developed, and that’s going to happen.”⁷ Similarly, White House Coronavirus Task Force member Dr. Scott Atlas and former HHS senior advisor Dr. Paul Alexander have both expressed support for this dangerous strategy.⁸

During your October 2 testimony, Rep. Jamie Raskin asked you whether you support the herd immunity strategy advocated by President Trump. You replied: “Herd immunity is not the strategy of the U.S. government with regard to coronavirus” and, “Our mission is to reduce fatalities, protect the vulnerable, keep coronavirus cases down to the lowest level possible.”⁹

Despite your disavowal of pursuing a herd immunity strategy, you made unsupported claims at the hearing that have been previously advanced by proponents of such an approach, including suggesting, “We may get herd slowing of transmission, as we perhaps have seen in the New York area and other concentrated areas.”¹⁰ Numerous scientists have refuted that New York City or other metropolitan areas have reached anywhere close to the number of cases necessary to achieve herd immunity.¹¹ Just last month, Dr. Fauci stated in testimony before the

⁵ See, e.g., *Early Herd Immunity Against COVID-19: A Dangerous Misconception*, Johns Hopkins University of Medicine (online at coronavirus.jhu.edu/from-our-experts/early-herd-immunity-against-covid-19-a-dangerous-misconception); *What Is Herd Immunity, and Why Are Trump Officials Pursuing an Idea WHO Calls ‘Dangerous’?*, Washington Post (Aug. 31, 2020) (online at www.washingtonpost.com/health/2020/08/31/herd-immunity-covid-19/).

⁶ *The Lasting Misery of Coronavirus Long-Haulers*, Nature (Sept. 14, 2020) (online at www.nature.com/articles/d41586-020-02598-6).

⁷ *Trump Says with ‘a Herd Mentality’ Covid-19 Coronavirus Will Go Away*, Forbes (Sept. 16, 2020) (online at www.forbes.com/sites/brucelee/2020/09/16/trump-says-with-a-herd-mentality-covid-19-coronavirus-will-go-away); see also *‘That’s Certainly Not My Approach’: Fauci Rejects Pursuing Herd Immunity*, Politico (Sept. 2, 2020) (online at www.politico.com/news/2020/09/02/anthony-fauci-rejects-herd-immunity-407747).

⁸ *New Trump Pandemic Adviser Pushes Controversial ‘Herd Immunity’ Strategy, Worrying Public Health Officials*, Washington Post (Aug. 31, 2020) (online at www.washingtonpost.com/politics/trump-coronavirus-scott-atlas-herd-immunity/2020/08/30/925e68fe-e93b-11ea-970a-64c73a1c2392_story.html); *Emails Detail Effort to Silence C.D.C. and Question Its Science*, New York Times (Sept. 18, 2020) (online at www.nytimes.com/2020/09/18/us/politics/trump-cdc-coronavirus.html).

⁹ Select Subcommittee on the Coronavirus Crisis, *Hybrid Hearing with Secretary of Health and Human Services Alex M. Azar II* (Oct. 2, 2020) (online at coronavirus.house.gov/subcommittee-activity/hearings/hybrid-hearing-secretary-health-and-human-services-alex-m-azar-ii).

¹⁰ *Id.*

¹¹ See, e.g., *Trump Allies Say the Virus Has Almost Run Its Course. ‘Nonsense,’ Experts Say*, New York Times (Sept. 29, 2020) (online at www.nytimes.com/2020/09/29/health/coronavirus-herd-immunity.html); Dr. Shuchi Anand, et al., *Prevalence of SARS-CoV-2 Antibodies in a Large Nationwide Sample of Patients on Dialysis in the USA: A Cross-Sectional Study*, The Lancet (Sept. 25, 2020) (online at [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)32009-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32009-2/fulltext)); Dr. Fiona P. Havers, et al., *Seroprevalence of Antibodies to SARS-CoV-2 in Six Sites in the United States, March 23-May 3, 2020* (June 26, 2020) (online at www.medrxiv.org/content/10.1101/2020.06.25.20140384v1.full.pdf).

Senate that “about 22 percent” of New York City’s residents have likely been exposed to the coronavirus, far short of the threshold needed to reach herd immunity.¹²

Your actions and words this week cast doubt on your testimony denying that the United States has adopted a herd immunity strategy. On October 5, you met with Dr. Atlas and three other individuals, Dr. Martin Kulldorff, Dr. Jay Bhattacharya, and Dr. Sunetra Gupta, who you described as “distinguished infectious disease experts.”¹³ All four of these individuals are outspoken proponents of advancing a herd immunity strategy in response to the coronavirus pandemic—an extreme view that has been widely rejected by the vast majority of public health experts. For example:

- Dr. Atlas has repeatedly called for the United States to pursue a herd immunity strategy. In July 2020, he stated: “**When younger, healthier people get infected, that’s a good thing**, because that’s exactly the way that population immunity develops.”¹⁴ He told Fox News that preventing young people from getting infected is merely “prolonging the problem because you’re preventing population immunity.” Dr. Atlas reportedly has espoused similar bogus claims during internal White House meetings.¹⁵
- Dr. Kulldorff has suggested that the Swedish model of resisting lockdown measures has been successful—even though Sweden has a per capita death toll from the coronavirus that is nearly 12 times higher than neighboring Norway and five times higher than Germany and Denmark, each of which closed businesses and schools and implemented other public health restrictions.¹⁶ Dr. Kulldorff proposed that the United States should pursue a similar strategy, stating, “exposures in young, healthy people contribute to the herd immunity that will ultimately benefit all,” and claimed, “An age-targeted strategy protects all older high-risk individuals until herd immunity is reached, whether rich or poor, while keeping schools open for our children and letting young low-risk adults live their lives and support their families.”¹⁷

¹² ‘You Are Not Listening,’ Fauci Tells Sen. Rand Paul During a Senate Hearing on the Coronavirus, CNBC (Sept. 23, 2020) (online at www.cnbc.com/2020/09/23/you-are-not-listening-fauci-tells-rand-paul-during-senate-hearing.html).

¹³ Secretary Alex Azar (@SecAzar), *Twitter* (Oct. 5, 2020) (online at twitter.com/SecAzar/status/1313246635456159745).

¹⁴ *Trump Makes Call for New White House Doctor’s Virus Advice*, Associated Press (Aug. 16, 2020) (online at abcnews.go.com/Health/wireStory/trump-makes-call-white-house-doctors-virus-advice-72404816) (emphasis added).

¹⁵ *New Trump Pandemic Adviser Pushes Controversial ‘Herd Immunity’ Strategy, Worrying Public Health Officials*, Washington Post (Aug. 31, 2020) (online at www.washingtonpost.com/politics/trump-coronavirus-scott-atlas-herd-immunity/2020/08/30/925e68fe-e93b-11ea-970a-64c73a1c2392_story.html).

¹⁶ ‘It’s Been So, So Surreal.’ *Critics of Sweden’s Lax Pandemic Policies Face Fierce Backlash*, Science (Oct. 6, 2020) (online at www.sciencemag.org/news/2020/10/it-s-been-so-so-surreal-critics-sweden-s-lax-pandemic-policies-face-fierce-backlash).

¹⁷ *We Need a Radically Different Approach to the Pandemic and Our Economy as a Whole*, Jacobin (Sept. 19, 2020) (online at www.jacobinmag.com/2020/09/covid-19-pandemic-economy-us-response-inequality); *The*

- Dr. Bhattacharya has also supported lifting lockdown measures—which he has called “an utter disaster for public health”—and instead adopting the Swedish model. He explained “I think Sweden’s policy was the right one” and, “if my hypothesis is right, they’re going to come out better in the long run in lives than their neighbors which adopted these draconian public lockdown policies.”¹⁸
- Dr. Gupta has repeatedly promoted herd immunity strategies, stating that “there’s a high benefit to the community by helping to create herd immunity” and that “the death rate in people under 65 is not something you would lock down the economy for.” She has claimed: “Three months, maybe six is sufficient time for enough immunity to accumulate ... that the vulnerable could resume normal lives.”¹⁹

Following the October 5 meeting, you tweeted, “we heard strong reinforcement of the Trump Administration’s strategy of aggressively protecting the vulnerable while opening schools and the workplace.”²⁰ This tweet appears consistent with the herd immunity strategy promoted by Dr. Atlas, Dr. Kulldorff, Dr. Bhattacharya, and Dr. Gupta, who support rapidly reopening schools and businesses because they believe it will accelerate the spread of the coronavirus to many Americans. After the meeting, *Politico* reported:

HHS refused to comment on the scientists’ meeting with Azar and Atlas’ role in it, or whether the Trump administration is shifting to a herd immunity strategy.²¹

Your decision to meet with prominent proponents of a herd immunity strategy and to refuse to publicly reject their dangerous advice and reaffirm your testimony at the Select Subcommittee hearing raises troubling questions regarding whether the Trump Administration has given up on containing the coronavirus and instead plans to allow it to spread unchecked across the country. Indeed, the White House Coronavirus Task Force has already weakened its

Moral Case for Reopening Schools—Without Masks, City Journal (Sept. 22, 2020) (online at www.city-journal.org/achieving-herd-immunity).

¹⁸ *Jay Bhattacharya on Understanding the COVID-19 Virus*, The Foundation for Research on Equal Opportunity (Aug. 10, 2020) (online at freopp.org/jay-bhattacharya-on-understanding-the-covid-19-virus-3ecbee8d6e23).

¹⁹ *An Oxford Professor Argues for Maskless Reopening of Schools*, Independent Women’s Forum (Sept. 23, 2020) (online at www.iwf.org/2020/09/23/an-oxford-professor-argues-for-maskless-reopening-of-schools/); *The Costs Are Too High’: The Scientist Who Wants Lockdown Lifted Faster*, the Guardian (June 5, 2020) (online at www.theguardian.com/world/2020/jun/05/the-costs-are-too-high-the-scientist-who-wants-lockdown-lifted-faster-sunetra-gupta); *Trump Advisers Consult Scientists Pushing Disputed Herd Immunity Strategy*, Politico (Oct. 6, 2020) (online at www.politico.com/news/2020/10/06/trump-herd-immunity-scientists-426911); see also, *Britain’s ‘Professor Reopen,’* Wall Street Journal (June 5, 2020) (online at www.wsj.com/articles/britains-professor-reopen-11591376796).

²⁰ Secretary Alex Azar (@SecAzar), *Twitter* (Oct. 5, 2020) (online at twitter.com/SecAzar/status/1313246635456159745).

²¹ *Trump Advisers Consult Scientists Pushing Disputed Herd Immunity Strategy*, Politico (Oct. 6, 2020) (online at www.politico.com/news/2020/10/06/trump-herd-immunity-scientists-426911)

previous recommendations to states to require face masks, close bars and gyms, and take other steps proven effective at slowing the spread of the virus.²²

More than 212,000 Americans have already died from the coronavirus,²³ and nearly 200,000 more may die before the end of this year.²⁴ The Trump Administration must firmly reject the strategy of herd immunity and finally develop a strong national plan to contain the virus.

For all these reasons, we would like to offer you the opportunity to either reaffirm your October 2 testimony and disavow the herd immunity strategy advocated by President Trump and the individuals you met on October 5, or amend your testimony and explain why you provided misleading information to the Select Subcommittee. In addition, please respond to the following requests by October 16, 2020:

1. Please describe in detail the subject matters discussed during your October 5, 2020, meeting with Dr. Scott Atlas, Dr. Martin Kulldorff, Dr. Jay Bhattacharya, and Dr. Sunetra Gupta, including whether any of these individuals recommended pursuing a herd immunity strategy in the United States or allowing the virus to spread among any portion of the U.S. population.
2. Please provide all documents and communications with Dr. Atlas, Dr. Kulldorff, Dr. Bhattacharya, or Dr. Gupta related to herd immunity or the Administration's strategy for responding to the coronavirus pandemic.
3. Please describe whether the Trump Administration has taken, plans to take, or is considering taking any steps to pursue a herd immunity strategy or allow the virus to spread among any portion of the U.S. population prior to the development of a vaccine and distribution of that vaccine to all Americans.

These requests are consistent with House Resolution 935, which established the Select Subcommittee on the Coronavirus Crisis "to conduct a full and complete investigation" of "issues related to the coronavirus crisis," including the "preparedness for and response to the

²² Select Subcommittee on the Coronavirus Crisis, *Press Release: Select Subcommittee Finds White House Task Force Weakened Recommendations as Infection Rates Rose* (Sept. 16, 2020) (online at coronavirus.house.gov/news/press-releases/select-subcommittee-finds-white-house-task-force-weakened-recommendations); *see also*, Select Subcommittee on the Coronavirus Crisis, *The Trump Administration's Pattern of Political Interference in the Nation's Coronavirus Response* (Oct. 2, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/10.2.20%20Political%20Interference%20Report%20%281%29.pdf).

²³ *Covid in the U.S.: Latest Map and Case Count*, New York Times (Oct. 9, 2020) (online at www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html).

²⁴ *Trump Could Face a Relapse, Experts Warn, as President Downplays Coronavirus Threat Despite Massive Death Toll*, USA Today (Oct. 6, 2020) (online at www.usatoday.com/story/news/health/2020/10/06/fauci-warns-trump-relapse-president-downplays-coronavirus-death-toll/3634631001/); *Experts Warn U.S. Covid-19 Deaths Could More than Double by Year's End*, Washington Post (Sept. 4, 2020) (online at www.washingtonpost.com/health/experts-warn-us-death-toll-could-hit-410000-by-years-end/2020/09/04/ffc34736-eea7-11ea-99a1-71343d03bc29_story.html).

The Honorable Alex M. Azar II

Page 6

coronavirus crisis” and “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus crisis.”

An attachment to this letter provides additional instructions for responding to the Select Subcommittee’s request. If you have any questions regarding this request, please contact Select Subcommittee staff at (202) 225-4400.

Sincerely,


James E. Clyburn
Chairman


Rep. Jamie Raskin

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.