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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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October 22, 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:

I write today to seek compliance from the Department of Health and Human Services (HHS) with requests the Select Subcommittee on the Coronavirus Crisis sent to you more than a month ago. On September 14, 2020, I wrote to you seeking transcribed interviews and documents on efforts by HHS political appointees to interfere with scientific reports and guidance issued by the Centers for Disease Control and Prevention (CDC) during the coronavirus crisis.¹ This investigation is urgent because pervasive political interference at HHS appears to be contributing to the Trump Administration's ongoing failure to control the coronavirus, which is killing hundreds of Americans each day.² I urge you to end your obstruction of this crucial investigation, allow CDC officials to speak freely to Congress, and produce responsive documents. If you refuse to comply voluntarily, you will force the Select Subcommittee to consider issuing subpoenas.

In my September 14, 2020, letter, I explained the Select Subcommittee's grave concern that "the President's political appointees at HHS have sought to help him downplay the risks of the coronavirus crisis by attempting to alter, delay, and block critical scientific reports from CDC." I also explained that the Select Subcommittee was seeking interviews with seven HHS and CDC officials beginning on September 22, 2020, and the production of documents on September 28, 2020. The letter detailed the purpose of this inquiry:

Given the crucial and pressing need for truthful scientific information during this ongoing public health crisis, the Select Subcommittee is seeking to determine the

¹ Select Subcommittee on the Coronavirus Crisis, *Press Release: Select Subcommittee Launches Investigation into Political Interference in CDC Scientific Reports on Coronavirus* (Sept. 14, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-09-14.Majority%20to%20Azar%20and%20Redfield%20re%20HHS%20and%20CDC%20on%20Political%20Interference%20.pdf).

² *Trump Officials Interfered with CDC Reports on Covid-19*, Politico (Sept. 12, 2020) (online at www.politico.com/news/2020/09/11/exclusive-trump-officials-interfered-with-cdc-reports-on-covid-19-412809).

scope of political interference with CDC's scientific reports and other efforts to combat the pandemic, the impact of this interference on CDC's mission, whether this interference is continuing, and the steps that Congress may need to take to stop it before more Americans die needlessly.³

The Department has produced zero documents and zero witnesses in response to the Select Subcommittee's requests. Instead, you have used a variety of dilatory tactics to block the Select Subcommittee's investigation—not unlike the tactics HHS appointees reportedly used to prevent CDC from publishing truthful information about the coronavirus crisis.

On September 18, 2020, HHS wrote to the Select Subcommittee, refusing to make any of the witnesses available on the requested dates. The Department questioned the need for interviews, claimed they were “pretextual,” and asked for “additional clarity” on how the request “satisfies the requirement that oversight inquiries be conducted pursuant to a valid legislative purpose.”⁴

The Select Subcommittee responded on September 22, 2020. In that letter, I wrote that the Select Subcommittee's legislative purpose derives from its authority under House Resolution 935 and highlighted new reports indicating ongoing political interference at HHS, making the Subcommittee's investigation even more urgent. As an accommodation, I agreed to defer the interview of Assistant Secretary Michael Caputo until after he returns from leave and to contact Dr. Paul Alexander directly if he is no longer a government employee. I also agreed to postpone the five remaining interviews until the week of September 28, 2020.⁵

The Department refused to accept this accommodation. Instead, HHS wrote back on September 25, 2020, claiming again that the Select Subcommittee's requests were “pretextual” and demanding answers to a list of questions.⁶

³ Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Secretary of Health and Human Services Alex M. Azar II (Sept. 14, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-09-14.Majority%20to%20Azar%20and%20Redfield%20re%20HHS%20and%20CDC%20on%20Political%20Interference%20.pdf).

⁴ Letter from Assistant Secretary for Legislation Sarah C. Arbes, Department of Health and Human Services, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Sept. 18, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/Clyburn%20TI%20Request%20Response%20%28signed%29.pdf).

⁵ Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Secretary of Health and Human Services Alex M. Azar II (Sept. 22, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-09-22.Clyburn%20to%20Azar%20re%20HHS%20TIs%20.pdf).

⁶ Letter from Assistant Secretary Sarah C. Arbes, Department of Health and Human Services, to Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis (Sept. 25, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/09252020%20Clyburn%20TI%20Request%20Follow%20Up%20Response.pdf).

Select Subcommittee staff responded to HHS's questions promptly and asked the Department to confirm dates for the interviews.⁷ In response, your staff claimed on September 28, 2020, that the Department was "determining whether the requested individuals wish to hire personal counsel" and "assessing witness availability to sit and prepare for interviews."⁸

In testimony before the Select Subcommittee on October 2, 2020, I asked you to confirm that HHS would make witnesses available voluntarily for transcribed interviews the following week, beginning on October 5, 2020. You stated:

Our staffs are working to secure the agreements on the procedures to make that happen. We want to make that happen. ... I think they're in the final stages of getting things arranged.⁹

Yet, in the nearly three weeks since your testimony, HHS has refused to commit to any interviews or produce any documents despite repeated follow-up efforts from Subcommittee staff. Instead, on October 7, 2020, your staff sent a long list of new demands, claiming, "Until these outstanding issues and processes are resolved, it is not appropriate to commit to specific dates for interviews." Your staff also confirmed that the Department planned to withhold responsive documents and block witnesses from answering key questions. In particular, your staff wrote that HHS "will be conducting document searches and reviewing responsive materials" in advance of any interviews but "these document pulls are solely for the Department's use," and "The Subcommittee should not expect to receive any documents before the transcribed interviews occur." Your staff also warned that HHS lawyers would object to questions about the "review and clearance process" of CDC documents—a core issue in the Select Subcommittee's investigation—claiming that the development of public health materials is "inherently deliberative."¹⁰

Withholding responsive documents and blocking key testimony are tactics of obstruction, not accommodation, especially in light of the Department's failure to respond in full to at least six other requests from the Select Subcommittee since June 2020. If HHS has collected responsive documents, they should be produced at once—not withheld as leverage to delay transcribed interviews. In addition, deliberative process privilege is not an appropriate basis to withhold information or documents from Congress—especially where it is wielded to hide misconduct by executive branch officials.¹¹

⁷ Email from Staff, Select Subcommittee on the Coronavirus Crisis, to Staff, Department of Health and Human Services (Sept. 27, 2020).

⁸ Email from Staff, Department of Health and Human Services, to Staff, Select Subcommittee on the Coronavirus Crisis (Sept. 28, 2020).

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 Email from Staff, Department of Health and Human Services, to Staff, Select Subcommittee on the Coronavirus Crisis (Oct. 7, 2020).

¹¹ See *In re Sealed Case*, 121 F.3d 729 (D.C. Cir. 1997) (the "deliberative process privilege is primarily a common law privilege" and "the privilege disappears altogether when there is any reason to believe government

Your staff's October 7, 2020, email also posed a number of questions, many of which the Select Subcommittee has previously answered. For example, the Select Subcommittee described the scope of the requested interviews in communications on September 14, September 22, and September 27, 2020.¹² With respect to agency counsel, I am prepared to permit HHS counsel to participate in the Subcommittee's interviews if the Department will allow the witnesses to participate voluntarily without further delay and to answer the Select Subcommittee's questions without raising frivolous objections. With respect to logistics, the Select Subcommittee has agreed to conduct these interviews remotely via Webex or a similar service and expects the interviews to last approximately four hours.

For all these reasons, please confirm by October 26, 2020, whether HHS will produce responsive documents by October 30, 2020, and will make the requested CDC witnesses available for transcribed interviews during the week of November 2, 2020, or whether the Select Subcommittee should instead consider issuing subpoenas.

Sincerely,


James E. Clyburn
Chairman

cc: The Honorable Steve Scalise, Ranking Member

misconduct occurred"); *see also* Committee on Oversight and Reform, Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, in Contempt of Congress for Refusal to Comply with Subpoenas Duly Issued by the Committee on Oversight and Reform (June 24, 2019) (holding the Attorney General and Secretary of Commerce in contempt of Congress for refusing to comply with subpoenas and explaining that the deliberative process privilege is not a valid basis to withhold documents from Congress, particularly in light of evidence of potential misconduct) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/census-contempt-report.pdf).

¹² *See* Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Secretary of Health and Human Services Alex M. Azar II (Sept. 14, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-09-14.Majority%20to%20Azar%20and%20Redfield%20re%20HHS%20and%20CDC%20on%20Political%20Interference%20.pdf); Letter from Chairman James E. Clyburn, Select Subcommittee on the Coronavirus Crisis, to Secretary of Health and Human Services Alex M. Azar II (Sept. 22, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-09-22.Clyburn%20to%20Azar%20re%20HHS%20TIs%20.pdf); Email from Staff, Select Subcommittee on the Coronavirus Crisis, to Staff, Department of Health and Human Services (Sept. 27, 2020).