

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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March 19, 2020

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

Dr. Robert R. Redfield
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

Dear Secretary Azar and Director Redfield:

As you know, our Committee has been conducting oversight of the nation's preparedness for, and response to, the coronavirus crisis, and our top priority is to promote the health and safety of the American people. We are writing today to request limited, but important information about the status of coronavirus testing across the country. We hope you will be able to work with us to provide this critical information.

This week, the *New York Times* published a leaked copy of the Trump Administration's "Response Plan" for coronavirus dated last Friday, March 13, 2020. The document assumes, for planning purposes, that the crisis "will last 18 months or longer" and could include "multiple waves of illness" that would significantly degrade our nation's health care system. However, this document does not include a plan to address one of the most significant failings with the response to date—the shortfall in coronavirus testing.¹

The Response Plan recognizes the potentially negative consequences of the testing shortage, but it includes no specific measures to address these deficiencies. In a section entitled "Potential Shortfalls," the report states: "Shortage of SARS-CoV-2 viral test kits at the SLTT [state, local, tribal, and territorial] or private sector laboratory will delay the confirmation of

¹ Department of Health and Human Services, *PanCAP Adapted U.S. Government COVID-19 Response Plan* (Mar. 13, 2020) (online at <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf>). See also *U.S. Virus Plan Anticipates 18-Month Pandemic and Widespread Shortages*, *New York Times* (Mar. 17, 2020) (online at www.nytimes.com/2020/03/17/us/politics/trump-coronavirus-plan.html).

COVID-19 patients.” It also suggests that insufficient production capabilities would result in insufficient supplies for coronavirus testing. But it does not include any specific timelines, projections, target dates, or quantities for manufacturing, distributing, or conducting coronavirus testing across the country.²

More than two weeks ago, on March 3, 2020, the Committee requested documents relating to the Trump Administration’s planning for, and response to, the coronavirus outbreak, including in particular documents relating to coronavirus testing in the United States.³ You have not produced any of the requested information or documents.

Over that same period, it has become clear that the Administration’s testing program is failing. One day before the Administration’s “Response Plan,” was created, Dr. Anthony Fauci, the Director of the National Institute of Allergy and Infectious Diseases, testified at a hearing before our Committee that the current testing system is failing. He stated: “The system does not, is not really geared to what we need right now, to what you are asking for. That is a failing.” He continued:

It is a failing. Let’s admit it. The fact is the way the system was set up is that the public health component that Dr. Redfield was talking about was a system where you put it out there in the public, and a physician asks for it, and you get it. The idea of anybody getting it easily the way people in other countries are doing it, we are not set up for that. Do I think we should be? Yes. But we are not.⁴

We are gravely concerned that, due to multiple missteps, people across the country have been unable to get tested as healthcare providers are being forced to ration the extremely limited number of tests available, significantly degrading our country’s ability to conduct accurate modeling of the spread of the virus and endangering the health and safety of the American people. While other countries are accelerating their testing programs, ours remains far behind as

² *Id.*

³ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Chairman Stephen F. Lynch, Subcommittee on National Security, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Alex M. Azar II, Secretary, Department of Health and Human Services (Mar. 3, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020.03.03.CBM%20SFL%20GEC%20RK%20to%20Azar-HHS%20re%20COVID-19%20Testing.pdf>); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Chairman Stephen F. Lynch, Subcommittee on National Security, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Robert R. Redfield, Director, Centers for Disease Control and Prevention (Mar. 3, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020.03.03.CBM%20SFL%20GEC%20RK%20to%20Redfield-%20CDC%20re%20Coronavirus.pdf>).

⁴ Committee on Oversight and Reform, Testimony of Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, *Hearing on Coronavirus Preparedness and Response* (Mar. 11-12, 2020) (online at <https://oversight.house.gov/legislation/hearings/coronavirus-preparedness-and-response>).

the virus spreads throughout our nation largely undetected and doctors and nurses are forced to turn away people seeking tests even though they may be contagious.

For example, Ohio Governor Mike DeWine reported on Friday that state authorities believe that more than 100,000 Ohio residents have undiagnosed cases of coronavirus, but only 1,000 testing kits have been made available to Ohio's Department of Health.⁵ Yesterday, Governor DeWine warned that, due to the shortage, "testing is limited." He added:

The most important thing we can do right now, and I really can't stress this enough, is to reserve the limited tests we have for those Ohioans that are the sickest and most at risk. We must reserve those for those individuals.⁶

Earlier this week, Dr. Carlos Del Rio, the former Chief of the Emory Medical Service at Grady Memorial Hospital, warned on national television that the number of people coming into hospitals is "going up very, very rapidly." He added:

They're coming in at a very quick pace. And part of the reason we, we have, you will see in many hospitals, we have, you know, 100 patients, persons under investigation, and we may only have five or six confirmed cases—part of that is because there's still a big bottleneck in testing at the state. ...

We need to start having more tests because as we have more testing, we will have a lot more ability to diagnose who is, who's really a patient, a person under investigation, and who's not, and who's really a true case. So the number of cases are going to go up. I'm not surprised because they're so backed up in cases that as we get more testing, we'll be looking at those, sort of the cases that already exist.⁷

Reports indicate that many states are being forced to ration tests, and doctors report that they have been unable to test people they suspect have coronavirus because of the shortage.⁸

⁵ *Governor Mike DeWine: 100,000 Believed to Have Coronavirus in Ohio, Number Projected to Double Every Six Days*, Fox News (Mar. 13, 2020) (online at www.foxnews.com/media/governor-dewine-100k-believed-to-have-cv-in-ohio-number-will-double-every-six-days).

⁶ *DeWine Announces More Closures*, Portsmouth Daily-Times (Mar. 18, 2020) (online at www.portsmouth-dailytimes.com/news/47532/dewine-announces-more-closures); *88 People in Ohio Have Tested Positive for Coronavirus: Gov. Mike DeWine's Wednesday, March 18 Coronavirus Briefing*, Cleveland.com (Mar. 18, 2020) (online at www.cleveland.com/open/2020/03/88-people-in-ohio-have-tested-positive-coronavirus-gov-mike-dewines-wednesday-march-18-coronavirus-briefing.html).

⁷ *New Day*, CNN (Mar. 17, 2020).

⁸ *America Isn't Testing for the Most Alarming Coronavirus Cases*, The Atlantic (Mar. 13, 2020) (online at www.theatlantic.com/science/archive/2020/03/who-gets-tested-coronavirus/607999/); *How South Korea Scaled Coronavirus Testing While the U.S. Fell Dangerously Behind*, ProPublica (Mar. 15, 2020) (online at www.propublica.org/article/how-south-korea-scaled-coronavirus-testing-while-the-us-fell-dangerously-behind); *Sick People Across the U.S. Say They Are Being Denied the Coronavirus Test*, New York Times (Mar. 12, 2020) (online at www.nytimes.com/2020/03/12/us/coronavirus-testing-challenges.html).

This rationing runs counter to the recommendation of the World Health Organization, which advises that “every suspected case” must be tested.⁹

Unfortunately, the Trump Administration has repeatedly failed to meet its goals for coronavirus testing.¹⁰ For example:

- In the first week of March, the Administration claimed it would deliver testing capacity for one million people by the end of that week. Instead, it delivered tests for only 75,000 people—more than 900,000 short of its goal.¹¹
- In the second week of March, the Administration stated that it would deliver an additional four million tests by March 13, 2020.¹² There is no indication that this target was met.
- On March 13, 2020, Trump Administration officials stated that the President ordered “an entire overhaul of the testing approach,” and President Trump stated that it would take several more weeks for manufacturers to finally produce five million tests. He also stated, without explanation, “I doubt we’ll need anywhere near that.”¹³

Although the Administration has promised that testing will be more widely available, these delays prevent health officials across the country from determining the true scope of the crisis now—when it matters most. These claims also directly contradict multiple prior claims by President Trump that the testing program is having no problems at all.¹⁴

⁹ *World Health Organization Says Some Nations Aren’t Running Enough Coronavirus Tests: ‘Test Every Suspected Case,’* CNBC (Mar. 16, 2020) (online at www.cnbc.com/2020/03/16/who-says-some-nations-arent-running-enough-coronavirus-tests-test-every-suspected-case.html).

¹⁰ *Coronavirus: White House Concedes US Lacks Enough Test Kits,* BBC News (Mar. 6, 2020) (online at www.bbc.com/news/world-us-canada-51761435).

¹¹ *U.S. Will Miss Coronavirus Test Rollout Goal, Senators Say,* Bloomberg (Mar. 5, 2020) (online at www.bloomberg.com/news/articles/2020-03-05/u-s-won-t-meet-coronavirus-test-rollout-goal-senators-say).

¹² Food and Drug Administration, *Coronavirus (COVID-19) Update: White House Press Briefing by FDA Commissioner Stephen M. Hahn, M.D.* (Mar. 7, 2020) (online at www.fda.gov/news-events/speeches-fda-officials/coronavirus-covid-19-update-white-house-press-briefing-fda-commissioner-stephen-m-hahn-md-03072020).

¹³ The White House, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference* (Mar. 13, 2020) (online at www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-conference-3/).

¹⁴ *See, e.g.,* The White House, *Remarks by President Trump After Tour of the Centers for Disease Control and Prevention* (Mar. 7, 2020) (online at www.whitehouse.gov/briefings-statements/remarks-president-trump-tour-centers-disease-control-prevention-atlanta-ga/) (“[T]he testing has been amazing, actually. ... Anybody that wants a test can get a test. That’s what the bottom line is. ... Anybody right now and yesterday—anybody that needs a test gets a test. We—they’re there. They have the tests. And the tests are beautiful..”).

Given that the Administration's Response Plan does not contain plans for addressing the testing shortage, the Committee is narrowing its previous request to a limited set of information relating to that topic—which is the most urgent and, presumably, should be the most easily accessible. Please produce the following documents:

1. The Administration's current plans for producing, distributing, ensuring adequate supplies and equipment for, and conducting coronavirus testing;
2. The Administration's plans for producing, distributing, ensuring adequate supplies and equipment for, and conducting coronavirus testing as of:
 - a. January 31, 2020, the date a public health emergency was declared;
 - b. February 28, 2020, the date the first case of community spread was reported in the United States; and
 - c. March 13, 2020, the date a national emergency was declared; and
3. Documents sufficient to show current testing capacity across the country to date, including by the Centers for Disease Control and Prevention, state and local public health laboratories, and commercial laboratories, broken down by the numbers of:
 - a. Tests; and
 - b. Individuals that laboratories can test per day; and
4. A list of officials involved in coordinating coronavirus testing and their roles.

Time is of the essence, so we ask that you produce these documents by March 24, 2020. We need information about the Administration's plans for the production and distribution of coronavirus tests to determine whether Congress must take action to remedy these deficiencies. The House has already passed significant legislation to help address this crisis, and we are considering additional steps. This information is also necessary for local and state officials, medical professionals, and ordinary Americans to plan their response to this public health crisis.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's request.

The Honorable Alex M. Azar II
Dr. Robert R. Redfield
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If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Stephen F. Lynch
Chairman
Subcommittee on National Security



Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy



Gerald E. Connolly
Chairman
Subcommittee on Government
Operations



Harley Rouda
Chairman
Subcommittee on Environment

Enclosure

cc: The Honorable Mark Meadows, Ranking Member
Committee on Oversight and Reform

The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

The Honorable Jody B. Hice, Ranking Member
Subcommittee on National Security

The Honorable Mark Meadows, Ranking Member
Subcommittee on Government Operations

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

The Honorable James Comer, Ranking Member
Subcommittee on Environment

Responding to 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 Committees.
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 Committees' 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 Committees 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 Committees 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 Committees' 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 on Oversight and Reform, 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. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
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.