

Congress of the United States

House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

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March 5, 2024

The Honorable Andrew M. Cuomo
Former Governor, State of New York
C/O Ms. Rita Glavin, Esq.
Principal
Glavin, PLLC
156 W. 56th St., Suite 2004
New York, NY 10019
[TRANSMITTED VIA EMAIL]

Dear Mr. Cuomo:

The Select Subcommittee on the Coronavirus Pandemic (Select Subcommittee) wrote to you on December 1, 2023, to request that you voluntarily participate in a transcribed interview on February 2, 2024, related to the Select Subcommittee's investigation into how New York implemented federal guidance from both the Centers for Medicare and Medicaid Services (CMS) and Centers for Disease Control and Prevention (CDC) regarding protecting residents in nursing homes and other long-term care facilities.

The Select Subcommittee specifically requested your testimony because it was your administration that issued the March 25, 2020 nursing home order stating, in relevant part, that “[n]o resident shall be denied re-admission or admission to the [nursing home] solely based on confirmed or suspect[ed] diagnosis of COVID-19” (“March 25 Order”).¹ This misguided decision effectively admitted thousands of COVID-19 positive patients into nursing homes, causing predictable but deadly consequences for New York's most vulnerable.

Of course, you have argued—even after leaving office—that the March 25 Order was consistent with CMS and CDC guidance. In addition, you have argued that it was the nursing home staff—not your Administration's order—that was responsible for the resulting deaths in the nursing homes.

In addition to the March 25 Order itself, there is also troubling evidence suggesting the Cuomo Administration at best downplayed its impacts and at worst covered them up. For example, on July 6, 2020, the New York State Department of Health (NYDOH) released a report regarding COVID-19 in nursing homes. Although the report appeared to independently validate your position regarding the March 25 Order, it was far from impartial. Indeed, according to the New York impeachment investigation, your office edited the report with the intention of

¹ Memorandum from the New York State Department of Health to Nursing Home Administration, et. al., *Advisory: Hospital Discharges and Admissions to Nursing Homes* (Mar. 25, 2020) (on file with Comm. Staff).

suppressing your and the March 25 Order's involvement in nursing home fatalities. Specifically, the impeachment report found:

Evidence obtained during our investigation demonstrates that while the DOH Report was released under the auspices of DOH, it was substantially revised by the Executive Chamber and largely intended to combat criticisms regarding former Governor Cuomo's directive that nursing homes should readmit residents that had been diagnosed with COVID-19.¹

Further, your office heavily edited—or at the very least, filtered—the truth in the NYSDOH Report to only account for 6,432 nursing home deaths, instead of the 9,844 that were initially included in earlier drafts.² According to a report by New York Attorney General Letitia James, COVID-19-related nursing home deaths in New York were undercounted by as much as 50 percent—resulting in thousands of nursing home deaths not being reported properly.³

Accordingly, your testimony is vital to our investigation into the effectiveness of federal guidance and regulations implemented during the COVID-19 pandemic regarding the protection of nursing home residents. Further, this investigation may inform legislation to enhance the federal scientific guidance process, including the drafting, publication, and implementation of guidances originating from CMS or CDC.

As outlined below, you have repeatedly refused the Select Subcommittee's attempts to schedule a transcribed interview in a reasonable timeframe. Accordingly, attached to this letter please find a subpoena for you to appear for a deposition on **May 24, 2024** in Washington, D.C.

I. Background

The Select Subcommittee has been charged with conducting oversight to inform legislative solutions to address deficiencies and ingrain proficiencies within the federal government. Among the inquiry's relevant topics, the Select Subcommittee has been investigating how the State of New York implemented CMS and CDC guidance regarding health and safety in nursing homes.

On May 19, 2023, the Select Subcommittee requested that you participate in a voluntary transcribed interview.⁴ The Select Subcommittee's letter also included requests for documents and communications relevant to this investigation.⁵ After one discussion, the Select Subcommittee never received further information from you.

² Jesse McKinley, *et al.*, *As Cuomo Sought \$4 Million Book Deal, Aides Hid Damaging Death Toll*, THE N.Y. TIMES (Mar. 31, 2021)

³ Report of New York Attorney General Letitia James, *Nursing Home Response to COVID-19 Pandemic (updated Jan. 30, 2021)*, available at <https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf>.

⁴ Letter from Hon. Brad Wenstrup D.P.M., Chairman, Select Subcomm. On the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, Hon. Nicole Malliotakis, Member of Congress, to Andrew M. Cuomo, Governor of New York (May 19, 2023).

⁵ *Id.*

On October 10, 2023, the Select Subcommittee sent you a letter that highlighted your failure to cooperate and reminded you that you were still expected to respond to the Select Subcommittee's previous requests.⁶ The October 10 Letter also explicitly warned you that if you failed to comply, the Select Subcommittee would evaluate pursuing compulsory process.⁷

On October 11, 2023, your attorney informed the Select Subcommittee that she did not believe that you were in possession of any documents responsive to our request.⁸

II. The Select Subcommittee's December 1, 2023 Request for a Transcribed Interview

On December 1, 2023, the Select Subcommittee again requested your testimony at a transcribed interview, to take place on February 2, 2024.⁹ This request, which provided you more than sixty days advance notice—coupled with the more than six months since the initial May 19 Letter—should have provided you sufficient time to prepare your testimony for the date requested by the Select Subcommittee.

Unfortunately, you have only worked to delay our investigation. While the Select Subcommittee has endeavored to work in good faith with you to schedule a transcribed interview, including offering to conduct the interview at a location of your choosing and freely granting extensions of time in scheduling the transcribed interview, there has been no reasonable attempt on your part to schedule the interview.

On December 5, 2023, Select Subcommittee staff followed up with your attorney regarding the December 1 Letter.¹⁰ The following day, your attorney acknowledged receipt, but only informed the Select Subcommittee that she would be sending a “written response” to the letter.¹¹ Your attorney did not give any indication that you would decline our request to participate in a transcribed interview on February 2, 2024.

On December 17, 2023, after not receiving a written response, Select Subcommittee staff again followed up with your attorney regarding your status and availability for an interview on February 2, 2024.¹² Your attorney responded that she would be sending a letter that week to the

⁶ Letter from Hon. Brad Wenstrup D.P.M., Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, Hon. Nicole Malliotakis, Member of Congress, to Andrew M. Cuomo, Governor of New York (Oct. 10, 2023).

⁷ *Id.*

⁸ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Oct. 11, 2023).

⁹ Letter from Hon. Brad Wenstrup, D.P.M., Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, Hon. Nicole Malliotakis, Member of Congress, to Andrew M. Cuomo, Governor of New York (Dec. 1, 2023).

¹⁰ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (December 5, 2023).

¹¹ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Dec. 6, 2023).

¹² E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (December 17, 2023).

Select Subcommittee on your behalf, but again, gave no indication that you would refuse to testify on the requested date.¹³

On December 22, 2023—more than three weeks since the December 1 Letter—your attorney sent a letter to the Select Subcommittee claiming you were unavailable on February 2, 2024—without any proposed alternative dates or any indication that you would work with the Select Subcommittee to find an alternative date.¹⁴ Instead, your attorney requested a meeting with Select Subcommittee staff for the first week of January, more than a month after the December 1 Letter.¹⁵

Accordingly, on January 3, 2024, at the request of and as further accommodation to you, Select Subcommittee staff called your attorney to discuss the requested transcribed interview. Select Subcommittee staff discussed the Subcommittee’s investigative authority, as well as both the mechanics and scope of a potential transcribed interview. When Select Subcommittee staff attempted to discuss potential dates, however, your attorney declined, saying that she still needed to speak with you about scheduling, which she suggested should be discussed during a follow-up meeting.

On January 10, 2024, Select Subcommittee staff followed up to ask if your attorney had any questions before a date for the transcribed interview was set.¹⁶ The Select Subcommittee received no response.

On January 12, 2024, Select Subcommittee staff again emailed your attorney to follow up on scheduling.¹⁷ Your attorney responded to Select Subcommittee staff with an assurance that she would “circle back” with the Subcommittee the next week.¹⁸ However, your attorney never did.

On January 19, 2024, Select Subcommittee staff again emailed your attorney requesting to move forward with planning.¹⁹ After your attorney again failed to respond, Select Subcommittee staff emailed her on January 23, 2024, requesting to meet to find a mutually agreed upon date to have the transcribed interview.²⁰

¹³ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Dec. 17, 2023).

¹⁴ Letter from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Dec. 22, 2023).

¹⁵ Letter from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Dec. 22, 2023).

¹⁶ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Jan. 10, 2024).

¹⁷ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Jan. 12, 2024).

¹⁸ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Jan. 12, 2024).

¹⁹ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Jan. 19, 2024).

²⁰ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Jan. 23, 2024).

Your attorney finally responded to Select Subcommittee staff four days later, asking to meet on January 26, 2024.²¹ However, less than fifteen minutes before the scheduled meeting, your attorney's office notified the Select Subcommittee that it would need to be rescheduled.²²

Select Subcommittee staff offered you any day of your choosing during the week of February 26, 2024 to have the transcribed interview and reminded your attorney that it had been almost two months since the December 1 Letter and the Select Subcommittee needed to schedule the transcribed interview.²³

On January 29, 2024, your attorney requested a meeting with Select Subcommittee staff on January 31, 2024.²⁴ While your attorney did not respond to our request from the previous email with dates to schedule a transcribed interview, the Select Subcommittee staff agreed. At the meeting on January 31, 2024, however, your attorney was not prepared to work with Select Subcommittee staff to find a mutually agreeable date for the transcribed interview. Instead, your attorney assured Select Subcommittee staff that she would follow up once she was able to meet with you to discuss dates. Like your attorney's previous assurances, unfortunately, she never followed up with the Select Subcommittee, leading Select Subcommittee staff to check with your attorney the following week.

On February 5, 2024—more than two months after the December 1 Letter that initially requested a transcribed interview on February 2—Select Subcommittee staff emailed your attorney asking for a meeting to schedule the transcribed interview.²⁵ After not receiving a response, Select Subcommittee staff again emailed your attorney on February 7, 2024, to follow up on our request.²⁶

That very day, your attorney informed Select Subcommittee staff that she was out of the country that week and would not be able to meet until the following week.²⁷ This was not something that your attorney informed Select Subcommittee staff one week earlier when she assured the Select Subcommittee that she would follow up on scheduling.

Accordingly, Select Subcommittee staff met with your attorney on February 12, 2024. Once again, your attorney did not come prepared with available dates for a transcribed interview.

²¹ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Jan. 23, 2024).

²² E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Jan. 26, 2024).

²³ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Jan. 26, 2024).

²⁴ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Jan. 29, 2024).

²⁵ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Feb. 5, 2024).

²⁶ E-Mail from Staff, Select Subcomm. on the Coronavirus Pandemic, to Counsel, Andrew M. Cuomo, Governor of New York (Feb. 7, 2024).

²⁷ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Feb. 7, 2024).

Instead, your attorney informed Select Subcommittee staff that you would likely not be available for a transcribed interview until August 2024. Select Subcommittee staff expressed concern over this delay and informed your attorney we would be evaluating the use of the compulsory process.

On February 21, 2024, your attorney finally provided specific dates for an interview: in August 2024—more than seven months after the date requested in the December 1 Letter.²⁸

It is now clear that your strategy from the beginning has been to delay and undermine our investigation. You have repeatedly and consistently dismissed, deflected, or ignored all questions and requests from the Select Subcommittee related to your handling of nursing homes. Publicly, you and your spokesman have downplayed our investigation—characterizing it as a political attempt to weaponize people’s pain.²⁹ In actuality, as elected officials, it is our obligation and responsibility to recognize people’s pain and to address the surrounding issues that led to or created their pain.

Your unwillingness to seriously cooperate with our requests and to negotiate a reasonable date to participate in a transcribed interview has unjustifiably delayed our investigation. This is unacceptable.

House Resolution 5 specifically authorizes the Select Subcommittee to investigate “the implementation or effectiveness of any Federal law or regulation applied, enacted, or under consideration to address the coronavirus pandemic and prepare for future pandemics” and “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic.”³⁰ House Resolution 5 also expressly authorizes the Committee on Oversight and Accountability to issue subpoenas returnable to the Select Subcommittee.³¹ Consistent with House Rule XI.2(m)(3)(A)(i), and Rule 12(g) of the Rules of the Committee on Oversight and Accountability, the Chairman of the Committee on Oversight and Accountability has authorized the attached subpoena, compelling your appearance at a deposition on May 24, 2024 before the Select Subcommittee.

Sincerely,



Brad Wenstrup, D.P.M.
Chairman

²⁸ E-Mail from Counsel, Andrew M. Cuomo, Governor of New York, to Staff, Select Subcomm. on the Coronavirus Pandemic (Feb. 21, 2024).

²⁹ *Andrew Cuomo Answers All, The Rita Cosby Show, 77 WABC AM (May 23, 2023), available at <https://wabcradio.com/episode/andrew-cuomo-answers-all-5-23-23/>; Victor Nava, *House COVID-19 panel requests testimony from 4 former Cuomo admin officials*, N.Y. POST (Feb. 16, 2024).*

³⁰ H. Res. 5 § 4(a)(2)(A)(iii), (vii).

³¹ H. Res. 5, § 4(a)(3)(A)(ii).

The Honorable Andrew M. Cuomo

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cc: The Honorable Raul Ruiz, M.D., Ranking Member
Select Subcommittee on the Coronavirus Pandemic