

Congress of the United States

House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

September 30, 2024

Ms. Margaret A. Moore
C/O William J. Vigen
Partner
Venable LLP
600 Massachusetts Ave., NW
Washington, D.C. 20001

Dear Ms. Moore:

The Select Subcommittee on the Coronavirus Pandemic is authorized to investigate “the origins of the Coronavirus pandemic, including but not limited to the Federal Government’s funding of gain-of function research,” “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic,” and “cooperation by the executive branch and others with Congress, the Inspectors General, the Government Accountability Office, and others in connection with oversight of the preparedness for and response to the coronavirus pandemic.”¹ Pursuant to this authority, the Select Committee is actively investigating the origins of the COVID-19 pandemic, the Executive Branch’s cooperation with Congress and others, and whether legislative solutions are needed regarding the transparency and retention of National Institute of Allergy and Infectious Diseases (NIAID) documents. You have information vital to each line of inquiry—specifically regarding the Executive Branch’s Freedom of Information Act (FOIA) policies and validating previous testimony.

As you know, the Select Subcommittee requested that you voluntarily appear for a transcribed interview to answer questions about your knowledge of these issues. Your attorney conveyed your declination of that request on August 5, 2024. To ensure that the Select Subcommittee can obtain relevant information from you, please see the attached subpoena for you to appear at a deposition on October 4, 2024.

As background, on May 22, 2024, the Select Subcommittee released a Staff Memorandum containing evidence of potential malfeasance by Dr. David Morens, Senior Scientific Advisor to former Director of National Institute of Allergy and Infectious Diseases Dr. Anthony Fauci.² The Staff Memo included e-mails that suggest you were involved in a scheme to

¹ H. Res. 5 § 4(a)(2)(A)(i), (vii), (ix).

² Memorandum from Republican Staff to Republican Members of the Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, *Allegations of Wrongdoing and Illegal Activity by Dr. David Morens, Senior Advisor to National Institute of Allergy and Infectious Diseases former-Director; Dr. Anthony Fauci* (May 22, 2024).

assist Dr. Morens in sidestepping the transparency requirements of FOIA and possibly other laws or regulations.³ This evidence led the Select Subcommittee to request your testimony.

On May 24, 2024, Select Subcommittee staff sent you an e-mail requesting an informal phone call to discuss Dr. Morens' testimony and communications.⁴ You failed to respond. On May 29, 2024, Select Subcommittee staff again requested an informal phone call.⁵ In response to the second inquiry, you stated that you were in the process of retaining counsel.⁶

On May 31, 2024, after you had retained counsel, the Select Subcommittee officially requested your testimony at a voluntary transcribed interview.⁷ Since then, Select Subcommittee staff and your counsel have engaged in negotiations to secure your testimony. This has included discussions about an initial offer for a sworn statement in lieu of an interview, a limited scope, and time extensions to allow your counsel to obtain the National Institutes of Health (NIH) response to your FOIA request for your official e-mails. Despite all of these efforts and accommodations, your counsel continued to delay answering whether or not you would voluntarily testify.

On August 5, 2024, the Select Subcommittee received a letter from your counsel outlining your refusal to testify.⁸ This letter includes numerous misstatements of law and fact, which are briefly addressed below.

Your counsel first claims that you refuse to voluntarily testify because the allegations that you assisted Dr. Morens—and possibly others—in avoiding FOIA or otherwise deleting or destroying official records are “spurious.”⁹ In an attempt to substantiate this statement, your counsel relies on the testimony of Dr. Morens, the individual with whom you may have colluded to avoid transparency requirements.¹⁰ In light of evidence that Dr. Morens may have made false statements to the Select Subcommittee, we believe any reliance on his testimony, until independently validated, is spurious.

Next, your counsel writes that you are refusing to testify because of “threats of prosecution” but does not cite to any evidence of any relevant ongoing law enforcement investigation.¹¹ In any event, this is not a valid excuse to refuse to testify.

³ *Id.*

⁴ E-mail from Peter Spectre, Professional Staff Member, Select Subcomm. on the Coronavirus Pandemic, to Margaret A. Moore, former Freedom of Information Act (FOIA) Officer, National Institute of Allergy and Infectious Diseases (NIAID) (May 24, 2024).

⁵ E-mail from Peter Spectre, Professional Staff Member, Select Subcomm. on the Coronavirus Pandemic, to Margaret A. Moore, former FOIA Officer, NIAID (May 29, 2024).

⁶ E-mail from Margaret A. Moore, former FOIA Officer, NIAID, to Peter Spectre, Professional Staff Member, Select Subcomm. on the Coronavirus Pandemic (May 29, 2024).

⁷ Letter from Hon. Brad Wenstrup, D.P.M., Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, to Margaret A. Moore (May 31, 2024), *on file with Select Subcomm. Staff*.

⁸ Letter from William J. Vigen, Partner, Venable LLP, *et al.*, to Hon. Brad Wenstrup, D.P.M., Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability (Aug. 5, 2024).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Further, your counsel writes that you have “cooperated with the Select Subcommittee” and “expedit[ed] [your] own FOIA request for [your] own documents, which [you] provided to the Select Subcommittee voluntarily.”¹² While voluntary providing documents in response to a Congressional request can constitute cooperation in most circumstances, providing public documents that we did not request does not. Moreover, the Select Subcommittee also requested your testimony, and your refusal to testify demonstrates a lack of cooperation.

Finally, your counsel writes that if the Select Subcommittee announces a subpoena for your testimony, you “would have no choice but to assert your right under the Fifth Amendment of the United States Constitution not to be forced to address such topics.”¹³ This is your right and your decision. However, your counsel is incorrect in asserting that “a subpoena in this context would potentially violate the D.C. Rules of Professional Conduct because the subpoena would cause ‘a witness to be called for the sole purpose of harass[ment].’”¹⁴ As noted, the Select Subcommittee is charged with investigating “the origins of the Coronavirus pandemic, including but not limited to the Federal Government’s funding of gain-of-function research,” and “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic;” it is not seeking to expose your conduct for exposure’s sake. Setting aside whether the D.C. Bar has any authority to prevent Congress from conducting its constitutionally obligated oversight duties, this subpoena does not violate the D.C. legal ethics rules for at least three reasons.¹⁵

First, the D.C. Bar Legal Ethics Committee itself recognizes that its opinions do not prevent a Congressional committee from conducting constitutionally mandated oversight. The Legal Ethics Committee concedes that “[i]t is *not per se improper*...to cause a witness to be summoned in furtherance of a legitimate legislative function of Congress, even though the resultant attending publicity will be damaging to the witness’ reputation and possibly prejudicial to him in a future criminal trial.”¹⁶

Second, the facts and circumstances discussed in the relevant D.C. Bar Opinions are distinguishable from your case. In Opinion 31, for example, the witness was a “target” of a grand jury investigation when he was subpoenaed to appear at a public hearing before a Congressional Committee.¹⁷ The Select Subcommittee has no reason to believe that you are currently a target of a grand jury investigation, and we are not subpoenaing you to appear publicly.

Third, because you have yet to testify or affirmatively assert your Fifth Amendment privilege against self-incrimination, it would be consistent with the D.C. Bar Opinions to seek your testimony in a non-public setting, as the Select Subcommittee has done. As the Legal Ethics

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ D.C. Bar Legal Ethics Opinion 358 (2011), (D.C. Legal Ethics Opinion 358, which revisits Opinion 31, discusses the ethics of a Congressional committee subpoenaing a witness when it has already been advised the witness will refuse to answer questions on a claim of privilege. In Opinion 358, the D.C. Bar Legal Ethics Committee was asked to vacate Opinion 31 and declined to do so.)

¹⁶ *Id.*

¹⁷ *Id.*

Ms. Margaret Moore
September 30, 2024
Page 4

Committee acknowledges, “[i]nsofar as the attorney has some question whether the witness will in fact claim his privilege if called, this question can be resolved by calling the witness in an executive session.”¹⁸

In sum, the justifications your counsel has offered do not excuse you from testifying before the Select Subcommittee. Accordingly, the attached subpoena requires you to testify at a deposition before the Select Subcommittee on October 4, 2024.

Sincerely,



Brad Wenstrup, D.P.M.
Chairman

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

¹⁸ *Id.*