

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITY OF CHICAGO,

Plaintiff,

vs.

Case No. 1:20-cv-1566 (TJK)

ALEX M. AZAR, II, in his official capacity
as Secretary of the United States
Department of Health and Human
Services, et al.,

Defendants.

NOTICE OF SUPPLEMENTAL INFORMATION

Plaintiff City of Chicago respectfully submits this notice to inform the Court of several recent reports summarizing public health data that project that the nation is likely beginning the predicted fall surge of the novel coronavirus pandemic. Data from the Centers for Disease Control and Prevention reveal that the seven-day moving average of new cases has risen since mid-September,¹ and experts are warning of a significant increase in cases as the nation continues into the fall.² As Judge Henderson recently recognized, the pandemic continues to be

¹ *Trends in Number of COVID-19 Cases in the US Reported to CDC, by State/Territory*, CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrends (last visited Oct. 5, 2020).

² *See, e.g.,* Shelby Lin Erdman, *IHME Director Warns of Coming “Surge” in Covid-19 Cases*, CNN (Sept. 25, 2020), https://www.cnn.com/world/live-news/coronavirus-pandemic-09-25-20-intl/h_063f5cbf97e2e73315b7dd95fca71f61 (over 350,000 deaths projected by the end of the year, according to data provided by the Institute for Health Metrics and Evaluation at the University of Washington, which is available at <https://covid19.healthdata.org/united-states-of-america?view=infections-testing&tab=trend&test=infections>); Ted Mann & Talal Ansari, *Fresh Surge in U.S. Coronavirus Cases Feared, as Death Toll Nears 200,000*, Wall St. J. (Sept. 21, 2020), <https://www.wsj.com/articles/coronavirus-latest-news-09-21-2020-11600676779> (“Former Food and Drug Administration Commissioner Scott Gottlieb said on CBS’s ‘Face the Nation’ he expected the nation to have ‘at least one more cycle with this virus heading into fall

“an unprecedented calamity, subjecting Americans to physical and economic suffering on a national scale.” *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, No. 20-5204, 2020 WL 5742075, at *10 (D.C. Cir. Sept. 25, 2020) (Henderson, J., concurring); *see also Renewal of Determination that a Public Health Emergency Exists*, HHS (Oct. 2, 2020), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-2Oct2020.aspx>. These reports therefore provide further reason for the Court to grant Chicago’s motion for summary judgment on an expedited basis, and to require Defendants to open a special enrollment period in response to the pandemic.

and winter.”); Corky Siemaszko, *Covid Cases Climbing Again in U.S. While Fauci Warns “We’re Not in a Good Place,”* NBC News (Sept. 28, 2020), <https://www.nbcnews.com/news/us-news/covid-cases-climbing-again-u-s-while-fauci-warns-we-n1241256> (Dr. Anthony Fauci warning that cases are “unacceptably high” and that the nation “really need[s] to intensify the public health measure[s] that we talk about all the time”); Chris Wilson & Jeffrey Kluger, *Alarming Data Show a Third Wave of COVID-19 Is About to Hit the U.S.*, Time (Sept. 28, 2020), <https://time.com/5893916/covid-19-coronavirus-third-wave/> (citing data from the Johns Hopkins Center for Systems Science & Engineering reflecting a 32% increase in cases since September 9); *see also* Abby Goodnough, *Trump Program to Cover Uninsured Covid-19 Patients Falls Short of Promise*, N.Y. Times, <https://www.nytimes.com/2020/08/29/health/Covid-obamacare-uninsured.html> (last updated Sept. 17, 2020) (“[A] review by The New York Times of payments made through [the COVID-19 testing and treatment program], as well as interviews with hospital executives, patients and health policy researchers who have examined the payments, suggest the quickly concocted plan has not lived up to its promise.”).

Dated: October 5, 2020

Respectfully submitted,

/s/ John T. Lewis

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