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August 5, 2020

Office of Inspector General
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U.S. Dept. of Health and Human Services
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Washington, D.C. 20201

Office of Inspector General
Norbert Vint
U.S. Office of Personnel Management
1900 E Street, NW
Washington, D.C. 20415

**RE: Second Request, Government Employee Status of Moncef Slaoui and Others,
Operation Warp Speed**

Dear Inspector Generals:

Public Citizen and Lower Drug Prices Now respectfully submit this second request for the Office of Inspector General to evaluate whether appointees to advise and manage the massive government program to oversee the development and funding of COVID-19 treatments and vaccines, known as Operation Warp Speed, should be classified as government employees rather than private contractors, subject to the conflict of interest and disclosure requirements applicable to federal employees.

Our first request was sent to the Health and Human Services Inspector General's office on May 28, 2020, and focused solely on Dr. Moncef Slaoui, appointed co-leader of the government program by President Donald Trump. Public Citizen and Lower Drug Prices Now noted that the appointment of Slaoui to head such a critical government program appears "to qualify him as a special government employee, if not a regular government employee," and asked that the HHS Inspector General determine whether this is the case.

Robert DeConti, HHS Assistant Inspector General for Legal Affairs, responded on July 13, 2020, that Slaoui is likely to serve as chief advisor for Operation Warp Speed for more than 130 calendar days and thus would not qualify as a special government employee (attached). With that, our request was dismissed.

DeConti later sent a follow-up response on July 31, 2020, noting that OIG has not authority to reclassify the employment status of appointees and that we should consult with HHS Office of Human Resources and the U.S. Office of Personnel Management (attached).

Public Citizen and Lower Drug Prices Now have decided to do precisely that and have sent the request to both directors of Health and Human Services (HHS) and the Office of Personnel Management (OPM).

However, we are also submitting this amended request to the Inspector General's offices (IG) of both HHS and OPM. This is a matter within the jurisdiction of the Inspector General's offices,

and experience suggests that the IG is more likely to provide a fair and independent analysis. The request is amended in that (i) Slaoui is likely to remain in his position beyond the 130-day threshold, so we ask whether this qualifies Slaoui as a regular government employee; and (ii) at least three other “private contractors” have been identified as playing critical roles in Operation Warp Speed who also should be evaluated as to whether they cross the threshold into government employment status.

A. Government Employee

Three criteria for Government employment are identified in 5 U.S.C. §§ 2104 and 2105: (1) appointment in the civil service; (2) performance of a Federal function; and (3) supervision by a Federal official.

Federal statutes (5 USC § 3109) as well as the Office of Legal Counsel (OLC) recognize the authority of the president and agencies on occasion to name advisors and experts on a temporary or intermittent basis to provide necessary governmental services. Nevertheless, as the Office of Personnel Management (OPM) has made clear these experts and consultants also are to be considered government employees. An OPM [“Fact Sheet on Expert and Consultant Pay”](#) specifies:

“Experts and consultants appointed under 5 USC 3109 are considered to be Federal civil service employees under 5 USC 2105. (See 5 CFR 304.101.) Thus, they are generally covered by laws applicable to Federal employees, including laws related to compensation and leave, subject to any additional coverage conditions in the given law.”

OLC has distinguished private-sector advisors from government employees based on their role in government. Those who assume a more formal role to assist the President or agency on specific matters, should be evaluated as a regular employee or SGE. In one OLC [opinion](#), for example, the advisor “departed from his usual role of an informal advisor” by organizing and chairing meetings of government officials on a particular issue as well as assuming responsibilities for coordinating related government activities on that issue. The advisor “presumably [was] working under the direction or supervision of the President,” leading OLC to conclude that the advisor should be given a formal designation and subject to any consequent ethics requirements.

B. The Case of Moncef Slaoui and Others

The appointment of Dr. Moncef Slaoui as co-leader of Operation Warp Speed certainly appears to qualify him as a government employee, either a regular or special government employee depending on his term leading Operation Warp Speed. Slaoui has received a formal contract to serve in a leadership position of a government program, in which there is a “firm mutual understanding that a relatively formal relationship” for employment exists. 1 Op. O.L.C. 20, 21 (1977). Slaoui likely will be instructing others in the project and making official decisions to guide government policy. His duties and role in government are very specific and focused on a singular mission. And Slaoui is accountable to higher government officials (including the President) and in doing so, characterizing him as an independent contractor and not an employee seems implausible.

The President certainly has the authority to appoint Slaoui to such a leadership position in government, but the public also has the legal authority to demand that Slaoui's public service not be tainted by personal gain.

Slaoui is a venture capitalist in the pharmaceutical industry and a long-time pharmaceutical executive, even while assuming his governmental role to pick and choose winners in the race for pandemic treatments and vaccines. As the [New York Times](#) reports, he still holds about \$10 million in GlaxoSmithKline stock and remains a partner in Medicxi, a venture capital firm that specializes in investing in biotech concerns, with several companies engaged in the global race to develop treatments or vaccines to stanch the coronavirus pandemic. GSK and Sanofi, to name a few, have become partners in creating a vaccine candidate against the coronavirus.

The conflicts of interest posed by Slaoui's private-sector employment and financial interests with his new official role in government are enormous and seriously undercut confidence that official actions are being taken in the public's interest. In fact, Operation Warp Speed has [awarded](#) \$2.1 billion to GlaxoSmithKline and Sanofi Pasteur "for development including clinical trials, manufacturing, scale-up and delivery of its vaccine." It is the largest investment through Operation Warp Speed to date – and Slaoui owns substantial investments in at least one of the corporate recipients of this multi-billion dollar contract.

An [investigation by Politico](#) has identified at least three other private contractors with serious conflicts of interest who are intimately involved in Operation Warp Speed. Carlo de Notaristefani, a pharmaceutical industry veteran, is overseeing the program's manufacturing of vaccines. William Erhardt and Rachel Harrington, who are both former Pfizer executives, are under contract to work on Warp Speed, though their formal roles have not been publicly disclosed.

Public Citizen and Lower Drug Prices Now request that the Inspector General's office of the Department of Health and Human Services as well as the Office of Personnel Management evaluate whether the threshold for government employee status, and its attendant conflict of interest and disclosure requirements, are being properly implemented and enforced when it comes to Dr. Moncef Slaoui and perhaps others working on Operation Warp Speed.

Respectfully Submitted,

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



July 13, 2020

Sent by Email

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Dear Dr. Holman and Ms. Jorge:

This responds to your letter dated May 28, 2020, to the Office of Inspector General (OIG), requesting a determination as to whether or not Moncef Slaoui should be classified as a Special Government Employee (SGE) pursuant to 18 U.S.C. § 202. OIG shares your commitment to ensuring that all individuals and entities follow the ethics laws and regulations applicable to federal employees to promote good governance and the integrity of the federal service.

On May 15, 2020, the agency announced that Mr. Slaoui would be serving as chief advisor for Operation Warp Speed (OWS). OWS is the national program to accelerate the development, manufacture and distribution of COVID-19 vaccines, therapeutics and diagnostics. The publicized goal of OWS is to have a safe and effective vaccine available by January 2021. Our understanding is that this ambitious timeline is expected to be greater than 200 days and may result in a longer period to effectuate the manufacture and distribution of a vaccine. The timeframe appears to be longer than the applicable statutory time limit for an SGE appointment, which is not to exceed 130 calendar days. Given these circumstances, OIG is not in a position to determine that the Department's decision was unreasonable when it pursued options other than an SGE appointment for Mr. Slaoui's advisory services for this operation

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Thank you for your communication to OIG in the public interest.

Sincerely,

Robert DeConti
Assistant Inspector General for Legal Affairs



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



July 31, 2020

Sent by Email

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Dear Dr. Holman and Ms. Jorge:

I write on behalf of the U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG) in further response to your email to our office dated May 28, 2020. As you know, on behalf of the OIG, I responded to your email by letter dated July 13, 2020 (the “OIG response”). On July 14, 2020, an article appeared in the *Washington Post* that mischaracterized OIG’s response. I write to clarify the OIG response in light of the *Washington Post* article and others that followed.

Your email of May 28, 2020, expressly requested OIG to make a determination as to whether or not Dr. Moncef Slaoui, the Chief Advisor to HHS’s Operation Warp Speed, should be classified as a Special Government Employee (SGE) pursuant to 18 U.S.C. § 202, rather than as a contractor for HHS. In the OIG response, we stated, in pertinent part, that: “OIG is not in a position to determine that the Department’s decision was unreasonable when it pursued options other than an SGE appointment for Mr. Slaoui’s advisory services for this operation.”

Decisions concerning the classification of individuals as employees, consultants, or contractors within HHS are made by HHS management, not the OIG. Similarly, decisions concerning what financial holdings a Department employee may have are made by HHS ethics officials in the Department’s Office of General Counsel. As such, the OIG response was intended to notify you that we made no determination as to whether Dr. Slaoui should have been classified as a special government employee. Likewise, we did not address Dr. Slaoui’s financial holdings.

Dr. Holman and Ms. Jorge

July 31, 2020

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While OIG can and does review (through, for example, audits) alleged mismanagement and ethics issues in HHS (including, for example, reviewing the appropriate employment/contractor classification of individuals or financial conflicts of interest), we have not made a decision to review HHS' arrangement with Dr. Slaoui at this time. If OIG were to conduct such a review, we would assess the available data that pertains to the existing arrangement. Ultimately, HHS management has the authority to make the determination of what actions, if any, to take in response to a finding or recommendation found in an OIG report. OIG has no authority to change an individual's classification or make decisions with respect to what financial holdings can be retained and which must be divested.

If you believe that Dr. Slaoui was improperly classified as a contractor rather than an employee, you may want to raise such concerns to either the Department's Office of Human Resources (<https://www.hhs.gov/about/agencies/asa/ohr/index.html>) or the U.S. Office of Personnel Management (<https://www.opm.gov/>). To the extent that you believe Dr. Slaoui was improperly allowed to maintain investments that create a conflict of interest with his HHS work, you should contact either the Ethics Division of the Department's Office of General Counsel (<https://www.hhs.gov/about/agencies/ogc/key-personnel/ethics-division/index.html>) or the Office of Government Ethics (<https://oge.gov/>).

I hope this information is useful to you. Should you have additional information that you would like us to consider, please feel free to forward it to my attention.

Sincerely,

Robert DeConti
Assistant Inspector General for Legal Affairs