

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<http://oversight.house.gov>

May 20, 2020

The Honorable Henry J. Kerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036

Dear Mr. Kerner:

The Office of Special Counsel (OSC) is evaluating a complaint filed by Dr. Rick Bright, the Director of the Biomedical Advanced Research and Development Authority (BARDA) within the Department of Health and Human Services (HHS). The complaint stems from HHS's decision to transfer Dr. Bright, who became BARDA Director in the waning weeks of the Obama-Biden Administration, to lead a newly-created COVID-19 testing development program at the National Institutes of Health (NIH).¹ Rather than showing up to work for his new position, Dr. Bright took paid leave from his \$285,000-a-year job, hired a notoriously partisan attorney to represent him, and became the star witness at a congressional hearing to attack the Trump Administration. As congressional Democrats continue to use the COVID-19 pandemic to attack the Trump Administration for partisan gain, we hope you will conduct a fair investigation and resist any attempt to politicize Dr. Bright's allegations.

On November 11, 2016, just days after the Presidential election, the Obama Administration installed Dr. Bright as the new BARDA Director based on the recommendation of Obama political appointee Nicole Lurie.² On April 20, 2020, Dr. Robert Kadlec, the HHS Assistant Secretary for Preparedness and Response, reassigned Dr. Bright to the new position within the NIH.³ On May 5, 2020, Dr. Bright filed his complaint with OSC. Dr. Bright is represented by attorney Debra Katz, who previously represented Justice Brett Kavanaugh

¹ Rick Bright, Ph.D., *Addendum to The Complaint of Prohibited Personnel Practice and Other Prohibited Activity by the Department of Health and Human Services* (2020), https://www.kmblegal.com/sites/default/files/NEW%20R.%20Bright%20OSC%20Complaint_Redacted.pdf [hereinafter Complaint].

² Press Release, Dep't of Health & Human Serv., Office of the Assistant Sec'y for Preparedness & Response, Assistant Secretary Nicole Lurie Announces New BARDA Director (Nov. 11, 2016), <https://www.phe.gov/Preparedness/news/Pages/BARDA-director.aspx>; *see also Rick Bright Selected as New BARDA, Director*, GLOBAL BIODEFENSE (Nov. 15, 2016), <https://globalbiodefense.com/2016/11/15/rick-bright-selected-new-barda-director/>.

³ Complaint at 48.

accuser Christine Blasey Ford in high-profile 2018 hearings and later admitted that her work was motivated in part by a desire to put an “asterisk” next to Justice Kavanaugh’s name.⁴

On May 8, 2020, Katz told reporters that OSC had made a “threshold determination that HHS violated the Whistleblower Protection Act by removing Bright from his position because he made protected disclosures in the best interest of the American public.”⁵ Katz stated that OSC determined that Dr. Bright should be reinstated to his position at BARDA for the next 45 days.⁶

On May 14, 2020, Dr. Bright voluntarily testified before Chairwoman Anna Eshoo’s Health Subcommittee of the House Committee on Energy and Commerce, a panel not typically known for evaluating allegations of prohibited personnel practices.⁷ News reports referred to Chairwoman Eshoo as a “close ally” of Dr. Bright.⁸ Committee Democrats used the hearing—and Dr. Bright’s appearance—as an opportunity to attack the Trump Administration for political gain.⁹

Dr. Bright testified that instead of accepting the critical new position at NIH, he decided to take paid leave due to hypertension that had increased since his transfer from BARDA.¹⁰ Curiously, although Dr. Bright’s hypertension prevented him from performing work on behalf of American taxpayers, it did not prevent him from testifying for several hours in a public hearing on Capitol Hill. During the hearing, Dr. Bright continually emphasized the need to increase testing efforts to reopen the American economy and save American lives; however, he has refused to report to his job at NIH to lead the effort toward that precise goal.¹¹

HHS has publicly refuted Dr. Bright’s allegations. With respect to the Administration’s preparedness efforts, HHS has explained that Dr. Bright’s role in BARDA was “limited to providing support for the development of drugs, vaccines, and diagnostics,” and therefore he was not aware of the full set of operations “across HHS and the Administration as a whole.”¹² HHS noted that Dr. Bright assumed that “because he was not aware of initiatives outside of his scope of responsibilities, that such programs did not exist.”¹³ Dr. Bright was also seemingly blinded by his personal frustrations to see for himself that HHS acquired and was disseminating the virus’s genomic sequencing.¹⁴

⁴ Mary Margaret Olohan, *Video Shows Anti-Kavanaugh Lawyer Saying Christine Blasey Ford Wanted ‘Asterisk’ By Justice’s Name*, DAILY CALLER (Sept. 4, 2019), <https://dailycaller.com/2019/09/04/christine-ford-abortion-kavanaugh/>.

⁵ Ricardo Alonso-Zaldivar, *Investigators: ‘Reasonable Grounds’ Trump Administration Retaliated Against Coronavirus Whistleblower*, TIME (May 8, 2020), <https://time.com/5834514/trump-retaliation-coronavirus-whistleblower/>.

⁶ *Id.*

⁷ Dan Diamond, *Top Trump Critic Will Testify Before a Chairwoman Who is a Close Ally*, POLITICO (May 13, 2020), <https://www.politico.com/news/2020/05/13/eshoo-bright-testify-257488>.

⁸ *Id.*

⁹ *Hearing on Protecting Scientific Integrity in the COVID-19 Response Before the Subcomm. On Health of the H. Comm. on Energy & Commerce*, 116th Cong. (2020) [hereinafter May 14 Hearing].

¹⁰ *Id.*

¹¹ *Id.*

¹² Press Release, Dep’t of Health & Human Serv., *Claim v. Reality* (May 14, 2020).

¹³ *Id.*

¹⁴ *Id.*

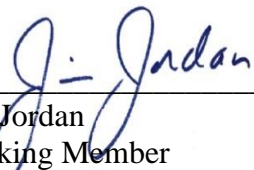
The crux of Dr. Bright's complaint centered on the use of the anti-malaria drug hydroxychloroquine for treatment in patients with COVID-19. During his testimony, Dr. Bright acknowledged that he was initially supportive of reviewing hydroxychloroquine for use in controlled clinical trials but soured on the idea when it was proposed to be used outside of a physician's supervision.¹⁵ HHS confirmed that Dr. Bright "pushed for quick and serious consideration of chloroquine," tried to secure donations of hydroxychloroquine, and even requested the emergency use authorization from the Food and Drug Administration (FDA) for use of the drug as a treatment for COVID-19.¹⁶

However, although Dr. Bright seems to have opposed hydroxychloroquine for use as a COVID-19 treatment, he supported clinical studies of an experimental drug produced by a pharmaceutical company in the district of a powerful Democrat Member of Congress. On March 21, 2020, during the time period when Dr. Bright says he was urging HHS leadership against the use of hydroxychloroquine, BARDA awarded pharmaceutical company Regeneron \$92 million in funding for clinical studies for its anti-rheumatic drug Kevzara for treatment in patients with COVID-19.¹⁷ While the drug is similar to hydroxychloroquine in that both therapies are anti-rheumatic, Dr. Bright's preferred drug is costlier to the patient without yet proving efficacy or safety.¹⁸

Democrats in Congress are already using Dr. Bright's allegations to politicize the Trump Administration's response to the COVID-19 pandemic, even going so far as to state the Administration dismisses science in favor of politics.¹⁹ OSC plays a critical role in protecting whistleblowers and thoroughly investigating prohibited personnel practices. To effectively safeguard merit system principles, OSC must remain a fair and neutral arbiter of applicable federal laws. I urge OSC to resist any attempt to further politicize Dr. Bright's allegations and instead conduct a fair and objective investigation with all available facts.

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
House Committee on Oversight and Reform

cc: The Honorable Carolyn Maloney, Chairwoman

¹⁵ May 14 Hearing.

¹⁶ Press Release, Dep't of Health & Human Serv., Claim v. Reality (May 14, 2020).

¹⁷ Press Release, Dep't of Health & Human Serv., HHS Funds Phase 2/3 Clinical Trial for Potential Treatment of COVID-19 (Mar. 21, 2020), <https://www.hhs.gov/about/news/2020/03/21/hhs-funds-phase-2-3-clinical-trial-for-potential-treatment-for-covid-19.html>.

¹⁸ Antirheumatics, <https://www.drugs.com/drug-class/antirheumatics.html> (last accessed May 18, 2020).

¹⁹ May 14 Hearing.