

**SECOND ADDENDUM TO
THE COMPLAINT OF PROHIBITED PERSONNEL PRACTICE
AND OTHER PROHIBITED ACTIVITY
BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBMITTED BY DR. RICK BRIGHT**

I. Public Disparagement

On April 20, 2020, Dr. Rick Bright learned that he was being removed from his position as Director of the Biomedical Advanced Research and Development Authority (“BARDA”) and transferred to the National Institutes of Health (“NIH”) when he received a text message from his supervisor, Assistant Secretary of Preparedness and Response Robert Kadlec, reading, “I’ve confirmed you’ve been assigned to NIH.” Dr. Kadlec did not answer Dr. Bright’s calls seeking clarity following this text message. Later that day, Dr. Bright read media reports that he had been transferred to a more limited position at NIH. The following day, the U.S. Department of Health and Human Services (“HHS”) released a statement to the media confirming Dr. Bright’s removal as Director of BARDA. HHS’s initial public statement described Dr. Bright’s transfer from BARDA as “part of a bold plan to accelerate the development and deployment of novel point-of-care testing platforms.”¹ HHS also announced that Dr. Bright would be tapped to lead a new “shark tank” effort to develop a COVID-19 test.²

Following his involuntary removal as Director of BARDA, Dr. Bright experienced hypertension. On April 21, 2020, Dr. Bright took accrued vacation leave. On April 22, 2020, Dr. Bright sent an email to Dr. Kadlec, Dr. Kadlec’s Chief of Staff Bryan Shuy, NIH Director Francis Collins, and Dr. Collins’s Principal Deputy Director Dr. Lawrence Tabak, explaining that he was unable to work due to illness, and that he would update them after speaking with his physician. Only Dr. Tabak responded to Dr. Bright’s email. Dr. Bright had an appointment with his physician, who prescribed medication and directed him to take medical leave to manage the effects of the hypertension. At his doctor’s recommendation, Dr. Bright took fourteen days of authorized and accrued sick leave between April 22 and May 11, 2020. He informed Dr. Tabak about his medical condition on April 24, 2020, and provided him with updates on April 27, April 30, May 4, May 6, and May 8. NIH approved Dr. Bright’s sick leave, and at no time did Dr. Tabak, or anyone else at NIH or HHS, express any objection to Dr. Bright’s use of accrued sick leave, as directed by his physician.

¹ Nathaniel Weixel, *Director of Agency Behind Vaccine Development Leaves Role*, THE HILL (Apr. 21, 2020), <https://thehill.com/policy/healthcare/493978-director-of-federal-agency-to-lead-coronavirus-vaccine-development-departs>.

² Jeremy Diamond, *Bright's Ouster Shines Light on Months of HHS Turmoil*, CNN (Apr. 23, 2020), available at <https://www.cnn.com/2020/04/23/politics/rick-bright-health-and-human-services-coronavirus/index.html>.

Nonetheless, President Donald Trump, Secretary Alex Azar, White House Senior Trade Advisor Peter Navarro, Congressman Markwayne Mullin, and an HHS spokesperson publicly disparaged Dr. Bright, including in media publications and on national television, for taking sick leave and branded him a disgruntled worker, a deserter, and unfit to work for the federal government. On May 14, 2020, hours before Dr. Bright was scheduled to testify before the U.S. House Committee on Energy and Commerce Subcommittee on Health, President Trump tweeted:

I don't know the so-called Whistleblower Rick Bright, never met him or even heard of him, but to me he is a disgruntled employee, not liked or respected by people I spoke to and who, with his attitude, should no longer be working for our government!³

This message was a clear attempt by the president to unnerve and intimidate Dr. Bright 90 minutes before his congressional testimony. That afternoon, while Dr. Bright was testifying, President Trump and Secretary Azar further disparaged Dr. Bright while speaking to press on the south lawn of the White House before boarding Marine One. President Trump declared that Dr. Bright, “looks like an angry, disgruntled employee who, frankly, according to some people, didn't do a very good job.”⁴ Standing at the President's side, Secretary Azar dismissed Dr. Bright's OSC complaint and insisted that Dr. Bright did not raise any concerns that were not broadly shared by HHS. According to Secretary Azar, Dr. Bright “is like somebody who was in a choir and is now trying to say he was a soloist back then. What he was saying is what every member of this administration and the President was saying.” He continued: “Oh and by the way, whose job was it to actually lead the development of vaccines? Dr. Bright. So while we're launching Operation Warp Speed, he's not showing up to work to be part of that.”⁵ Secretary Azar's criticism is particularly troubling not only because Dr. Bright was on documented and approved sick leave, but also because, as detailed below, his transfer removed him from all work on vaccines.

During the hearing, Representative Markwayne Mullin of Oklahoma used his questioning to further attack Dr. Bright. He criticized him for continuing to collect his salary while first on sick leave, then on vacation leave. He taunted, “You're too sick to go into work, but you're well enough to come here while getting paid. I have a hard time understanding that.”⁶ Also during Dr.

³ Donald J. Trump, (@realDonaldTrump), Twitter (May 14, 2020, 8:37 AM), <https://twitter.com/realDonaldTrump/status/1260912207027675136>.

⁴ Emma Tucker, *Azar Blasts Fired Dr. Bright for 'Not Showing Up to Work' on Coronavirus Vaccine*, DAILY BEAST (May 14, 2020), available at <https://www.thedailybeast.com/president-trump-and-health-and-human-services-secretary-alex-azar-blast-dr-rick-bright-as-disgruntled>.

⁵ *Id.*

⁶ Ricardo Alonso-Zaldivar and Richard Lardner, *Immunologist Ousted By Trump Tells Lawmakers the US Lacks a Coronavirus Vaccine Plan, Takes Slight Dig At President Over Lack of Mask*, CHICAGO TRIBUNE (May 14, 2020), available at

Bright's testimony, HHS issued a statement, saying in part: "Mr. Bright has not yet shown up for work, but continues to collect his \$285,010 salary, while using his taxpayer-funded medical leave to work with partisan attorneys who are politicizing the response to COVID-19."⁷

White House Press Secretary Kayleigh McEnany repeated these talking points in a press briefing the next day:

Rick Bright hasn't . . . yet shown up for work. He takes a \$285,000 salary. That's extraordinary for a federal government salary. And he is still on taxpayer-funded medical leave so he can work with partisan attorneys to malign this President. So Mr. Bright — he should perhaps show up for the job that he currently has.⁸

These egregious statements by the President, members of his administration, and other political leaders, accusing Dr. Bright of malingering and gaming the system to earn a big paycheck for no work, were reported by all major print, television, and media outlets.⁹

<https://www.chicagotribune.com/coronavirus/ct-nw-coronavirus-congress-hearing-rick-bright-20200514-esamypyl6bdt3kqdeiteaflx2y-story.html>.

⁷ *Melissa Macaya, Meg Wagner and Mike Hayes, Coronavirus Whistleblower Rick Bright Testifies*, CNN (May 14, 2020), available at <https://www.cnn.com/politics/live-news/rick-bright-testimony-05-14-20/index.html>.

⁸ *Press Briefing by Press Secretary Kayleigh McEnany*, WHITE HOUSE (May. 15, 2020), available at <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-kayleigh-mcenany-2/>.

⁹ *See, e.g.*, Anna Edney and Justin Sink, *Trump Administration Seeks to Discredit Ousted Health Official*, BLOOMBERG (May 14, 2020), available at <https://www.bloomberg.com/news/articles/2020-05-14/hhs-seeks-to-discredit-ousted-health-official-as-gop-backs-probe>; Paulina Firozi, *The Health 202: Trump's Claim Coronavirus Vaccine Coming By Year's End Undercut By Ousted Vaccine Official*, WASH. POST (May 15, 2020), available at <https://www.washingtonpost.com/news/powerpost/paloma/the-health-202/2020/05/15/the-health-202-trump-s-claim-coronavirus-vaccine-coming-by-year-s-end-undercut-by-ousted-vaccine-official/5ebda0b288e0fa17cde001cc/>; David S. Cloud, *Ousted Director Testifies that Trump has no Plan and Unrealistic Timetable for a Coronavirus Vaccine*, L.A. TIMES (May 14, 2020), available at <https://www.latimes.com/politics/story/2020-05-14/ousted-director-to-testify-that-trump-administration-was-unprepared-for-pandemic>; William Cummings and Maureen Groppe, *Whistleblower Rick Bright Tells Congress He Warned Of Coronavirus Supply Problems; Trump Calls Him 'Disgruntled'*, U.S.A. TODAY (May 14, 2020), available at <https://www.usatoday.com/story/news/politics/2020/05/14/coronavirus-rick-bright-house-testimony/5189215002/>; Joshua Nelson, *McEnany Responds To Ousted HHS Official's Criticism Of Trump: Sounds Like He 'Hasn't Been Paying Much Attention'*, FOX NEWS (May 14, 2020), available at <https://www.foxnews.com/media/kayleigh-mcenany-rick-bright-criticism>; Kevin Breuninger, *HHS Whistleblower Rick Bright Is A 'Disgruntled Employee,' Trump Says Ahead Of House Coronavirus Hearing*, CNBC (May 14, 2020), available at

II. Onboarding with NIH

Dr. Bright was in regular communication with NIH beginning April 20, 2020, about his new position. His first full day of work was May 18, 2020. In the intervening month, the onboarding process was haphazard, and Dr. Bright was given inconsistent and contradictory information about his new position. Between April 20, 2020, when Dr. Bright's HHS email was cut off, and May 20, 2020, when Dr. Bright gained access to the NIH system, all emails to and from Dr. Bright were sent to and from his personal email address.

On Monday, May 4, 2020, Dr. Bright informed Drs. Tabak, Collins, Kadlec and Mr. Shuy that he had not been fully compensated in payroll received on the previous Friday. He is normally compensated every two weeks for a two-week work period, but that paycheck consisted of half that amount. That evening, Dr. Tabak responded that he was looking into the problem. Dr. Bright never received a response from the ASPR office. Dr. Tabak followed up on Wednesday, May 6, 2020, to explain that NIH had paid him for his first week at NIH (April 20 through April 24), but that ASPR had not paid him for his last week at ASPR. Due to Dr. Tabak's intervention, the issue was resolved by the end of the week. However, the delayed payment is further evidence of ASPR's rushed removal of Dr. Bright from his position as BARDA Director and its failure to have a bona fide position in place for him.

On Wednesday, May 6, 2020, Dr. Bright sent an email to Dr. Collins and Mr. Tabak requesting details about his new position:

I am still seeking a written description on what you envision for my duties and responsibilities at NIH. Initially, there was great confusion and mixed messages. I hope that by now there is clarity that you can share with me so we can move forward to discuss expeditiously.

See email from R. Bright to F. Collins (May 6, 2020), *attached hereto as Exhibit 1.*

<https://www.cnn.com/2020/05/14/coronavirus-trump-slams-disgruntled-employee-rick-bright-house-hearing.html>; Brian Naylor, *Ousted Scientist Says His Pandemic Warnings Were Dismissed As 'Commotion'*, NPR (May 14, 2020), available at <https://www.npr.org/2020/05/14/855254610/ousted-scientist-says-window-of-opportunity-to-fight-coronavirus-is-closing>; Morgan Chalfant, *Trump Attacks Whistleblower Bright As 'Disgruntled Employee'*, THE HILL (MAY 14, 2020), <https://thehill.com/homenews/administration/497728-trump-attacks-whistleblower-bright-as-disgruntled-employee>; Cameron Peters, *Ousted Whistleblower Warns US Is Heading Toward "Darkest Winter In Modern History"*, VOX (May 14, 2020), available at <https://www.vox.com/2020/5/14/21258727/rick-bright-whistleblower-darkest-winter-modern-history>.

Mr. Tabak responded by sending Dr. Bright a “DRAFT Reassignment and Pay Document.” See Draft Reassignment and Pay Document (May 6, 2020), *attached hereto as Exhibit 2*. In the body of the email, Mr. Tabak wrote that Dr. Bright’s transfer was “effective April 18, 2020.” This was the first time Dr. Bright was notified of the effective date of his transfer. As late as April 20, 2020, Dr. Bright believed that he was still BARDA Director, and was still performing that function accordingly. May 6, 2020 – eighteen days after his involuntary transfer – was the first time Dr. Bright saw a written description of his new position.

On May 8, 2020, Dr. Tabak emailed Dr. Bright a letter about the virtual onboarding process. See Onboarding Letter (May 8, 2020), *attached hereto as Exhibit 3*. The letter described specific actions required of Dr. Bright, including the requirement that he physically come to the NIH campus to get fingerprinted. The letter also stated that if Dr. Bright has any comments on his draft statement of reassignment, he must provide them by the close of business on Wednesday, May 13, 2020. Dr. Bright immediately requested a call with Dr. Tabak to discuss the statement, and they spoke the evening of May 13.

During this call, Dr. Tabak walked Dr. Bright through the draft reassignment document. According to the draft, Dr. Bright’s new position was “Senior Advisor” to the NIH Director and NIH Principal Deputy Director “on NIH’s efforts to accelerate the development of diagnostic options necessary to support the eradication of COVID-19 and its spread.” Dr. Bright was surprised by this description in two respects. First, he was surprised that the title was Senior Advisor, which was a lower level position than he had originally been told he would be given. His original title, as reflected in his Standard Form 50 (“SF-50”), was “Deputy Director of COVID-19 Response.” See SF-50, *attached hereto as Exhibit 4*. NIH subsequently filed a “corrected” SF-50 that changed his title to the less senior position of “Senior Advisor.” See Corrected SF-50, *attached hereto as Exhibit 5*. Second, he was surprised that his position was limited to the development of diagnostics. Dr. Bright asked Dr. Tabak if he would have any opportunities to work on vaccine development, his area of expertise. Dr. Tabak responded that the scope of Dr. Bright’s position was currently limited to diagnostics.

Dr. Bright’s last day of sick leave was Monday, May 11, 2020, and he was on authorized and accrued annual leave from May 12 to May 15, 2020. Dr. Bright used these days to prepare for and take a break after his four-hour testimony before the House Committee on Energy and Commerce’s Health Subcommittee on May 14, 2020. On Friday, May 15, 2020, Darla Hayes, Associate Director for Management in the NIH Office of Human Resources, sent Dr. Bright an email informing him about the onboarding process and instructing him to come to the NIH campus the next week for a series of non-substantive appointments.

Dr. Bright’s first full day of onboarding was Monday, May 18, 2020. On Monday, May 18, Dr. Bright went to the NIH campus to get fingerprinted. While there, he also got his ID badge and computer access code. He returned Wednesday to set up his computer with the IT office, and he received his phone in the mail later that week. His first full day of substantive work was May 21, and he was integrated into the team by Friday, May 22, 2020.

III. Narrow scope of role

In his new role, Dr. Bright is a member of NIH's Rapid Acceleration of Diagnostics ("RADx") program leadership team, along with Dr. Collins, Dr. Tabak, Dr. Bruce Tromberg, and Dr. Tara Schwetz. Dr. Bright was assigned to lead the RADx-Advanced Technology Platforms ("RADx-ATP") project, which is responsible for making contracts with experienced diagnostics companies to scale up their production of existing diagnostic platforms. His new role does not include work on the development of new diagnostics. Instead, he works with companies that have already developed a diagnostic for SARS-CoV-2 and already have FDA authorization for their test. The target for the program is to have five to eight projects, a small fraction of the 200+ projects that Dr. Bright oversaw at BARDA.

This scope is significantly narrower than his work as BARDA Director. BARDA provides funding, technical assistance, and services, including clinical research and manufacturing support, to facilitate and accelerate innovation and the research and development of drugs, vaccines, diagnostics and respiratory protection devices. As BARDA Director, Dr. Bright worked with private industry to develop new drugs, vaccines, and diagnostics for influenza, emerging infectious diseases such as Ebola, Zika, MERS and a full range of chemical, biological, radiological and nuclear threats. BARDA seeks to secure FDA approval, scale up production and procure drugs, vaccines and diagnostics to save lives in a public health emergency. In his current role, Dr. Bright works only with diagnostics, not vaccines or therapeutics or respiratory protective devices. He does not work to develop innovative new diagnostics or secure FDA approval, but rather, only to scale up production of existing diagnostics that have already been developed and approved by the FDA. Different groups within NIH work on vaccines, therapeutics, and the development of new diagnostics. Dr. Bright is not invited to these meetings or discussions despite his expertise and experience.

BARDA oversees and executes government contracts and acquisitions with a cumulative value approaching \$50 billion, and its average annual budget exceeds \$1.5 billion. In addition, Dr. Bright was successful in working with Congress to secure over \$6 billion in funding for BARDA to support the development of drugs, vaccines and diagnostics specifically for the COVID-19 pandemic response. In his current role, Dr. Bright has access to, but not control over, a \$230 million budget. As BARDA Director, Dr. Bright supervised a staff of over 250 people. In his current role, Dr. Bright has a part-time contracted employee to assist with scheduling and is working to borrow staff detailed from others parts of HHS and other federal agencies to assist with his program. During the first week of June 2020, Dr. Bright requested assistance from Dr. Rachael Fleurence to help to launch the new project. Dr. Fleurence is a contractor advising Dr. Collins and is working on miscellaneous scientific assignments to support the COVID-19 response. Dr. Bright requested and has been allowed to collaborate with Dr. Fleurence on his assigned project. Dr. Bright and Dr. Fleurence worked together to devise a strategy to identify and contact companies with approved diagnostics. They are working to leverage NIH's elaborate review process, and they are also launching their own team. To perform his job, Dr. Bright is seeking to borrow a contracting officer and three to five project managers from elsewhere within NIH. With this borrowed staff, temporarily detailed from other departments, Dr. Bright hopes to be able to perform the job he has been involuntarily assigned to do.

Dr. Bright has been deliberately impeded in his effort to perform even this diminished role at NIH. He has not been provided with all the tools he needs to be successful in his new role. Nonetheless, he has been attempting to utilize the resources he has to do the best possible work for the American people. He understands that his work is important, and he is bringing all of his talents to this mission. Yet this position does not remotely utilize his expertise or experience.

Dr. Bright is a global expert in vaccines, and has devoted his career to the development of new vaccines. He has a PhD in Immunology and Molecular Pathogenesis (Virology) from Emory University, and has 25 years of experience working in government, industry, and nonprofit settings to research and develop drugs and vaccines responsive to emerging infectious diseases and to expand vaccine production capacity in the United States and around the world. His focus has been on preparing for and responding to a pandemic virus exactly like the SARS-CoV-2 virus the world is facing today. He has researched viruses and immunology, and developed vaccines and antiviral drugs at the Centers for Disease Control and Prevention (“CDC”); overseen vaccine and immunology programs as the Director of Immunology at Altea Therapeutics; evaluated antiviral drugs and developed rapid tests for antiviral drug resistance to help the CDC combat pandemic avian flu; overseen the development of new vaccines as the Vice President of Research and Development at Novavax, Inc.; served as Scientific Director of the Influenza Vaccine Project in the Vaccine Development Global Program with the international health nonprofit PATH; and, until becoming BARDA Director, worked within BARDA to lead the expansion of pandemic vaccine production capacity in twelve developing countries. While at BARDA, he has led the development of new vaccines for multiple emerging viruses, including influenza, Zika, and Ebola.

In his current role, Dr. Bright does not work on the development of new vaccines, and he is excluded from HHS’s work on vaccines, including the vaccine programs that he initiated in response to the current COVID-19 pandemic response. He is cut off from all vaccine work, cut off from all therapeutic work, and has a very limited role in the diagnostic work. His extremely narrow role is confined to making contracts with diagnostics companies that have already developed diagnostics, to scale up their production. Not only does this narrowed focus not make the best use of Dr. Bright’s expertise to help our nation respond to the COVID-19 pandemic, but also, this intentional effort to pigeon-hole Dr. Bright is detrimental to his entire professional career. He is excluded from the scientific and industry work to which he has devoted decades of his career.

IV. Secretary Azar leading coordinated effort to ensure Dr. Bright is not successful

There is significant overlap in work on the development of diagnostics within HHS, particularly between Dr. Bright’s current role at NIH and his former division, BARDA. Both offices invest in companies that produce diagnostics. If the offices fail to communicate with one another and share information, each office risks duplicating the other’s efforts, and also, companies can “double dip” and get paid twice for the same work. When Dr. Bright directed BARDA, it was common practice for BARDA and NIH to share resources, work product, and scientific expertise, and to communicate about their own efforts to ensure work was not unnecessarily duplicated. Communication between offices with overlapping missions is essential for coordination and alignment, and to help HHS most effectively use its resources and achieve its mission.

On June 9, Dr. Bright called Dr. Gary Disbrow, Acting Director of BARDA following Dr. Bright's involuntary removal, to discuss how they could best coordinate their efforts. Dr. Disbrow did not respond to Dr. Bright's call. Dr. Disbrow also did not respond to emails that Dr. Bright sent to him and the BARDA team on June 9, 10, and 11. On June 10, 2020, in another attempt to reach Dr. Disbrow, Dr. Bright called a BARDA employee to see if there was a way to reach Dr. Disbrow to discuss how their programs could work together. This employee told Dr. Bright that they had heard from Dr. Disbrow the day before regarding collaboration between BARDA and Dr. Bright in his new role. Dr. Disbrow warned this employee to be "very careful." He explained that Secretary Azar was very angry with Dr. Bright and was "on the war path." He explained that Secretary Azar directed HHS employees to refrain from doing anything that would help Dr. Bright be successful in his new role.

Dr. Bright was shocked and disturbed by this news. On one hand, it was unfathomable that the Secretary of HHS was directing employees to undermine its work on COVID-19 diagnostics in the middle of a pandemic, solely to retaliate against an employee who made protected disclosures about illegal and improper actions within HHS. On the other hand, the news was consistent with Secretary Azar's previous public statements disparaging Dr. Bright, and also explained why Dr. Bright was being ignored by Dr. Disbrow, a colleague with whom he had a positive relationship for nearly ten years.

Dr. Bright spoke to the same BARDA employee a couple of days later. The employee repeated details of the conversation with Dr. Disbrow, and reiterated that Dr. Disbrow warned that Secretary Azar's staff was "watching them closely." Dr. Disbrow told the employee that Secretary Azar said that if anyone were to help Dr. Bright be successful, "there would be hell to pay."

Dr. Disbrow's message made the employee fearful to support Dr. Bright's work or to have any professional communication with him at all. In fact, materials that Dr. Bright requested be shared with him to align the diagnostics programs were now being sent indirectly through other NIH staff instead of directly to Dr. Bright. On June 15, 2020, a technology landscape slide was sent to Dr. Fleurence to forward to Dr. Bright. The slide tracked all companies making COVID-19 diagnostics and their current stages of development. It also recorded which companies BARDA or the Department of Defense ("DOD") had already funded for COVID-19 development. This information was instrumental to Dr. Bright's ability to be successful in his new role. In order to work with companies developing diagnostics, he needed to know which companies were doing this work, what they were doing, and if they were already receiving support from the federal government. Had the employee not shared this information, Dr. Bright and Dr. Fleurence would have needed to devote several weeks to research and collect this information independently. A single email therefore saved Dr. Bright from up to a month of duplicative work. Yet Secretary Azar's directions to thwart Dr. Bright's success, combined with Dr. Disbrow's warning, made BARDA employees so afraid to work with Dr. Bright that the only BARDA employee who responded to Dr. Bright's calls was unwilling to send the slide directly to Dr. Bright. Going forward, Dr. Bright will need a collaborative relationship with BARDA to be successful, and Secretary Azar's direction to BARDA employees is a clear act of retaliation that has impaired his ability to perform his job.

On June 9, 11, and 19, Dr. Bright again emailed Dr. Disbrow and requested a quick discussion to ensure that BARDA and NIH were aligned. Dr. Disbrow did not respond. Frustrated by his inability to connect with Dr. Disbrow to discuss the necessary alignment between their two offices, Dr. Bright called Dr. Disbrow from his new cell phone number on the morning of June 22, 2020. Though he did not answer Dr. Bright's previous calls or emails, Dr. Disbrow answered Dr. Bright's call when it was from a number Dr. Disbrow had not seen before, and therefore likely did not realize that Dr. Bright was calling. During the call, Dr. Disbrow acted friendly. Dr. Disbrow explained that he was largely out of full communication on what was happening in the diagnostic program due to his limited bandwidth. Dr. Bright asked if he could talk to Rodney Wallace, Director of BARDA's Diagnostics and Medical Devices Division. Dr. Disbrow asked Dr. Bright several questions about why he wanted to talk to Dr. Wallace and what he planned to discuss. Following this interrogation, Dr. Disbrow eventually agreed that Dr. Bright could speak with Dr. Wallace. Dr. Bright scheduled a call with Dr. Wallace later that day, and they had a productive conversation about aligning their work with various companies. This one-hour call, which should have been routine, came to fruition only because Dr. Bright sent several emails, made several calls, and once reaching Dr. Disbrow from an unknown number, pled his case for permission to contact appropriate personnel.

V. NIH continues to redefine and narrow Dr. Bright's role.

The federal government's work to develop COVID-19 diagnostics is not, and has never been, an organized effort. On May 15, 2020, the White House announced "Operation Warp Speed" ("OWS"), a public-private partnership to facilitate the development, manufacturing, and distribution of COVID-19 vaccines, therapeutics, and diagnostics. It is intended to coordinate work between components of HHS (including NIH and BARDA), other federal agencies, and private firms. However, employees within BARDA and NIH have never fully understood the structure by which OWS is supposed to oversee these efforts.

On June 1, 2020, the media reported that the federal government's "testing Czar," Admiral Brett Giroir, would be leaving his role overseeing the federal government's work to develop COVID-19 diagnostic testing.¹⁰ On Tuesday, June 16, Dr. Tromberg shared that the COVID-19 diagnostics program was no longer going to be a formal part of OWS and that many of the standing meetings to report on diagnostic development progress would end. Dr. Disbrow confirmed that diagnostics were no longer part of OWS during his call with Dr. Bright on June 22, 2020, referenced above.

Recent events indicate that Admiral Giroir is now being positioned to lead the government's COVID-19 diagnostic effort, outside of OWS, including the coordination of the NIH portfolio for diagnostics. On the evening of Sunday, June 21, Admiral Giroir emailed Dr. Bright: "This may already be in process, but I am going to be coordinating the testing/diagnostics portfolio at NIH that was formerly under OWS." See email from B. Giroir to R. Bright (Jun. 21, 2020),

¹⁰ Selena Simmons-Duffin, *White House Coronavirus Testing Czar To Stand Down*, NPR (Jun. 1, 2020), available at <https://www.npr.org/sections/coronavirus-live-updates/2020/06/01/867431135/white-house-coronavirus-testing-czar-to-stand-down>.

attached hereto as Exhibit 6. He asked Dr. Bright to provide him more information about RADx-ATP. Dr. Bright forwarded the message to Dr. Tabak, Dr. Collins, and Dr. Tromberg, asking for clarity regarding Admiral Giroir's work with NIH. He soon learned that no one within NIH, including the NIH Director, fully understood how the future structure of NIH's diagnostics work would fit into the overall OWS or the government's COVID-19 diagnostic strategy. Dr. Tromberg responded the next day, explaining that Admiral Giroir was now working on diagnostics, and met with some people with NIH the week before. Dr. Tromberg wrote that they would "set up a regular meeting but will do that as we transition from OWS structure (if/when we really do transition...no one has updated me officially)." Dr. Collins weighed in that afternoon: "So I don't think I understood before that this means that [Admiral Giroir] is formally taking over the oversight role for diagnostics that formerly resided in OWS?" Dr. Tromberg responded that that was his understanding, to which Dr. Collins replied that such an arrangement had not been discussed with him. It is clear that the leadership for diagnostic development is still in flux, further evidence of the confusion in the administration's pandemic response.

The movement of COVID-19 diagnostics oversight from OWS to Admiral Giroir would allow political leadership to directly oversee Dr. Bright, furthering controlling and narrowing the scope of this work. Clearly, the structure of diagnostics development within the government, OWS, HHS, NIH, and accordingly, Dr. Bright's position within NIH, is still being narrowed. Currently, it appears there is a plan to transition USG COVID-19 diagnostic development from OWS to a new structure under the direction of Admiral Giroir, a close ally of President Trump and Secretary Azar. This appears to be another attempt by Secretary Azar to maintain close control and oversight over Dr. Bright's efforts to be most effective in his new role.

VI. Renewed request for relief.

Dr. Bright filed his initial complaint with the Office of Special Counsel ("OSC") on May 5, 2020. On the afternoon of May 7, OSC notified us that it had determined there were "reasonable grounds" to believe that Dr. Bright had been subjected to a prohibited personnel practice. It further advised that in light of this determination, it would contact the HHS to request that it stay Dr. Bright's removal as Director of BARDA for 45 days to allow OSC sufficient time to complete its investigation of Bright's allegations.

Now, 49 days later, HHS has yet to respond to this request. Given HHS's failure to respond, and given Secretary Azar's continued retaliation against Dr. Bright and stated hostility towards him, we request that OSC:

- Repeat its request that HHS reinstate Dr. Bright as BARDA Director and Deputy Assistant Secretary for Preparedness and Response;
- Request that Secretary Azar recuse himself from this determination; and
- Direct HHS senior leadership, including Secretary Azar, to cease its campaign of retaliation against Dr. Bright.