

November 26, 2020

U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505
202-804-7069

Re: OSC File No. DI-20-000537

Dear Office of Special Counsel:

On February 26, 2020, I filed a complaint with the Office of Special Counsel alleging a substantial and specific danger to public health when Department of Health and Human Services (“HHS”) personnel were sent into quarantined areas with evacuees from Wuhan, China without proper PPE or training. HHS’s report, written following an internal investigation by the Office of General Counsel (“OGC”), makes clear that while HHS is now willing to admit that it failed in its efforts to contain COVID-19 early in the pandemic, it remains unyielding in its efforts to discredit me.

Sadly, the internal investigation proves that I was correct about HHS’s public health failures regarding COVID-19. The first page of the report admits that HHS made mistakes during the repatriation and quarantine of individuals from Wuhan, China—mistakes that put US Government employees and the American public at risk. The internal investigation finds:

- “Initially, no procedures were in place at March to ensure uniform infection-control and infection-prevention measures, including the proper use of personal protective equipment (PPE). Appropriate safety officers were not designated and in place from the outset of the deployment. Nor was an Infection Prevention Control (IPC) Plan in place.” HHS Report at 2.
- “From January 29 to February 1, CDC personnel failed to provide formal training or written guidance regarding proper PPE use to other U.S. Government (USG) personnel and responded to repeated inquiries from Administration for Children and Families (ACF) personnel, U.S. Public Health Service Commissioned Corps (USPHS) officers, and others regarding PPE with confusing, incomplete, and contradictory information. CDC personnel also set inconsistent examples with respect to their own personal use of PPE.” HHS Report at 2.
- “ACF, Office of the Assistant Secretary for Preparedness and Response (ASPR), and USPHS officers (USPHSOs) at March during the first days of the deployment did not have adequate PPE supplies.” HHS Report at 2.
- “ACF personnel and the USPHSOs who had potentially been exposed in the first seventy-two hours of the March mission—when proper infection-control and infection-prevention measures were not in place—to repatriates who potentially were COVID-19-positive (if asymptomatic) were instructed to fly out of commercial airports, boarding commercial airlines and inherently sitting within six feet of other repatriates and

members of the American public. The risk inherent in such an approach was compounded by the fact that ACF personnel and USPHSOs received no instruction, or else belated and inconsistent instruction, on self-monitoring for COVID-19 symptoms while at March.” HHS Report at 35–36.

- “Multiple containment issues occurred at March, including: . . . [that] ACF personnel were in proximity to and had physical contact with repatriates at March without proper PPE safeguards, including during the initial intake of repatriates.” HHS Report at 2.
- “[T]he USG leadership was reckless with respect to the risk of endangering the broader public.” HHS Report at 37.
- “OGC’s findings indicate that the management and containment issues manifest a breakdown of infection control at March that placed USG personnel and members of the public at risk of exposure to COVID-19.” HHS Report at 46.

I brought this complaint to the Office of Special Counsel and the HHS Office of Inspector General because I was concerned about the health and safety of HHS employees and the American public. My goal was for HHS to take appropriate action to remediate and improve its policies and operating procedures so that similar safety risks would not occur again. Indeed, HHS’s report gives lip-service to this fact, stating that my complaint “prompted this OGC investigation and the resulting findings and recommendations, which should improve HHS’ future ability to respond to repatriation and quarantine missions.” HHS Report at 17 n.146. I hope that both the current administration and future officials learn from these mistakes so that, moving forward, our pandemic responses protect the public health. Unfortunately, however, there is reason to doubt the report will have such an impact.

To begin, even now, HHS OGC appears to be minimizing HHS’s missteps at Travis Air Force Base. While the report recommends referring the person identified as W1 for remedial and adverse employment action, it neglects to mention that she was the team lead for ACF at Travis.¹ Further, the report draws no conclusions as to whether ACF staff were ordered by W1 to come into contact with repatriates at Travis. In fact, ACF staff reported that, as at March, they were again directed to unnecessarily interact directly with repatriates at Travis without proper social distancing. The report also neglects to mention that the OHSEPR Director stated in a January 31, 2020 email to the ACF Assistant Secretary that ACF staff should not have interacted with repatriates in person at all: “[D]ue to the limited understanding of the disease and an abundance of caution to ensure the safety of HHS personnel, ACF will utilize *remote* case management to

¹ Likewise, the CDC lead at Travis Air Force Base failed to wear PPE at Travis, yet the report only recommends adverse employment action for the CDC lead at March.

obtain requisite information to determine eligibility and connection to appropriate local services.” (emphasis added).²

Moreover, and while I firmly believe that my report regarding Travis Air Force Base was accurate, instead of the HHS OGC attorneys simply stating that they did not believe that certain aspects of my complaint were substantiated, they went on the offensive, attacking me, attacking my motives, and attacking my professionalism. This approach seems to serve only three possible purposes:

- to retaliate against me for raising serious concerns about conduct that OGC itself found put the American public at risk;
- to try to distract from and minimize the serious findings in the report about HHS’s failings or from the absence of findings regarding Travis, where the first known COVID-19 community transmission case occurred shortly after deployment of US Government personnel; or
- to try to dissuade Government employees from engaging in whistleblowing in the future.

HHS OGC’s approach—to attack the very person who brought to light the fact that the US Government put Americans at risk—puts all of us at risk. If Government employees know that this is the treatment facing them if they come forward with serious and substantiated allegations of wrongdoing, they could be forgiven for staying silent. HHS OGC’s stated mission is to “advance the Department’s goal of protecting the health of all Americans;”³ instead of serving that goal, OGC undermined it.

First, HHS OGC bends over backwards manufacturing a way to blame me for HHS’s failures, while at the same time failing to attribute fault to more culpable parties, particularly political leadership. HHS OGC claims that, had I stepped in further to correct minor procedural irregularities in the manner in which ACF staff were deployed, I somehow could have prevented the public health issues on the ground.⁴ The facts prove otherwise. I learned on the evening of

² The HHS OGC Report also fails to address why this recommendation of remote case management was not followed and who overrode the recommendation, unnecessarily exposing ACF staff to the virus.

³ About OGC, Department of Health and Human Services, <https://www.hhs.gov/about/agencies/ogc/about/index.html>.

⁴ HHS investigators alternate between accusing me of being completely inconsequential to the repatriation mission and claiming that I was the only person who could have prevented HHS’s failings. On page 18 of the report, HHS OGC claims that it did not need to interview me because I “was not a percipient witness to the events that formed the basis of the investigation.” Twenty-two pages later, they present me as the key to the whole mission, concluding that my supposed “lack of engagement and inaction constituted an additional command and control breakdown that detrimentally affected the March repatriation and quarantine mission.” HHS Report at 40.

Sunday, February 9, 2020 that ACF personnel were ordered into quarantined environments without PPE. I elevated these concerns to the Associate Deputy Secretary (now Senior Advisor) of HHS at 7:55 AM Monday morning, and thereafter continually updated ACF leadership with information I was receiving from staff on the ground.

By contrast, ACF leadership, including the Principal Deputy Assistant Secretary and Chief of Staff, knew since February 4, 2010 that ACF staff had potentially been exposed to COVID-19. They did nothing. A direct report of the Principal Deputy Assistant Secretary's raised the alarm on potential staff exposure the evening of February 4th. She called in sick with flu-like symptoms on February 10th, after returning from Travis AFB to her duty station in Washington, DC. In addition, I briefed the Assistant Secretary and Chief of Staff regarding staff safety and public health concerns on the afternoon of February 10th. They failed to respond for weeks. The ACF Assistant Secretary did not offer tests to ACF personnel until February 29th, 19 days after she was aware of the issue and well beyond the incubation period and potential public exposure.

The HHS OGC Report is likewise silent on the responsibility of the OHSEPR Director, who led the repatriation missions at both March and Travis. And while the report insinuates that I was somehow responsible for any missteps by the OHSEPR Director, it says nothing about the responsibility of the Principal Deputy Assistant Secretary, who in fact supervises her. The ACF Immediate Office of the Assistant Secretary could have and should have intervened, demanding testing, monitoring, quarantining, and health clearance of staff before they boarded commercial flights and stayed at area hotels in Solano County, CA, potentially exposing the American public. By failing to act, the Immediate Office of the Assistant Secretary placed ACF staff and the American public at risk.

Second, HHS OGC accuses me of factual inaccuracies in one email and a chronology I wrote in mid-February during the emergence of a public health crisis, that, in OGC's own words, has never occurred in United States history. HHS Report at 1. At the same time, OGC applauds itself for spending 2,500 hours on the investigation, interviewing 66 people and reviewing 73,000 emails and attachments. HHS Report at 1, 18; HHS Addendum at 1 n.1. Like the HHS OGC attorneys investigating retrospectively, I was not at March and Travis. Unlike the HHS OGC attorneys, I did not have the luxury of spending thousands of hours to obtain perfect information about the conditions on the ground. Instead, I had to investigate quickly, and take urgent action to get US Government employees and the American public out of harm's way. It is telling that HHS OGC attempts to minimize the fact that HHS employees and the general public were put at risk by pointing to the "unprecedented, dynamic, and evolving" nature of the situation, HHS Report at 1, while attributing perceived factual errors on my part to bias, ill motive, or other personal failings. Despite OGC's nonfactual claim that I "insisted that it was not [my] responsibility to ensure that statements made to [my] superiors were factually accurate," HHS Addendum at 7, as I explained to OGC, I believed that my responsibility was to raise public health concerns, and I did just that.

Moreover, despite the 2,500 hours HHS OGC attorneys spent on this investigation, their report is replete with suppositions and inaccuracies about me, the only purpose of which seems to be to try to undermine me. For example:

- The report states that I “appear[] to have only engaged when ORO personnel with whom [I] had a close, personal relationship were faced with deployment.” HHS Report at 39. First, it is simply inaccurate that I had a close personal relationship with those ORO personnel and/or contractors, never having interacted with them outside of work or office functions. Moreover, as I explained at the interview, I did not step in after the earlier deployments because, while customary procedures were not followed, I had been notified of the deployments and, based on my understanding of the mission at the time, appropriate personnel were being deployed.⁵ I took immediate action when ACF leadership attempted to deploy people who were not appropriate, for example, people who were not permitted to be deployed.
- The report erroneously states that I did not respond during the first week of the mission. HHS Report at 38–39. In fact, I responded to every single email, text, and call that was directed to me for a response within hours and was in touch with staff in my chain of command who were involved in the repatriation missions several times a day, every day, throughout the missions.


Third, during my interview and in the report, HHS OGC accused me acting out of personal and political bias. I am a dedicated public servant who has proudly served under both Democratic and Republican leadership. My concern here was not politics, but rather negligence and incompetence that—as HHS OGC itself found—put HHS employees and the American public at risk.

Fourth, from the beginning, the OGC attorneys’ goal appeared to be to attack me and protect political leadership rather than honestly evaluate the concerns I raised. HHS mentions several times in the report that they did not wish to interview me.⁶ As the whistleblower who brought the failures of the repatriation mission to light, I do not understand how I would not be the *first* person interviewed. Instead, I was the last. In hindsight, it seems like the OGC attorneys were trying to make me the last whistleblower as well.

- It is highly unusual that the investigation was conducted by HHS’s own lawyers, rather than the HHS Office of Inspector General, as would be typical in an investigation of this type.
- The report states that I was interviewed as a “final step” after the report was “largely written,” HHS Report at 19; HHS Addendum at 1 n.2, indicating that the OGC attorneys’ conclusions had already been drawn.

⁵ For example, it was appropriate for the person identified in the report as W1 to be deployed as a state relations lead at a time when California was to lead the repatriation mission.

⁶ Contrary to HHS OGC’s claims that I was not a percipient witness, I am the sole career executive in a 1400-person agency with responsibility over the emergency management function who also had visibility into the Immediate Office of the Assistant Secretary’s response and, in this case, its gross mismanagement.

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- OGC repeatedly refused to provide any guidance on the topics they would question me about. Then, armed with the 2,500 hours they had spent investigating my claims, OGC attorneys went to work undermining my career and credibility, subjecting me to five hours of hostile cross-examination on details of events that occurred eight months prior.
 - That HHS OGC included nine pages, whose sole purpose is to attack me, in an addendum rather than in the body of the report, demonstrates that these findings were irrelevant and unnecessary to the report's conclusions.
 - Moreover, while HHS OGC spends eleven pages attacking me (nine in the addendum and an additional two pages in the report), the report spends fewer than seven total pages addressing what occurred at Travis, failing to address the CDC lead's lack of PPE and the ACF Team Lead again sending ACF personnel into quarantine environments where repatriates were received and housed.
 - Finally, HHS OGC crafted its "recommendations" without inquiring into my view of why things went wrong and the structural changes I would recommend to ensure that future repatriation responses protect the public health.

In sum, HHS OGC refused to provide me with information that would help me prepare; utilized their superior resources and manpower to nitpick my statements; blamed me while ignoring the failings of more culpable parties; and are now issuing what appears to be an unprecedented addendum smearing me. The message to future whistleblowers is clear: they will investigate your claims, but they will also investigate *you*.

I hope that the conclusions of HHS's report will make future repatriation missions safer for HHS employees and the American public as a whole, and I look forward to discussing with incoming government officials opportunities to improve the repatriation protocols to promote the public health. I fear, however, that HHS OGC's retaliatory approach will dissuade whistleblowers from coming forward in the future with information showing serious Government wrongdoing.

Sincerely,