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U.S. Office of Government Ethics
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**RE: Special Government Employee Status of Moncef Slaoui,
Operation Warp Speed**

Dear Inspector General and Office of Government Ethics:

Public Citizen and Lower Drug Prices Now coalition request that your offices make a determination whether Dr. Moncef Slaoui, co-leader of the government program to oversee the development and funding of COVID-19 treatments and vaccinations known as Operation Warp Speed, should be classified as a special government employee (SGE), subject to the ethics and disclosure requirements of federal government employees.

Currently, Slaoui is under a contractual arrangement with the Department of Health and Human Services to serve with Gen. Gustave Perna in leading the Warp Speed program. Even though Slaoui is recognized as chief scientist and co-leader of the government program, the contractual arrangement asserts that Slaoui will function as a private contractor rather than a government employee, immune from the ethics and disclosure requirements applicable to all other senior government officials, most notably the conflict of interest code (18 USC 208) and the personal financial disclosure requirements mandated by the Ethics in Government Act of 1978.

The contractual arrangement that regards Slaoui as merely a private contractor appears unwarranted and designed primarily to allow Slaoui to maintain an extensive web of conflicting financial interests without the need to divest of, recuse from or disclose those conflicting interests. This would otherwise constitute a violation of federal ethics laws. The arrangement provides Slaoui with the opportunity to enrich himself, his colleagues and his employers, and calls into question the integrity of critically-important official actions that will be taken under the Warp Speed program.

A. Special 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. A “special government employee” (SGE) is a unique position that allows the

federal government to employ some persons on a temporary basis, with or without compensation, subject to somewhat less stringent ethics requirements because of their particular expertise in the field.

The Office of Legal Counsel (OLC) recognizes the President's authority to name advisors without formal appointment to White House roles. In some instances, presidents have relied on private-sector experts to provide advice without appointing them to official government positions. In other cases, presidents have appointed such experts to formal, if temporary, positions classified as special government employees.

The Office of Government Ethics (OGE) [explains](#) that, while conflict of interest restrictions arguably should apply to all advisors who serve the government, sometimes "the Government cannot obtain the expertise it needs if it requires experts to forego their private professional lives as a condition of temporary service." Accordingly, Congress tailored how ethics requirements apply to these types of employees in order to strike a balance between private interests and public service. Congress created a category of employees known as special government employees (SGEs), which it defined to cover situations in which outside experts and consultants provide advice on a temporary basis, with or without compensation. According to 18 USC 202, in order to qualify as an SGE, the individual generally must be "retained, designated, appointed, or employed" and cannot serve for more than 130 days during any 365-day period. Federal regulations expressly clarify that "[s]tatus as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day."

OLC has distinguished private-sector advisors from special government employees based on their role in government. Those who assume a more formal role to assist the President 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.

As a general rule, SGEs are subject to some, but not all, of the ethics provisions that govern the conduct of regular employees. For example, SGEs are exempt from the restrictions on outside earned income (18 USC 209 and 5 CFR 2635.804). SGEs also are usually exempt from the revolving door restrictions (18 USC 207) as well as limitations on accepting payment for teaching and writing (5 CFR 2635.807).

Nevertheless, the conflict of interest code (18 USC 208) and personal financial disclosure requirements explicitly apply to SGEs, though special waivers from these requirements may be obtained for cause and in writing.

B. The Case of Moncef Slaoui

The appointment of Dr. Moncef Slaoui as co-leader of Operation Warp Speed certainly appears to qualify him as a special government employee, if not a regular government employee. 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 helping make 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 rather than a government 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 has been placed in a position to influence the awarding of massive government contracts in response to the critical health crisis currently plaguing the nation. It is imperative that there be a reasonable level of confidence that the decisions coming from the Warp Speed project are being based on the public’s interest. But the conflicts of interest posed by Slaoui’s private-sector employment and financial interests with his new official role in government seem enormous and seriously undercut such confidence.

Granted, Slaoui has taken an initial step to ameliorate perhaps one of his [most egregious](#) conflict of interest – resigning from the corporate board and divesting of ownership in Moderna, a pharmaceutical company expected to receive large government contracts and assistance from the Warp Speed project. But many other conflicts of interest appear to persist, many of which may not be public.

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.

Slaoui has not disclosed how much stock he owns in GSK. When he left the company in 2017, he held about 240,000 shares, according to the New York Times [analysis](#). He told administration officials he does not want to sell these shares. “I have worked for 29 years for GSK,” Slaoui said. “What I said regarding the GSK shares, I said I cannot take the job if I have to sell them.”

He has close ties to multiple companies in the pharmaceutical industry, both domestic and abroad, judging from public records. There may well be more ties that are not known, since a private contractor is exempt from the public disclosure requirements.

C. Conclusion: Slaoui Should Be Classified a Special Government Employee Subject to the Conflict of Interest Code and Disclosure Requirements

There is far too much at stake, in terms of both the public's health and the scope of public expenditures in response to the pandemic, to allow any person, including Moncef Slaoui, to assume a leadership position in the war against the pandemic without complying to the conflict of interest code and disclosure requirements.

Public Citizen and Lower Drug Prices Now coalition request that the Inspector General for the Department of Health and Human Services, as well as the Office of Government Ethics, determine whether Slaoui is in fact serving in the capacity of a special government employee and should resolve his conflicts of interest and secrecy surrounding his financial interests.

Respectfully Submitted,

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