



United States Senate
Washington D.C. 20510

July 17, 2023

VIA ELECTRONIC TRANSMISSION

Dr. Vivek Murthy
Office of the Surgeon General
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Surgeon General Murthy:

Today we write to request an immediate investigation into potential misconduct and violations of federal laws, regulations and agency policies by a Captain in the U.S. Public Health Service Commission Corp (USPHS Commissioned Corp) assigned to the National Institutes of Health (NIH) as a top science advisor.

On June 29, 2023, a document tranche acquired by the U.S. House Select Subcommittee on the Coronavirus Pandemic majority was published in a media article that featured how Captain Morens deliberately avoided compliance with federal laws by using his personal email to conduct official government business.¹ The documents revealed select contents of Captain Morens' emails, including the following excerpt:

Peter and colleagues,

As you know, I try to always communicate on gmail because my NIH email is FOIA'D constantly. Yesterday my gmail was hacked, probably by these GoF [explicative], and until IT can get it fixed I may have to occasionally email from my NIH account. IT spent a couple hours today but couldn't fix it. Stuff sent to my gmail gets to my phone, but not my NIH computer.²

Prohibited Communications and Conflicts of Interest

Captain Morens addressed the email recipients as "colleagues" in the above email, however, those individuals were not USPHS Commissioned Corp or NIH staff but instead included persons with whom Captain Morens should not have been directly seeking counsel from for official NIH business. Email recipients included NIH grantees like Kristian Andersen, who is currently under scrutiny for

¹ Jimmy Tobais, Top NIH Official Advised Covid Scientists That He Uses Personal Email To Evade FOIA, THE INTERCEPT (June 29, 2023) available at <https://theintercept.com/2023/06/29/covid-nih-personal-email-foia/>.

² Jimmy Tobais, David Morens emails redacted, THE INTERCEPT (June 29, 2023) https://www.documentcloud.org/documents/23863749-david_morens_nih_emails_redacted.

inappropriate private communications with other NIH leadership in potential violation of federal laws and regulations, and who may have misled the public and the U.S. Intelligence Committee about the COVID-19 origins.³

In a separate email, Captain Morens referenced the recipient group as his trusted “experts” when he sought their advice about a Broad Institute researcher’s scientific assessment. The Broad Institute has received over \$10.7 billion in NIH grants and it is inconceivable that competing NIH grant recipients who have financial conflicts of interest privately advise top NIH executives about their competitors.⁴

Some of Captain Morens’ email recipients involved direct consultations with foreign nationals which may be in violation of the Federal Advisory Committee Act (FACA). FACA provides the legal foundation defining how federal advisory committees operate, with emphasis on open meetings and reporting.⁵

Captain Morens also communicated directly with journalists and in knowing violation of NIH policies as evidenced when the Captain emailed a Bloomberg journalist and offered to speak on background before that journalist approached NIH for an official meeting request. Captain Morens acknowledged that “[i]n the US government we all have to get approval from HHS or the White House to speak to the press.”

Potential Statutory Violations

The Captain’s ongoing use of his private email compromises NIH cyber security systems and safeguards. NIH employees are required to complete annual cyber security training and prove their understanding of the training content by submitting an annual training certificate.⁶ Captain Morens should be investigated for his potential violation of 18 U.S.C. § 1001 for each year he knowingly and willfully filed his annual mandatory cyber security training certificate with NIH.

Captain Morens’ deliberate use of his personal email for official government business may be in violation of 18 U.S.C. § 2071 for unlawful removal of official government records. Government email communications may be considered official U.S. government records. The statute provides that “whoever willfully and unlawfully conceals, removes...or attempts to do so... shall be fined under this title or imprisoned not more than three years, or both,” and continues with, “whoever, having the custody of any such record...shall be fined under this title or imprisoned not more than three years, or both...”

Potential Abuse of Authority

The disclosed documents also reveal that Captain Morens tasked the NIH Information Technology (“IT”) staff for at least “a couple hours” to work on restoring Morens’ personal email account. Government employees are prohibited from using their official positions or authority to coerce another person or subordinate staff for personal benefit. Captain Morens’ actions may have violated

³ Emily Kopp, *Virologist under investigation for misleading on ‘lab leak theory’ briefed the intel community*, U.S. Right to Know (July 10, 2023) available at <https://usrtk.org/covid-19-origins/virologist-under-investigation-for-misleading-briefed-intel-community/>.

⁴ NIH RePorter, *Broad Institute* (July 10, 2023) available at <https://reporter.nih.gov/search/FL7T3TjbRk2oqTqQwhRNsw/projects/charts?shared=true>.

⁵ U.S. General Services Administration, *Federal Advisory Committee Act* (Aug. 2, 2017) available at <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/federal-advisory-committee-act>.

⁶ NIH, *NIH Information Security and Information Management Training* (July 10, 2023) available at <https://irtsectraining.nih.gov/publicuser.aspx>.

regulations which prohibit the misuse of his public position. Specifically, 5 C.F.R. 2635, Subpart G provides that, “an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.”⁷

Potential Violations of Public Trust

Captain Morens has violated the public trust with his reckless, flagrant and deliberate disregard of his legal and ethical duties. A security sweep of his communications should include any references to NIH official business, grants, internal deliberations, privileged communications, communications and other NIH leadership strategies.

Relationships between David Morens and each individual identified in his private email communications must be closely examined. For example, Captain Morens co-authored published research articles with Peter Daszak starting at least 15 years ago.⁸ Peter Daszak was one of Captain Morens’ primary private email recipients and is also the NIH grant recipient who shared his NIH grant with the Wuhan Institute of Virology (WIV) in China to collect and conduct risky research on dangerous bat coronavirus pathogens before the COVID-19 pandemic. Peter Daszak was non-compliant with NIH grant policies throughout that award, resulting in NIH suspension of the grant for more than two years and termination of the WIV subaward last year. While other public health officials worked continuously during the initial months of the COVID-19 pandemic, Captain Morens devoted his time to two research collaborations with Peter Daszak about the SARS-CoV-2 virus, with one publishing as early as Feb. 26, 2020, claiming that “epidemiologic information implicates a bat-origin virus infecting unidentified animal species sold in China’s live-animal markets” and “did not escape from a jar.”⁹ The authors failed to disclose that NIH and Peter Daszak were conflicted financially due to their subgrant support of the WIV research that potentially could have contributed to the COVID-19 outbreak if a lab accident is determined to be the pandemic origin.¹⁰

In addition to his emails to Kristian Andersen, Captain Morens also emailed NIH grant recipient Robert Garry and former NIH grantee Edward Holmes, who collectively co-authored with two other scientists, a pivotal opinion letter entitled, “The Proximal Origins of SARS-CoV-2.”¹¹ The Proximal Origins letter was published and has been cited to dispel the theory that the pandemic originated as the result of a lab incident. Anthony Fauci referenced the Proximal Origins opinion letter from the White House lectern as a scientific study and NIH Director at the time Francis Collins devoted an NIH Office of the Director blog page to the letter which he described as a “genomic study.”¹²

Captain Morens’ personal emails may also contain communications with NIH grant recipient Ralph Baric, who Peter Daszak claims also uses a personal email account to circumvent record retention and disclosure laws. Ralph Baric has been the lead for the NIH’s Southeast Regional Center of Excellence

⁷ 5 CFR §2634 available at <https://www.ecfr.gov/current/title-5/chapter-XVI/subchapter-B/part-2635/subpart-G>.

⁸ Parrish CR, et al., *Cross-species virus transmission and the emergence of new epidemic diseases*, Microbiol Mol Biol Rev. (Sep. 2008) available at <https://pubmed.ncbi.nlm.nih.gov/18772285/>

⁹ D. Morens, et al, *Escaping Pandora’s Box - Another Novel Coronavirus*, NEJM.ORG (Feb. 2020) available at <https://www.nejm.org/doi/10.1056/NEJMp2002106>.

¹⁰ *Id.*

¹¹ K. Andersen, et al, *The Proximal Origins of SARS-CoV-2*, Nature Medicine (March 17, 2020) available at <https://www.nature.com/articles/s41591-020-0820-9>.

¹² Jimmy Tobias, *Evolution of a Theory*, THE INTERCEPT (Jan. 19, 2023) available at <https://theintercept.com/2023/01/19/covid-origin-nih-emails/>; and Francis Collins, *Genomic Study Points to Natural Origin of COVID-19*, NIH DIRECTOR’S BLOG (March 26, 2020) available at <https://directorsblog.nih.gov/2020/03/26/genomic-research-points-to-natural-origin-of-covid-19/>.

for Emerging Infections and Biodefense (SERCEB), headquartered at the University of North Carolina at Chapel Hill.¹³

Potential Commissioned Corp Misconduct

Pursuant to the USPHS Commissioned Corps Directive 111.02, misconduct within the USPHS Commissioned Corp “shall constitute grounds for disciplinary action and includes violations of law, Federal regulations, or official government policy.” The Directive further explains that “...misconduct also includes, but is not limited to, violation of the Standards of Ethical Conduct for Employees of the Executive Branch set forth at 5 C.F.R. Part 2635, the Supplemental Standards of Ethical Conduct for Employees of HHS set forth at 5 C.F.R. Part 5501; or the policies for any HHS or non-HHS Federal government agency to which the officer is assigned or detailed.”

Questions and Requests

Given the above, we respectfully request your responses to my following questions and requests no later than Monday, July 31, 2023:

1. Please arrange before July 31, 2023, for Captain Morens to be available to be interviewed.
2. Please explain the steps the USPHS Commissioned Corps will take to mitigate further destruction of official U.S. Government records by Captain Morens to ensure that he will no longer be able to bypass federal laws and regulations during your investigation. Please include all actions, such as the immediate termination of Captain Morens’ assignment to NIH.
3. Will the USPHS Commissioned Corps report the email activities of Captain Morens to the:
 - a. HHS Chief Information Officer as a cyber breach?
 - b. National Archives and Records Administration for investigation?
4. Please provide copies of all private email correspondence in which Captain Morens participated in circumvention of the Freedom of Information Act, including but not limited to the following:¹⁴
 - a. NIH official business;
 - b. NIH grants;
 - c. Internal NIH deliberations and strategies;
 - d. NIH privileged communications;
 - e. The COVID-19 origins;
 - f. The Wuhan Institute of Virology; and

¹³ Jim Haslam (@JHas5), *Tweet message*, TWITTER (Jan. 13, 2023) available at <https://twitter.com/lissnup/status/1613854075745112064?s=20>.

¹⁴ Reporters Committee for Freedom of the Press, *How FOIA treats personal email messages used to conduct official business*, available at <https://www.rcfp.org/journals/how-foia-treats-personal-email/#:~:text=Unlike%20some%20state%20public%20records,the%20agency%20controls%20the%20record>.

- g. With or about individuals including: Peter Daszak, Robert Garry, Edward Holmes, Ralph Baric, Michael Callahan, Eric Eskew, Anthony Fauci, Hugh Auchincloss, Francis Collins, Jon Cohen, Adrienne Keen, Robert Kadlec, Dennis Carroll, Jonna Mazet, Zhengli Shi, Aleksei Chmura, or Michael Lauer.

Thank you for your priority attention to this matter. Please do not hesitate to contact Senator Marshall's Chief Investigator at Diane_Cutler@marshall.senate.gov should you need clarification on this request.

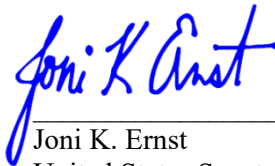
Sincerely,



Roger Marshall, M.D.
United States Senator



Charles E. Grassley
United States Senator



Joni K. Ernst
United States Senator



Michael S. Lee
United States Senator



Marsha Blackburn
United States Senator

CC: Rachel Levine, Admiral
Office of the Assistant Secretary for Health
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201