

Congress of the United States  
Washington, DC 20515

March 24, 2020

The Honorable William P. Barr  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

Dear Attorney General Barr,

We are writing today to join the National Whistleblower Center in urging the U.S. Department of Justice (DOJ) to establish a task force to monitor and investigate violations of the False Claims Act under federal programs supporting the response to COVID-19.<sup>1</sup>

Congress has already passed an \$8.3 billion emergency funding bill to assist communities, states, and federal agencies in responding to the coronavirus, and we anticipate additional legislation to further assist Americans.<sup>2</sup> With potentially trillions of taxpayers' dollars going to support efforts to combat the effects of COVID-19, it is critical DOJ does everything in its power to ensure the prevention and detection of fraud.

Before emergency funding was even made available, scams related to COVID-19 were numerous. The Federal Trade Commission and the Federal Drug Administration recently jointly issued warning letters to seven sellers of unapproved products that claim to treat or prevent the virus.<sup>3</sup> We commend you for also instructing the Department's attorneys to remain vigilant in investigating and prosecuting those who engage in wrongdoing as a result of this public health crisis.<sup>4</sup>

As federal agencies work together to ensure the protection of the American people, the False Claims Act can serve as a critical tool of protection. The False Claims Act was signed into law during a similar time of crisis in our nation. At the height of the Civil War, the law was passed to help prevent sale to the Union Army of defective products that would have put soldiers at risk.<sup>5</sup> More recently, the False Claims Act has been used to hold federal contractors liable for stealing

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<sup>1</sup> Lydia Wheeler, *Coronavirus False Claims Task Force Urged at Justice Dept.*, BLOOMBERG LAW (Mar. 17, 2020), <https://news.bloomberglaw.com/health-law-and-business/coronavirus-false-claims-task-force-urged-at-justice-department>.

<sup>2</sup> Families First Coronavirus Response Act, H.R. 6201, 116th Cong. (2020); Press Release, Majority Leader Steny Hoyer, Hoyer Statement on the Families First Coronavirus Response Act (Mar. 14, 2020), *available at* <https://www.majorityleader.gov/content/hoyer-statement-families-first-coronavirus-response-act>; Ella Nilsen and Li Zhou, *What We Know About Congress' Potential \$1 Trillion Coronavirus Stimulus Package*, VOX (Mar. 17, 2020), <https://www.vox.com/2020/3/17/21183846/congress-coronavirus-stimulus-package>.

<sup>3</sup> Colleen Tressler, *FTC & FDA: Warnings Sent to Sellers of Scam Coronavirus Treatments*, FED. TRADE COMM'N (Mar. 9, 2020), <https://www.consumer.ftc.gov/blog/2020/03/ftc-fda-warnings-sent-sellers-scam-coronavirus-treatments>.

<sup>4</sup> David Shortell, *Attorney General Barr: Prioritize Investigations of Fraudsters Exploiting Coronavirus Pandemic*, CNN (Mar. 16, 2020), <https://www.cnn.com/2020/03/16/politics/barr-investigate-fraudsters/index.html>.

<sup>5</sup> Stephen M. Kohn and Ben Kostyack, *Whistleblowing and the Coronavirus*, NAT'L LAW REVIEW (Mar. 16, 2020), <https://www.natlawreview.com/article/whistleblowing-and-coronavirus-crisis>.

from disaster sites, selling defective body armor to police, and providing substandard healthcare to Medicaid patients.<sup>6</sup> Further, the U.S. Supreme Court has ruled that under the Act, any healthcare provider, including nursing homes and hospitals, receiving federal funding can be held liable for not providing the level of care mandated under contract or by federal and state laws and regulations.<sup>7</sup>

As Congress continues to provide support through federal funding in this time of crisis, we echo the National Whistleblower Center’s request for a nationwide task force to focus on claims made under the False Claims Act pursuant to funding related to the COVID-19 pandemic. That task force should:

1. Ensure a prompt and aggressive federal response to any allegations of fraud related to COVID-19, including fraud that impacts patient care.
2. Initiate investigations of any whistleblower claim on the basis of a whistleblower’s “disclosure statement.” The Department should not wait to commence an investigation until a formal complaint is filed in federal court.
3. Prioritize the investigation of all COVID-19 cases.
4. Promptly prosecute meritorious cases and hold those who have committed fraud accountable to the fullest extent of the law (both civilly and criminally).
5. Immediately inform whistleblowers if a case lacks merit so that the person can continue to work without concern as to the legality of what they have witnessed.<sup>8</sup>

Whistleblowers have always been the eyes and ears of Congress and, through the False Claims Act, they have helped recover billions of dollars in taxpayer funds. The Department of Justice should prioritize claims made under the False Claims Act and related to COVID-19 to help ensure a successful federal response.

Thank you for your attention this important issue. Please contact Rachel Marshall in Congresswoman Speier’s office at Rachel.Marshall@mail.house.gov with any questions. We look forward to your response by Friday March 27, 2020.

Sincerely,



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Jackie Speier  
Whistleblower Protection Caucus  
Co-Chair

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Kathleen M. Rice  
Whistleblower Protection Caucus  
Co-Chair

<sup>6</sup> *Id.*

<sup>7</sup> See *Universal Health Servs. V. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016) (“Specifically, liability can attach when the defendant submits a claim for payment that makes specific representations about the goods or services provided, but knowingly fails to disclose the defendant’s noncompliance with a statutory, regulatory, or contractual requirement. In these circumstances, liability may attach if the omission renders those representations misleading.”).

<sup>8</sup> Letter from Stephen M. Kohn, Chairman of the Board of Directors, Nat’l Whistleblower Ctr., to the Honorable William P. Barr, Attorney General, U.S. Dept. of Justice (Mar. 16, 2020), available at <https://aboutblaw.com/Pwb>.



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Ro Khanna  
Member of Congress

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Eleanor Holmes Norton  
Member of Congress

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Nydia M. Velázquez  
Member of Congress