

United States Senate

March 26, 2020

The Honorable Mike Pence
Vice President of the United States
The White House
Office of the Vice President
1600 Pennsylvania Avenue N.W.
Washington, DC 20500

Dear Vice President Pence:

We are deeply troubled by the Trump Administration's continued failure to assist states as they face dire shortages of medical supplies necessary to fight the 2019 Novel Coronavirus (COVID-19). Despite months of warning, it is clear the Trump Administration did not take timely action to stabilize the nation's medical supply chain, equip health care facilities to treat the rising numbers of infected patients, or ensure the safety of health care providers on the front lines. We urge the White House to empower the recently announced Supply Chain Stabilization Task Force to activate every avenue available to get essential supplies to communities in need and to provide additional transparency on the Administration's efforts to Congress and the public.

Across the country, health care facilities are running out of personal protective equipment (PPE), ventilators, beds, diagnostic testing supplies, and other medical supplies necessary to treat infected patients, prevent further spread of COVID-19, and attenuate this public health catastrophe. Providers on the front lines of this pandemic are being forced to ration care and reuse critical protective equipment in previously unthinkable ways.¹ These desperate measures put their health at risk, contribute to the spread of this deadly virus, and limit their capacity to care for patients.

Rather than provide leadership and assistance, President Trump has told governors to fend for themselves to obtain scarce equipment and supplies,² while leaving manufacturers willing to step

¹ Ezekiel J. Emanuel, et al., "Fair Allocation of Scarce Medical Resources in the Time of Covid-19," *New England Journal of Medicine* (March 23, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMsb2005114>; Caroline Hopkins, "'We are desperate': Trump's inaction has created a crisis with protective medical gear," *Vox*, March 23, 2020, <https://www.vox.com/2020/3/22/21189896/coronavirus-in-us-masks-n95-respirator-doctors-nurses-shortage-ppe>; Clayton Dalton, "In Boston, Doctors Wait for the Deluge," *New Yorker*, March 21, 2020, <https://www.newyorker.com/news/dispatch/in-boston-doctors-wait-for-the-deluge>; <https://www.nytimes.com/article/face-masks-coronavirus.html>; Kate Wells and Emma Winowiecki, "Some healthcare workers turn to homemade masks amidst 'controlled chaos' of dwindling supplies," *Michigan Public Radio*, March 20, 2020, <https://www.michiganradio.org/post/some-healthcare-workers-turn-homemade-masks-amidst-controlled-chaos-dwindling-supplies>.

² Jonathan Martin, "Trump to Governors on Ventilators: 'Try Getting It Yourself,'" *The New York Times*, March 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/trump-coronavirus-respirators.html>.

in confused and pleading for federal coordination and guidance.³ The Trump Administration's failure to lead has left the nation's health care system in such a precarious state that the American Hospital Association, American Medical Association, and American Nurses Association recently warned that "even with an infusion of supplies from the strategic stockpile and other federal resources, there will not be enough medical supplies, including ventilators, to respond to the projected COVID-19 outbreak."⁴

For months, the Trump Administration ignored warnings of COVID-19's dangers. The Administration first learned of a possible pneumonia epidemic in the Chinese city of Wuhan in December 2019.⁵ By January 23, 2020, the World Health Organization stated the disease posed a high global risk after COVID-19 cases were reported in four other countries, including the United States.⁶ It was not until January 29 that the White House officially convened a task force to address the issue.⁷ Yet even as public health officials and other experts sounded the alarm of what lay ahead if the Administration failed to take immediate action, the President continued to downplay the seriousness of the disease.⁸ It was not until March 13 the Department of Health and Human Services (HHS) released a response plan for the disease.⁹ By that time, more than 1,600 confirmed cases and 41 deaths had been reported in the United States, and it was clear the disease was spreading substantially more than was captured through limited testing.¹⁰

The COVID-19 Response Plan detailed how the pandemic could so intensely strain the U.S. health care system and medical supply chains that state, local, tribal, and territorial health officials would be unable to adequately respond without substantial federal assistance. "Shortages of products may occur, impacting health care, emergency services, and other

³ Letter from Advanced Medical Technology Association to the Federal Emergency Management Agency, March 24, 2020, <https://www.advamed.org/sites/default/files/resource/advamed-recommendation-centralized-ventilator-procurement-allocation-decision-making.pdf>; Tom Krisher and Hope Yen, "AP FACT CHECK: Trump hype on auto industry and ventilators," *Associated Press*, March 22, 2020, <https://apnews.com/17868870ddfc526c6c7f454d651b6d7f>; David Sanger, et al., "Trump Bets Business Will Answer Call to Fight Virus, but Strategy Bewilders Firms," *The New York Times*, March 22, 2020, <https://www.nytimes.com/2020/03/22/us/politics/coronavirus-trump-defense-production-act.html>.

⁴ Letter from the American Hospital Association, et al., to President Donald J. Trump, March 21, 2020, <https://www.aha.org/lettercomment/2020-03-21-aha-ama-and-ana-letter-president-use-dpa-medical-supplies-and-equipment>.

⁵ U.S. Department of Health and Human Services, "U.S. Government COVID-19 Response Plan," March 13, 2020, <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf#page=1> (*hereinafter* "COVID-19 Response Plan").

⁶ World Health Organization, "Novel Coronavirus (2019 – nCoV), Situation Report 3," January 23, 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200123-sitrep-3-2019-ncov.pdf?sfvrsn=d6d23643_8.

⁷ Press Release, The White House, "Statement from the Press Secretary Regarding the President's Coronavirus Task Force," January 29, 2020 <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

⁸ David Leonhardt, "A Complete List of Trump's Attempts to Play Down Coronavirus," *The New York Times*, March 15, 2020, <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

⁹ Peter Baker and Eileen Sullivan, "U.S. Virus Plan Anticipates 18-Month Pandemic and Widespread Shortages," *The New York Times*, <https://www.nytimes.com/2020/03/17/us/politics/trump-coronavirus-plan.html>; *supra* Note 5, COVID-19 Response Plan.

¹⁰ World Health Organization, "Novel Coronavirus (2019 – nCoV), Situation Report 54," March 14, 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200314-sitrep-54-covid-19.pdf?sfvrsn=dcd46351_8.

elements of critical infrastructure . . . includ[ing] potentially critical shortages of diagnostics [and] medical supplies (including PPE and pharmaceuticals),” the plan cautioned.¹¹ Accordingly, the plan set forth an interagency effort to ensure the stability and resiliency of the U.S. health care supply chain. The effort would engage the Assistant Secretary for Preparedness and Response (ASPR) at HHS, the Federal Emergency Management Agency (FEMA), the Cybersecurity and Infrastructure Agency (CISA), and other agencies to “prepar[e] for and respon[d] to critical healthcare supply chain vulnerabilities and shortages” such as of PPE, and distribute medical countermeasures such as diagnostic tests and medical supportive care equipment such as ventilators from the Strategic National Stockpile (SNS).¹² The plan also anticipated a need to “[s]upport medical supportive equipment, supplies, and PPE needs through utilization of appropriate federal authorities such as the Defense Production Act [DPA].”¹³

It is unclear whether the Trump Administration has fully activated the HHS plan or whether it has basic information about the supply chain of critical medical supplies. For example, on March 17, the Food and Drug Administration (FDA) turned to Twitter to seek information about the availability of test reagent and other testing supplies.¹⁴ The President also has failed to provide clarity on whether he would use the DPA to facilitate coordinated efforts by private industry to produce and distribute critical supplies. Although President Trump issued an Executive Order invoking the DPA on March 18,¹⁵ FEMA Administrator Peter Gaynor and the President’s top trade adviser, Peter Navarro, said the President planned to use the threat of the law to spur industry action instead of actually using the law’s authorities.¹⁶

It was not until March 23 the Administration announced the creation of a “Supply Chain Stabilization Task Force,” led by Rear Admiral John Polowczyk, to assess current quantities of medical supplies in the commercial space and in the Strategic National Stockpile (SNS) and to work with industry to produce additional supplies.¹⁷ And it was not until March 24 that FEMA Administrator Gaynor announced the DPA would be used to produce diagnostic test kits and possibly masks – but he provided little detail; later the same day, the Trump Administration again reversed itself, saying it would not need to use the DPA after all.¹⁸

The country is looking to the federal government to mobilize the rapid procurement, manufacturing, and distribution of medical supplies critical to enabling our nation’s health care

¹¹ *Supra* Note 5, COVID-19 Response Plan, at 21.

¹² *Supra* Note 5, COVID-19 Response Plan, at 13.

¹³ *Supra* Note 5, COVID-19 Response Plan, at 42.

¹⁴ David Lim, “FDA turns to Twitter to help track testing supply shortages,” *Politico*, March 18, 2020, <https://www.politico.com/news/2020/03/18/fda-twitter-coronavirus-testing-136014>.

¹⁵ Executive Order 13909, 85 Fed. Reg. 56, (March 18, 2020); Katie Rogers, et al., “Trump Resists Pressure to Use Wartime Law to Mobilize Industry in Virus Response,” *The New York Times*, March 20, 2020, <https://www.nytimes.com/2020/03/20/us/politics/trump-coronavirus-supplies.html>.

¹⁶ *The New York Times*, “We’re getting what we need without putting the heavy hand of government down,” March 22, 2020, <https://www.nytimes.com/2020/03/22/world/coronavirus-updates-world-usa.html#link-5d073249>.

¹⁷ “President Trump Holds Coronavirus Task Force Briefing,” *C-SPAN*, March 23, 2020, <https://www.c-span.org/video/?470599-1/president-trump-coronavirus-task-force-hold-briefing-white-house&start=1977>.

¹⁸ Quint Forgey, et al., “FEMA: Defense Production Act no longer needed to secure thousands of test kits,” *Politico*, March 24, 2020, <https://www.politico.com/news/2020/03/24/trump-administration-defense-production-act-146070>.

providers to mitigate this public health catastrophe and save as many lives as possible. Please respond to the following questions by no later than April 1, 2020:

1. Please detail the federal government's communication with industry to facilitate production and ensure appropriate allocation and efficient distribution of medical supplies.
 - a. Which federal agencies are engaged in this effort? What precisely is each agency's role?
 - b. What processes are in place to ensure that industry receives clear, uniform direction from the federal government?
 - c. What are the roles and responsibilities of the Supply Chain Stabilization Task Force, led by Rear Admiral John Polowczyk?
 - d. Is the Supply Chain Stabilization Task Force responsible for the acquisition and development of medical supplies necessary to fight this pandemic? If not, who is the federal point person responsible for coordinating the acquisition and development of medical supplies?
2. Please describe the systems being developed and implemented to collect information from industry on available medical supplies and capacity to manufacture additional supplies, and to share that information with all appropriate federal agencies involved.
3. Please describe the systems being developed and implemented to collect information from the provider community on the need for additional medical supplies and capacity. Does the Administration plan to establish a database to monitor supply and anticipated needs?
4. Does the federal government plan to direct industry to send medical supplies to certain areas of need? If so, how is the federal government making these need determinations?
5. Please detail whether and how the Administration plans to use the full range of authorities under the DPA and other federal procurement laws to bolster domestic manufacturing, rationalize supply chain management and product distribution, and provide urgently-needed medical equipment and supplies to health care systems, hospitals, and clinics nationwide whose needs are increasingly critical.
6. Please detail the federal government's efforts to ensure price fairness.
 - a. How is the federal government ensuring current medical supply manufacturers and distributors maintain fair prices?
 - b. How is the federal government ensuring manufacturers and distributors newly entering the medical supply market set and maintain fair prices?

7. How is the federal government working to address regulatory challenges raised by efforts to quickly and drastically increase medical supply production? What are the Administration's plans to provide immediate support to manufacturers to purchase equipment, retool machinery, hire and train additional workers, and cover any other expenses needed to increase production of medical supplies and streamline contract and certification procedures?
8. How precisely will DPA prioritization and other authorities be used in the HHS contract the Administration has described for production of an additional 500 million N-95 masks over the next 18 months?
9. Are there other such contracts into which the federal government will be entering quickly to address short-term critical needs for medical supplies and equipment? Does the Administration, for example, anticipate deploying DPA title III authorities as needed for contracts going forward, to incentivize firms to quickly bolster existing production lines, reconfigure production lines, or take other steps as necessary to expand production capacity?

Thank you in advance for your attention to this matter. If you have any questions, or would like to further discuss compliance with this request, please contact Kathleen Borschow with Senator Murray's HELP Committee Staff at (202) 224-0767.

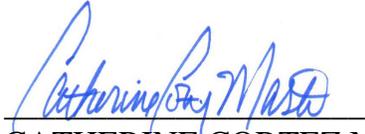
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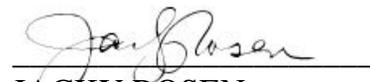

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cc:

Alex Azar,
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Chad Wolf,
Acting Secretary of Homeland Security