

March 30, 2020

Peter T. Gaynor
Administrator
Federal Emergency Management Agency (FEMA)
500 C Street, S.W.
Washington, DC 20472

Dear Administrator Gaynor,

I write regarding the dire conditions facing hospitals, health care providers, and first responders in Massachusetts and across the country as a result of the coronavirus disease 2019 (COVID-19) pandemic. Our nation's health care system badly needs more resources to test, diagnose, and treat COVID-19 patients. But President Trump's has underused, or failed to use at all, key procurement and allocation authorities available to the federal government—creating a logistical black hole in the federal COVID-19 response that has left states struggling to find key medical supplies on their own. As a result, Massachusetts state officials are continuing to face federal impediments as they scramble to find essential medical equipment to respond to a public health emergency. This is unacceptable, and I request answers on behalf of the Commonwealth.

In recent weeks, coronavirus infections in Massachusetts have grown exponentially to nearly 6,000, with thousands more suspected cases in quarantine.¹ Fifty-six people have died from COVID-19 in Massachusetts to date.² As these cases climb, Massachusetts hospitals and health care providers are facing shortages of test kits, personal protective equipment (PPE), ventilators, and other medical supplies needed to treat patients with COVID-19 and protect first responders and medical personnel.³ In the face of these shortages, frontline providers across the states are being forced to combat a highly communicable disease without proper protection. Already,

¹ Mass.gov, "COVID-19 Cases, Quarantine, and Monitoring," <https://www.mass.gov/info-details/covid-19-cases-quarantine-and-monitoring>.

² Boston Herald, "8 new coronavirus deaths in Massachusetts, 797 new cases," March 30, 2020, <https://www.bostonherald.com/2020/03/30/8-new-coronavirus-deaths-in-massachusetts-797-new-cases/>.

³ Boston Herald, "Massachusetts hospitals face shortages of protective equipment in coronavirus outbreak," Lisa Kashinsky, March 14, 2020, <https://www.bostonherald.com/2020/03/14/massachusetts-hospitals-face-shortages-of-protective-equipment-in-coronavirus-outbreak/>.

hundreds of healthcare workers in Massachusetts hospitals have tested positive for the virus⁴ and others have been forced to send dozens of employees home due to unnecessary exposure.⁵

Massachusetts health care providers and public health leaders are doing everything they can to stem this crisis and respond to the COVID-19 outbreak. But this Administration continues to fail them.

At the outset of the COVID-19 outbreak, Massachusetts officials turned to the Strategic National Stockpile (SNS) at the Department of Health and Human Services (HHS) to access the emergency medical equipment necessary to keep hospital and other medical workers safe. On March 5, 2020, the state requested 750,000 each of N95 respirator face masks, surgical masks, pairs of non-sterile gloves, pieces of eye protection equipment, powered air purifying respirators, and surgical gowns.⁶ The federal government, however, has failed to fulfill Massachusetts' request. According to state officials, the Commonwealth has received only a fraction of its SNS request.⁷ Meanwhile, it is my understanding that Massachusetts has received its last shipment from the SNS from the Assistant Secretary for Preparedness and Response at HHS and will now be subject to FEMA cost sharing requirements as it seeks to access SNS supplies. As state officials were informed of this news, President Trump discussed on live television how "happy" state Governors have been with his Administration's response⁸—a statement that does not reflect the reality that Massachusetts has been waiting for federal help that has been slow to arrive.

Meanwhile, the federal government has explicitly told states to try to procure additional equipment themselves, despite the federal government's ability to step in and boost medical supply production. Earlier this month, President Trump reportedly told governors that they were on their own to combat the crisis, saying, "Respirators, ventilators, all of the equipment—try getting it yourselves."⁹ Days later, President Trump continued to mock the situation, telling the governors that, "[t]he Federal government is not supposed to be out there buying vast amounts of items and then shipping. You know, we're not a shipping clerk."¹⁰ President Trump's statements came despite the fact that he has the authority to utilize the *Defense Production Act* (DPA) to

⁴ CNN Health, "More than 150 employees at 4 Boston hospitals have tested positive for coronavirus," Jason Hanna and Ellie Kaufman, March 27, 2020, <https://www.cnn.com/2020/03/26/health/boston-coronavirus-hospitals-employees-test-positive/index.html>.

⁵ NBC10 Boston, "Number of Boston-Area Hospital Workers With Coronavirus Swells Past 150," Perry Russom and Asher Klein, March 27, 2020, <https://www.nbc10.com/news/coronavirus/boston-hospital-workers-coronavirus-over-150/2098608/>; WBZ NewsRadio, "109 Employees of Beth Israel Lahey Health System Have Coronavirus," May 27, 2020, <https://wbznewsradio.iheart.com/content/109-employees-of-beth-israel-lahey-health-system-have-coronavirus/>.

⁶ Letter from Monica Bharel, MD, MPH, to Gary J. Kleinman, March 5, 2020.

⁷ Boston.com, "Donald Trump defends federal response to Massachusetts orders for more coronavirus gear," Nik DeCosta-Klipa, March 30, 2020, <https://www.boston.com/news/politics/2020/03/30/donald-trump-massachusetts-coronavirus-response-supplies>.

⁸ WBUR, "Trump Says Feds Are Getting Supplies to Mass. 'As Rapidly As Possible,'" Chris Lisinski, March 30, 2020, <https://www.wbur.org/news/2020/03/30/trump-ppe-outbid-massachusetts-supplies-baker>.

⁹ New York Times, "Trump to Governors on Ventilators: 'Try Getting It Yourselves,'" Jonathan Martin, March 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/trump-coronavirus-respirators.html>.

¹⁰ Politico, "'We're not a shipping clerk': Trump tells governors to step up efforts to get medical supplies," Quint Forgey, March 19, 2020, <https://www.politico.com/news/2020/03/19/trump-governors-coronavirus-medical-supplies-137658>.

help direct the procurement of materials like masks, gowns, and ventilators.¹¹ Despite the critical need for a centralized COVID-19 logistical coordinator, and the fact that lawmakers have repeatedly called on President Trump to invoke the DPA, the President has been slow and inconsistent in his use of the law.

To address the shortfalls caused by President Trump's dereliction of responsibility, Massachusetts state officials have attempted to purchase necessary supplies on their own, but have run into a new and inexplicable obstacle: they have been outbid by the federal government on at least three separate occasions.¹² In a call with governors on March 19, 2020, Governor Baker raised this concern with President Trump directly, stating: "We took seriously the push you made not to rely on the stockpile ... I got to tell you we lost to the feds ... If states are doing what the feds want and trying to create their own supply chain, then people should be responsive. I've got a feeling that if somebody has a chance to sell to you or to me, I'm going to lose every one of those."¹³ President Trump has said he would ask FEMA to address these conflicts.¹⁴ But days later—as COVID-19 cases grow exponentially by the day—it appears that the federal government is still interfering with state efforts to obtain medical equipment despite assurances from the Trump Administration.

Even worse, reports indicate that that two orders of personal protective equipment and other critical materials purchased by Massachusetts officials have been seized by federal authorities while en route to the Commonwealth. Massachusetts Secretary of Health and Human Services Marylou Sudders confirmed to the *Boston Globe* that Massachusetts state officials had successfully put in two separate orders for N95 respirator masks and ventilators, only to have these orders seized and impounded by the federal government.¹⁵ According to Secretary Sudders, "They take what we order."¹⁶

The federal government has also not adequately utilized its ability to direct and allocate supplies, rendering the private sector unable to send equipment to the hardest-hit states and hospitals. Under the DPA, the federal government can direct the allocation of supplies—like medical equipment—to states and localities that need them. The Trump Administration, however, has slow-walked its use of DPA allocation authorities. Meanwhile, "hundreds of companies" have "sent a breakdown of their inventories of masks, ventilators, and other medical supplies" to FEMA—yet the government has failed to provide them with "guidance...about where to send

¹¹ NPR, "Trump Resists Using Wartime Law To Get, Distribute Coronavirus Supplies," Ayesha Rascoe, March 25, 2020, <https://www.npr.org/2020/03/25/821285204/trump-sends-mixed-messages-about-invoking-defense-production-act>.

¹² Bloomberg, "Trump Told Governors to Buy Own Virus Supplies, Then Outbid Them," Jordan Fabian, March 19, 2020, <https://www.bloomberg.com/news/articles/2020-03-19/trump-told-governors-to-buy-own-virus-supplies-then-outbid-them>.

¹³ WBUR, "Gov. Baker Asks President Not to Outbid States on COVID-19 Supplies," Deborah Becker, March 20, 2020, <https://www.wbur.org/news/2020/03/20/charlie-baker-donald-trump-coronavirus-medical-supplies>.

¹⁴ Bloomberg, "Trump Told Governors to Buy Own Virus Supplies, Then Outbid Them," Jordan Fabian, March 19, 2020, <https://www.bloomberg.com/news/articles/2020-03-19/trump-told-governors-to-buy-own-virus-supplies-then-outbid-them>.

¹⁵ Boston Globe, "In state's intense chase for protective equipment, coronavirus isn't the only rival – the feds are too," Matt Stout and Victoria McGrane, March 27, 2020, <https://www.bostonglobe.com/2020/03/27/nation/states-intense-chase-protective-equipment-coronavirus-isnt-only-rival/>.

¹⁶ *Id.*

their products.” As a result, companies have been sending “regular shipments of medical supplies” to their customers “without knowing whether those supplies are more urgently needed elsewhere.”¹⁷

Massachusetts public health officials and medical workers need equipment to keep them safe, and the federal government must utilize its authorities to ensure that materials are produced and allocated. Please respond to the following questions by no later than April 13, 2020:

1. Please detail how FEMA is responding to President Trump’s directive to ensure that states can receive supplies without being outbid by the federal government.
2. Please explain in detail what you meant when you stated, “[FEMA is] trying to make sure that we have a way to prioritize needs based on requests, based on risk, based on we think where it’s going to be today, and where we think it’s going to be tomorrow.”¹⁸ How are you operationalizing this priority and how are you communicating with state governments to ensure they are receiving the supplies they need? Have you, or are you planning on, providing transparent timelines to states about when they should expect supplies to arrive?
3. Please explain why the federal government seized two orders from Massachusetts, and what the Commonwealth should be doing to find replacements for these supplies. In which state did the supplies that were taken by federal officials ultimately end up?
4. Last week, President Trump announced that he would use his DPA authorities to require General Motors to produce ventilators.¹⁹ He also stated that he would use the Act to procure 60,000 diagnostic tests, though he later appeared to pull back his commitment.²⁰ What additional plans, if any, does the Trump Administration have to utilize its authorities under the DPA to produce masks, gowns, and other personal protective equipment for first responders?
5. What plans, if any, does the Trump Administration have to utilize its allocation authorities under the DPA to allocate medical equipment and supplies to states in need?

¹⁷ Wall Street Journal, “Manufacturers Seek U.S. Help in Deciding Where to Ship Scarce Medical Goods,” Rebecca Ballhaus and Andrew Restuccia, March 29, 2020, https://www.wsj.com/articles/manufacturers-seek-u-s-help-in-deciding-where-to-ship-scarce-medical-goods-11585474201?mod=itp_wsj&ru=yahoo.

¹⁸ CBS News, “Coronavirus response is now streamlined, FEMA administrator says: ‘There’s nothing in my way,’” Nicole Brown, March 20, 2020, <https://www.cbsnews.com/news/coronavirus-united-states-response-fema-administrator-peter-gaynor/>.

¹⁹ CNBC, “Trump orders General Motors to make ventilators under Defense Production Act,” Michael Wayland and Christina Wilkie, March 27, 2020, <https://www.cnbc.com/2020/03/27/trump-orders-general-motors-to-make-ventilators-under-defense-production-act.html>.

²⁰ Wall Street Journal, “FEMA Pulls Back from Defense Production Act Amid Mixed Signals,” Rebecca Ballhaus and Andrew Restuccia, March 24, 2020, <https://www.wsj.com/articles/administration-to-use-defense-production-act-for-first-time-in-coronavirus-pandemic-11585058618>.

6. When does FEMA expect to issue guidance to companies about where they should, without directives from the federal government, prioritize sending medical equipment?
7. What steps is FEMA taking to track the medical equipment needs of hospitals across all 50 states, Washington D.C., and the U.S. territories? How is FEMA using this information to determine where and when to send federal equipment and aid to areas hit hard by COVID-19? How is FEMA communicating its tracking and allocation priorities to state and local governments to minimize confusion and duplication of effort?

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator