

United States Senate

WASHINGTON, DC 20510

April 10, 2020

The Honorable Michael R. Pence
Vice President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Vice President:

We write to you today about the Trump Administration's decisions regarding the procurement and distribution of critical medical supplies – particularly the use of the commercial sector – to states, localities, and tribes in need. We fear that, absent sufficient oversight and direction, the arrangement the Administration is using to deliver personal protective equipment (PPE) such as masks, N95 respirators, hospital gowns, and gloves to communities in need leaves the federal government open to potential fraud and inefficiencies while Americans are combatting the Novel Coronavirus (COVID-19) pandemic. We urge you to clarify and adjust your policies on the acquisition and distribution of critical medical supplies to ensure that the American people receive clarity on the process and much-needed support as quickly and effectively as possible.

We are troubled by the lack of information that the Federal Emergency Management Agency (FEMA) and the Supply Chain Stabilization Task Force (Task Force) have provided regarding their reliance on the private sector to distribute medical supplies and PPE, including those transported from abroad as part of "Project Airbridge." Although FEMA is paying to bring much-needed medical supplies into the United States, upon arrival, FEMA is allowing private distributors to deliver these items to hospitals, nursing homes, and health centers based on existing contractual relationships with minimal guidance on which areas or facilities should be prioritized based on need. Only half of the allocated supply is sent to areas considered to be hotspots, while the other half is given to distributors to fill existing orders in their "normal supply chain."¹

In addition to PPE purchased or transported by FEMA, we recently learned that the Department of Defense handed over 5 million N95 respirators for distribution to states that are in desperate need of these supplies. Instead of working with state emergency management offices to help distribute to the localities that need them most, FEMA decided to give these Department of Defense-owned N95 respirators to a private company to distribute according to their own supply chains. The Administration's delegation to the private sector will likely delay delivery and create serious ethical concerns.

While we agree that the existing supply chains and unique capabilities of the commercial market should be used to the greatest extent practicable, the process the task force has decided to use is, at best, opaque and inefficient. We are concerned that the federal government is using taxpayer dollars to bring supplies to the United States, just to have six private distributors step in

¹ Federal Emergency Management Agency, *Coronavirus (COVID-19) Pandemic: Daily Briefing Points* (Apr. 6, 2020).

and sell those very supplies to desperate states, tribes and health care systems for a profit. In the private market, states, tribes, federal agencies, hospitals, and other entities must all compete for the same supplies, where resources are allocated according to existing commercial relationships or the highest bidder instead of greatest need. We are concerned that this process is not directing critical materials to the jurisdictions that need them most, because the private distributors that FEMA has selected to deliver these materials may be inclined to instead take commercial considerations into account or simply not service all of the necessary localities in the country. The Administration should not be deferring to the private sector to make allocation and distribution decisions to respond to the COVID-19 crisis at the expense of the health and security of our citizens.

In this critical hour, FEMA should make organized, data-informed decisions about where, when, and in what quantities supplies should be delivered to states – not defer to the private sector to allow them to profit off this pandemic. We agree, in principle, that the private sector should be utilized to help deliver these materials to states, localities and tribes. However, allowing these distributors to determine the allocation of resources that the government has purchased or transported to the United States should not be permitted. To provide clarity and transparency on how the Administration is managing resources to respond to this crisis, we request that you answer these questions as soon as possible, but no later than April 17:

1. For the fifty percent of materials delivered to “hotspots,” how are private distributors allocating those medical supplies, such as those delivered to the United States through “Project Airbridge”?
 - a. Please provide all current state, county, and tribal priority lists that the Administration has developed for PPE and medical supplies.
 - b. How is a state, county, or tribe’s “need” for medical supplies determined?
 - c. Please describe each factor involved in any analysis for need and their relative weight in the allocation decisions, potentially including but not limited to infection rates, hospitalization rates, fatality rates, currently available medical supplies, and requests made.
 - d. How are the PPE needs of first responders and law enforcement being addressed in this analysis?
2. Why is the Administration giving supplies owned by the Department of Defense to private distributors to make decisions about where they go, instead of sending them directly to areas in need?
3. Please list the distributors that are receiving supplies from medical supply acquisition efforts by the Administration, including through “Project Airbridge.” Additionally, please provide copies of any Memoranda of Understanding or similar agreements that the Supply Chain Stabilization Task Force or FEMA has executed with commercial distributors on the delivery of PPE for COVID-19 response.

4. What oversight is FEMA conducting of medical supply distributions by the private sector?
 - a. When the Administration permits distributors to sell acquired supplies in the commercial market, how does it ensure that these distributors are not marking up prices and that they are delivering the supplies to critical hotspots?
 - b. How is FEMA ensuring that the commercial distributors selected are not prioritizing companies that they have existing or preferred business relationships with as opposed to those hospitals, nursing homes, or health care facilities with the greatest need?
 - c. How is FEMA directing PPE to areas or localities of the country that are not serviced by the commercial distributors it has selected to use?
 - d. How is FEMA ensuring that the distributors are not charging shipping costs for transport provided by FEMA from other countries to the United States?

5. How, if at all, is the Administration using the authorities granted by the Defense Production Act to direct private sector supply distribution efforts?
 - a. Has FEMA requested that the Department of Defense (DOD) use appropriated Defense Production Act Title III funds, authority, or expertise to expand the industrial base which could supply government and private sector PPE and other medical equipment needs in the upcoming months? If not, why not?

Thank you for your attention to this matter.

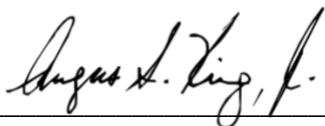
Sincerely,



Gary C. Peters
United States Senator



Christopher S. Murphy
United States Senator



Angus S. King, Jr.
United States Senator

/s/ Chris Van Hollen

Chris Van Hollen
United States Senator



Margaret Wood Hassan
United States Senator

/s/ Tim Kaine

Tim Kaine
United States Senator



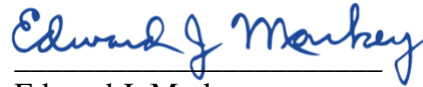
Bernard Sanders
United States Senator



Tammy Duckworth
United States Senator



Richard Blumenthal
United States Senator



Edward J. Markey
United States Senator



Jeanne Shaheen
United States Senator



Tammy Baldwin
United States Senator



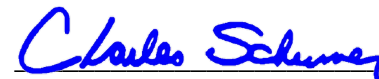
Richard J. Durbin
United States Senator

/s/ Jack Reed

Jack Reed
United States Senator



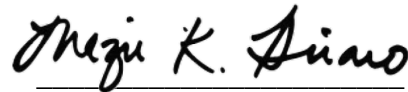
Kirsten Gillibrand
United States Senator



Charles E. Schumer
United States Senator



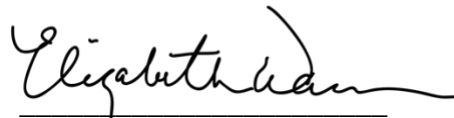
Debbie Stabenow
United States Senator



Mazie K. Hirono
United States Senator

/s/ Robert P. Casey, Jr.

Robert P. Casey, Jr.
United States Senator



Elizabeth Warren
United States Senator



Joe Manchin III
United States Senator



Maria Cantwell
United States Senator



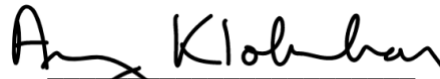
Ron Wyden
United States Senator



Kamala D. Harris
United States Senator



Christopher A. Coons
United States Senator



Amy Klobuchar
United States Senator



Cory A. Booker
United States Senator



Jeffrey A. Merkley
United States Senator

/s/ Mark R. Warner

Mark R. Warner
United States Senator



Brian Schatz
United States Senator

/s/ Martin Heinrich

Martin Heinrich
United States Senator

/s/ Patrick Leahy

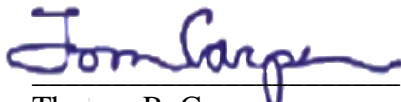
Patrick Leahy
United States Senator



Robert Menendez
United States Senator

/s/ Doug Jones

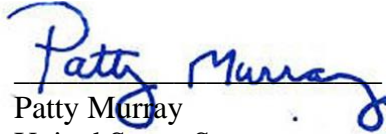
Doug Jones
United States Senator

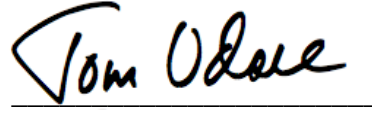


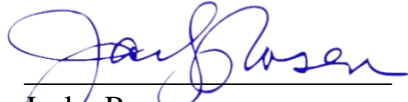
Thomas R. Carper
United States Senator


/s/ Sherrod Brown


Sherrod Brown
United States Senator

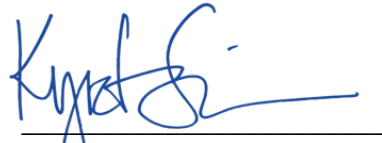

Patty Murray
United States Senator


Tom Udall
United States Senator

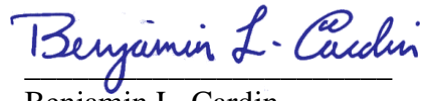

Jacky Rosen
United States Senator


Jon Tester
United States Senator


Sheldon Whitehouse
United States Senator


Kyrsten Sinema
United States Senator


Michael F. Bennet
United States Senator


Benjamin L. Cardin
United States Senator


Tina Smith
United States Senator

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Dianne Feinstein

Dianne Feinstein
United States Senator

cc: Peter Gaynor, Administrator, Federal Emergency Management Agency
Rear Admiral John Polowczyk, Supply Chain Stabilization Task Force, Federal
Emergency Management Agency