

March 28, 2020

The President
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Re: Urgent Request to Invoke Powers under the Defense Production Act to Save American Lives

Dear Mr. President:

We are a broad group of state and national disability and chronic health conditions, disability rights, and health and other organizations concerned with and representing individuals throughout the country with a variety of health conditions. Many of our clients, members and staff have conditions which put them at particular risk of severe complications and death in the event they contract the Covid-19 virus. We write to join the request of the American Medical Association, the American Hospital Association and the American Nurses Association that you immediately use the manufacturing authority in the Defense Production Act (DPA) to increase the domestic production of personal protective equipment, medical supplies and equipment that hospitals, health systems, physicians, nurses and all front line providers so desperately need, so as to save hundreds of thousands of American lives.

We very much appreciate the efforts that you have already taken to respond to the Covid-19 pandemic, including your declaration of a national emergency. We also appreciate your using your executive authority on March 18 to invoke the DPA's authority generally. Your call to manufacturers to voluntarily ramp up production of these crucial supplies and equipment has been helpful, so far as it has gone. And the FDA, with your support, just released guidance to help manufacturers produce more ventilators, and issued an emergency use authorization to cover other equipment that can be modified to operate as a ventilator.

While your encouragement and the FDA guidance are both helpful, almost all projections are that these efforts alone will not meet the need. Even with an infusion of supplies from the strategic stockpile and other federal resources, there will not be enough personal protective equipment (like N95 respirators), medical supplies, including ventilators, to respond to the projected outbreak. The ventilator shortage nationally is expected to be in the hundreds of thousands during the peak. Already, hospitals in New York have started to use the highly unorthodox technique of splitting one ventilator to keep alive two people. This untested and drastic approach is being deployed despite strong misgivings from experts because of the severe shortage — there is simply no other choice.

Quite soon, painful choices about who lives and who dies because of an absence of ventilators will need to be made by someone – maybe doctors, as we have sadly seen in Italy. Given the shortage, individuals who have disabilities and chronic health conditions are very likely to be the ones denied this life-sustaining equipment, no matter what laws like the Americans with Disabilities Act say, because someone trying to manage in the overwhelming crisis will say they are less likely than younger and healthier people to survive their ordeal.

The best way to avoid this catastrophe is to follow the policy you have started to set – to produce enough vitally necessary medical equipment, and personal protective equipment, so that the tragic shortages we will inevitably have can be held to a minimum. We know that you have wanted to hold the DPA’s manufacturing authority in reserve, to be used when and if the country needs it. Unfortunately, the events of the past few days have shown that, despite manufacturers’ best efforts, the country needs you to invoke it now.

As you have aptly pointed out, this is a war against an unseen enemy. Invoking the DPA’s allocation authority was the right step for you to begin to fight that war. It is now time to move onto the next step to invoke the **manufacturing** authority of the DPA to assure full federal funding for the conversion of factories and the guaranteed federal purchasing of all needed equipment and supplies in the categories specified above. The situation is extremely urgent because it will take weeks to produce the needed equipment, while the peak of hospital cases is also just a few weeks away. Given the vast needs and the difficulty for states and health care providers to vet potential equipment leads, we further urge you to consider federalizing the supply chain distribution. We have a well-grounded fear that an approach to wait and see if existing efforts are sufficient will put vulnerable individuals’ health and lives at risk. Invoking this DPA manufacturing authority at that point will be tragically too late.

Under the DPA, authority should be invoked to submit “rated orders” for this equipment. This authority necessarily includes the authority to compel manufacture, but that final step may not be necessary if the immediate financial incentives provided under the act dramatically increase the manufacturing capacity to promptly meet the need, as expected. That is what happened in World War II and it can happen in this war.

Finally, we note what an extraordinary request this is. But these are extraordinary times. The short-term temporary conversion of manufacturing capacity to fight this war and meet the urgent national need is an action that only a decisive war president can take, for the nation’s overall good, and you will be widely appreciated for taking that action. We urge you to take it immediately, while there is still time left to ramp up production and prevent the national catastrophe of tens or hundreds of thousands of American lives being lost for want of effective medical equipment or protective equipment.

Thank you for your ongoing leadership during this extremely challenging national crisis. If you have any questions, please contact Sheldon Toubman (stoubman@nhlegal.org or 203-710-8104) or Lew Golinker (lgolinker@aol.com or 607-227-6213).

Respectfully,

National Organizations

American Academy of Physical
Medicine and Rehabilitation (AAPM&R)

American Association for People with
Disabilities

American Association on Disability and
Health

AFSCME: American Federation of
State, County & Municipal Employees

American Medical Student Association

American Music Therapy Association

American Muslim Health Professionals

American Network of Community
Options & Resources (ANCOR)

Asian Pacific Community Health
Organizations

Assistive Technology Law Center

Association for Community Affiliated
Plans

Bazelon Center for Mental Health Law

Brain Injury Association of America

Center for Medicare Advocacy

Center for Public Representation

Christopher & Dana Reeve Foundation

Coalition for Disability Health Equity

Disability Rights Education & Defense
Fund

DQIA: Disabled Queers in Action

Easterseals

Equality Labs

Family Equality

GLMA: Health Professionals Advancing
LGBTQ Equality

GLSEN

Healthcare Rights Coalition

Heartland Alliance

Japanese American Citizens League

Just Future Project

Justice in Aging

Lakeshore Foundation

Muslim Public Affairs Council

National Association of Pediatric Nurse
Practitioners

National Association of Rights
Protection and Advocacy

National Center for Learning Disabilities

National Center for Transgender
Equality

National Coalition for LGBT Health

National Committee to Preserve Social Security and Medicare

National Disability Rights Network

National Equality Action Team

National Health Law Program

National Multiple Sclerosis Society

National Partnership for Women & Families

Pride at Work

SEIU

TASH

The Arc of the United States

Union for Reform Judaism

URGE: Unite for Reproductive & Gender Equity

State/Local Organizations

ADAPT Montana

Asian Americans Advancing Justice –
Los Angeles

Colorado Children’s Campaign

Colorado Cross-Disability Coalition

Connecticut Cross Disability Lifespan
Alliance

Connecticut Health Policy Project

Connecticut Legal Rights Project, Inc.

Connecticut State Independent Living
Council

Disabilities Law Program of Community
Legal Aid Society

Disability Law Center of Alaska

Disability Rights Arkansas

Disability Rights California

Disability Rights Connecticut

Disability Rights Florida

Disability Rights Mississippi

Disability Rights Nebraska

Disability Rights New Hampshire

Disability Rights New Jersey

Disability Rights New York

Disability Rights North Carolina

Disability Rights Tennessee

Disability Rights Vermont

Easter Seals Massachusetts

Equip for Equality

Georgia ADAPT

Georgia Advocacy Office

Keep the Promise Coalition

Kentucky Equal Justice Center

Massachusetts Law Reform Institute

Michigan Protection & Advocacy
Service, Inc.

New Haven Legal Assistance
Association

New York Lawyers for the Public
Interest

Northwest Health Law Advocates

Oklahoma Disability Law Center

Protect Our Care Connecticut

Protection and Advocacy for People with
Disabilities, South Carolina

SC Appleseed Legal Justice Center

Tennessee Justice Center

Whitman-Walker Health

Utah Disability Law Center