

May 5, 2020

Mr. Eric S. Dreiband
Assistant Attorney General
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Joint request to investigate disproportionate impact of COVID-19 on communities of color

Dear Assistant Attorney General Dreiband:

We, the undersigned elected officials, representing various jurisdictions in the United States, write to urge the Department of Justice (DOJ) Civil Rights Division to investigate the failures that led to the disparate impact of Coronavirus Disease 2019 (COVID-19) on communities of color. We make this request in light of the growing body of evidence that African-Americans, Latinos, and other people of color are being infected and dying from COVID-19 at dramatically disproportional rates. We are concerned that civil rights violations may account for these inequitable outcomes. For example, the New York City Department of Health and Mental Hygiene (DOHMH) has confirmed approximately 165,000 cases of COVID-19 and estimates roughly 18,000 deaths attributed to the virus. Both infection and death rates are higher among racial and ethnic minorities. DOHMH published early findings showing that African-Americans had a death rate approximated at 92/100,000 and Latinos a death rate approximated at 74/100,000. However, the death rate for Caucasians approximated at 45/100,000. This data is incomplete. Once complete, we believe the data will reveal that infection and death rates for people of color are even worse. These numbers are representative of infection and death rates throughout our country. While we recognize that every American has been impacted by this pandemic, minority communities have been harmed most severely.

We also seek an investigation into whether the actions of executive branches of government in response to the threats posed by the pandemic served to perpetuate and exacerbate racial inequality.

The numbers are alarming: Louisiana has reported more than 21,000 COVID-19 infections. African-Americans, approximately 33 percent of the state's population, account for 70 percent of its COVID-19 deaths. In Michigan, African-Americans make up 14 percent of the state's population, but account for 40 percent of its deaths. In Chicago, they account for 52 percent of the city's confirmed cases, but 72 percent of its deaths. In Kansas, rates of infection are more than double for Latinos than non-Latinos, despite being tested at a significantly higher rate. In St. Louis, African-Americans account for 64 percent of all COVID-19 cases, but make up 45 percent of its population. Similar disparities are found throughout the country.

Additional data continues to emerge from city, state, and federal agencies. However, the evidence is clear — in crisis circumstances, such as the ongoing pandemic, race and ethnicity are

themselves pre-existing conditions. The unequal impact of the COVID-19 pandemic on protected classes is a civil rights issue. The disparities are merely the most recent nationwide manifestation of policies and practices that fail to protect communities of color and perpetuate racial inequities. While viruses do not discriminate, people do. It is these potential civil rights violations that we request you investigate.

Communities of color are no more medically prone to infection or death than other communities. This leads us to question how such severe disparities formed. We reject the simplistic notion that pre-existing health problems solely account for the increased number of documented COVID-19 infections and deaths in minority communities. Rather, we believe that longstanding discrimination has served to reinforce vulnerabilities in these communities. Structural and generational disparities are worsened by racist practices that violate civil rights protections. This results in high rates of unemployment or underemployment, homelessness, substandard housing, lack of medical insurance and quality health care, and mass incarceration. Ultimately, the communities most at risk before a public health crisis suffer most during the crisis. We therefore ask DOJ to investigate if COVID-19 disparities are a result of ongoing discriminatory federal or state practice.

We believe we cannot simply raise awareness and highlight these issues. We work toward holding systemic actors, decision makers, and officials of all stripes accountable for their actions. Accountability is of primary concern and, via this communication, we urge you to investigate a series of potential civil rights violations and legal infractions that have plagued our communities and that may have cost our constituents their lives.

We urge you to investigate the following areas for plausible civil rights and other legal violations:

- **Unequal access to information and resources.** Preventative and ongoing information and resource distribution to racial and ethnic minority and immigrant communities, such as food, masks, and hand sanitizer, was uneven. As public health guidance evolved over the weeks of the pandemic, we question whether such information was equally available to racial and ethnic minority communities, immigrant populations, and non-English speakers.
- **Imbalanced distribution of resources to households.** Specifically, we ask you to investigate whether seniors and constituents of all ages in African-American, Latino, and other minority communities were reached with resources such as food and other essential goods at the same rates as their counterparts in Caucasian or more affluent settings.
- **Unequal distribution of Personal Protective Equipment (PPE) to hospitals and other care facilities.** City, state, and federal authorities reported purchasing and distributing PPE to traditional medical facilities and associated environments that served the public. However, beyond nominal information on what was procured and generally distributed, the public has little insight as to which facilities received PPE and whether it was equitably distributed among all communities. Authorities at all levels of government have spoken about a “dashboard” of centralized information to monitor these materials, but transparency to the public has been virtually nonexistent.

- **Unequal distribution in the roll out and expansion of COVID-19 sample collection and testing centers in racial and ethnic minority and immigrant neighborhoods.** A central question is whether the hardest-hit neighborhoods, which have tended to be minority neighborhoods in terms of infection and death rates, received equal access to testing, as compared to higher socioeconomic status neighborhoods. At the early stages of virus spread, testing was limited to those who had traveled abroad. Once testing availability expanded, how were testing decisions made? Was testing equally available in communities of color and other minority communities? If not, why not? These matters ought to be investigated for both diagnostic and antibody testing during all stages of the pandemic.
- **Hospitals, laboratories, and health care facilities struggled to acquire testing machines, supplies, reagents, and associated components.** Even with the appropriate laboratory licenses and funds to purchase the necessary laboratory equipment, facilities in Brooklyn, New York, for example, could not acquire rapid testing machines such as those made by Roche. Supply chain issues did and do exist. However, when such machines were “released” by the federal government, corporate entities, and other relevant regulators, we question the release to certain communities, while others were not given access to the equipment.
- **Lack of universal testing for pregnant women.** Pregnant women who may have COVID-19, but are asymptomatic, highlight the need for universal testing regardless of race and ethnicity or immigrant status. Research published in the April edition of the New England Journal of Medicine, undertaken by Columbia University Irving Medical Center and New York-Presbyterian, showed that about 15 percent of pregnant women tested positive for COVID-19. The vast majority of those who tested positive showed no signs of the condition. Other institutions are undertaking similar research efforts to understand how COVID-19 impacts women, children, and families. This early research highlights the importance of universal testing for pregnant women and enhanced PPE needs across all hospital services. While many hospitals, obstetric services, and labor and delivery units are now undertaking universal COVID-19 diagnostic testing, this was not always the case during scarce testing environments or across all facilities in all communities. We ask that you investigate whether racial and ethnic minority women or immigrant women were extended testing at the same rates as their Caucasian counterparts. Namely, were these elements present in any fashion in traditional and non-traditional labor and delivery environments in broader communities of color and lower socioeconomic status environments when compared to their Caucasian or wealthier counterparts?
- **Whether race and ethnicity were factors in classifying workers as essential or nonessential.** In New York, for example, “essential” frontline workers included employees staffing supermarkets and pharmacies, those who provide direct care at hospitals and nursing homes, those who work in transportation, and those who provide security. African-American, Latino, and other minority communities largely staff such services and workplaces. For example, one New York City report indicated that 75 percent of frontline workers were people of color. We ask you to investigate how executive branches of government made the “essential” and “nonessential” worker classifications.

- **Whether workers deemed essential were put at risk.** Further, related to the abovementioned item, reports suggest that city and state officials knowingly placed workers deemed essential at risk, due to inadequate PPE, cleaning, or other safety protocols. This effectively placed African-Americans, Latinos, and other minority communities at greater risk for acquiring COVID-19.
- **Inadequate protection of all frontline workers.** Recent litigation filed by the New York State Nurses Association, Corrections Officers Benevolent Association, and other professional associations in New York State and across the nation highlight the troubling issue of inadequate protection for those on the frontlines of the pandemic. Medical professionals, state and city employees, first responders, and frontline workers all struggled to acquire PPE. A large percentage of these workers are people of color. We question how PPE was allocated and distributed and what factors went into making such determinations. Other areas of concern include hazard pay and wrongful termination.
- **Whether health professionals in medical facilities were given the autonomy to test patients and collect samples as they saw fit.** Early reports revealed that some facilities had more supplies, which gave them the leeway to act independently of city and state guidance, compared to social safety net hospitals and those in low-income communities.
- **Rhetoric from hospital executives differed from that of frontline medical professionals.** PPE concerns were felt most viscerally by nurses, doctors, and other medical professionals working in traditional and non-traditional health care settings. However, it appeared that there was a significant difference between the concerns expressed by hospital or facility administrators and the concerns of those actually treating patients. We urge you to investigate whether administrators or executives pressured or attempted to coerce medical professionals to underreport the true needs of their facilities. Internal or external actors, agency personnel, or governmental or non-governmental officials may have also asserted pressure. A related question is whether racial and ethnic minority or immigrant group staff members suffered even more pressure than their counterparts. We question whether minority executives experienced heightened pressure to conform. Also, we ask that you investigate whether facilities administered by minorities, some of which largely serve racial and ethnic minority and immigrant populations, were under greater pressure to underreport or undercount.
- **In New York City, early reporting made clear that COVID-19 was an “outer borough” phenomenon. These are the very boroughs with the highest concentrations of African-American, Latino, and other ethnic communities.** For example, Brooklyn and Queens comprise about half of all confirmed cases and deaths. Staten Island, which has no city public hospital, was completely left out of the early surge of additional resources, as these resources were directed to public hospitals and not private facilities. This deprived Staten Island residents of additional medical personnel, PPE, and free testing for frontline and essential workers during crucial early weeks. We ask that you examine resource allocations to the Bronx, Brooklyn, Queens, and Staten Island and to the racial and ethnic minorities living therein.
- **Whether minority patients presenting at hospitals or other medical environments were more readily turned away or were refused a COVID-19 test.** Some reports and research in the medical literature show that racial and ethnic minorities and women were given fewer services from medical professionals or different courses of treatment. We

wish to probe this matter related to any refusals for testing, courses of treatment, inclusion in clinical trials, and any associated medical services. For example, Rubix Life Sciences reviewed its New York billing data and found that African-Americans with possible COVID-19 symptoms were less likely to be treated than were other ethnic groups.

- **Targeting young people of color.** Reporting in New York and across the country indicates that city and state law enforcement or other officials penalized or targeted members of racial and ethnic minority communities for wearing PPE in public. These troubling news reports show that young people of color may have been subjected to harassment by law enforcement or other public officials for wearing PPE/face coverings when they were simply obeying city and state mandates to do so. Also troubling is the increase in hate crimes against Asian communities.
- **Equal access to education.** As New York and the country transitioned to online learning for students of all ages, the matter of inequitable distribution of laptops, tablets, and other associated technology is of serious concern. City and state officials, as well as corporate partners, have provided basic figures on distribution of computing devices and Internet access, but it is unclear whether these tools, imperative for remote learning, were equitably distributed to youth and families in racial and ethnic minority communities and in low-income families.
- **Release of incarcerated and detained persons.** Those housed in congregate facilities, such as prisons, jails, detention centers, and youth facilities, struggle to comply with public health guidelines. Adherence to social distancing is implausible. A lack of cleaning supplies and water availability make regular, routine, and ramped up cleaning practices difficult. Rampant COVID-19 community spread is virtually unavoidable. Yet, cities and states have been slow in reducing the numbers of those incarcerated or held in immigration detention facilities. We ask that you uncover the measures used in release considerations and investigate whether such measures were racially biased.
- **Legal action is already underway regarding the lack of PPE in correctional facilities.** This matter must be evaluated from both a staff and an inmate perspective, as it is clear that both of these populations are not only at a higher risk of acquiring COVID-19 due to being in congregate settings, but that these populations are largely made up of racial and ethnic minorities. Reports of lack of access to basic items such as soap, cleaning supplies, face coverings, and preventative information remain matters for investigation on the city, state, and federal levels. Any potential denials of these materials and services must be thoroughly investigated.
- **School officials in New York and across the country took different courses of action on how, when, and to what degree they should inform their staffs about the looming public health issue of COVID-19 in the early days of the pandemic.** City, state, and federal agency officials must be held accountable for any instances of knowingly withholding or minimizing the potential risk posed by COVID-19. As noted previously regarding the dissemination of preventative information to racial and ethnic minorities and immigrant communities, this is an issue of concern when considering distribution of information to schools in every community regardless of socioeconomic status or racial and ethnic makeup.

- **Uncovering potential inequities among the nation's most prized and most vulnerable population.** National figures, reported within the last week, reveal that more than 50,000 confirmed COVID-19 cases and over 10,000 deaths associated with the virus occurred in nursing homes. New York, New Jersey, Massachusetts, and Pennsylvania have had severe cases of nursing homes overwhelmed by both case counts and deaths. While state regulators probe such negligence, we must understand whether decisions made by city, state, and federal officials to surge staff, inject PPE, and alter guidance on both infection control and end-of-life decisions, were made without regard to racial, ethnic or immigrant background, or socioeconomic status. The Kaiser Family Foundation recently noted that, as of 2017, approximately 40 percent of nursing homes across the nation had infection control infractions. If officials were aware that the most susceptible populations, the elderly, would suffer the worst consequences of a rampant infection and knew that such facilities were potentially underprepared, we must now fully investigate any misconduct or unequal treatment of residents, families, and staff.
- **Morgues and funeral homes were overrun and overwhelmed.** In recent days, horrific news reports about a funeral home in Brooklyn, New York emerged. Neighbors complained of an awful odor, which led authorities to uncover moving trucks filled with dozens of decomposing bodies. Unfortunately, this is not a phenomenon secluded to New York. Other states have witnessed challenges with inflows to morgues and funeral homes. As with other areas of concern mentioned in this communication, morgues and funeral homes were to receive federal, state, and city support, guidance, and emergency preparedness protocols. For example, the Federal Emergency Management Agency (FEMA) was slated to send refrigerated trucks to New York City to assist morgues and funeral homes with storage capacity. New York State officials were also said to be liaising with the New York State Funeral Directors Association (NYSFDA) and surging qualified staff from other states to help New York. However, it is unclear whether there was an equitable distribution of resources, staff, and information sharing to all communities, regardless of racial and ethnic makeup or socioeconomic status. This matter must be thoroughly investigated so as to understand and hold responsible actors accountable for any unequal treatment toward any person, group, or community.
- **Disproportionate access to unemployment insurance and stimulus relief under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.** As states and municipalities have gone on lockdown, an unprecedented number of Americans have lost their jobs. Restaurant workers, domestic care workers, formal and informal day laborers, migrant workers, hospitality and personal services workers — the very sectors in which African-American, Latino, and other people of color are overrepresented — have suffered catastrophic job losses. Unemployment insurance schemes, often punitive, will not protect many of these workers and many won't receive federal stimulus funds. The CARES Act excludes tax-paying undocumented immigrants, largely Latino, from receiving stimulus relief money. Otherwise qualified US citizens or lawful permanent residents who file joint taxes with an undocumented spouse are also excluded. The short-term and long-term economic consequences of the pandemic will devastate communities of color and other minority communities. Programs designed to mitigate the consequences of job loss will exacerbate the devastation for communities of color. We

ask you to investigate the unequal treatment of low-income minorities under state unemployment insurance schemes and the CARES Act.

- **Dispersal of the Paycheck Protection Program (PPP).** In recent weeks, the more than \$300 billion PPP, which extends forgivable loans to eligible small businesses, began in earnest. However, reports from minority-owned businesses across the nation appear to show that both eligibility for and dispersal of these funds may have not been equitable across racial and ethnic lines and among different classes of businesses. According to the League of United Latin American Citizens (LULAC) and the United States Hispanic Chamber of Commerce, upwards of 70 percent of member businesses had their PPP applications denied. Other reporting has shown that larger firms such as Wells Fargo and JPMorgan Chase have had little headwind in accessing PPP funds, whereas many minority-owned businesses, which utilize smaller financial outfits or community banks, have struggled to access PPP funds. We ask that you investigate whether minority-owned businesses were extended the same treatment, processing time, and attention when compared to other corporate players. Namely, were there any differences in the eligibility, application, or dispersal processes?

We are calling on your office to probe the abovementioned issues and connected arteries to show our constituents and the American public that awareness of inequities is not enough. We must act and bring those accountable for these inequities to justice. Moreover, the aforementioned items are not aberrations. We have witnessed these instances in places across the nation from Los Angeles to Louisiana and within the various territories we represent.

We look forward to your timely response to this communication. Our offices stand at the ready to support your work in these endeavors.

Sincerely,



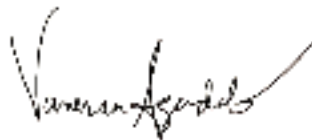
Eric Adams
Brooklyn Borough President



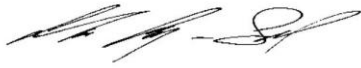
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Kristerfer Burnett
Baltimore City Council



Gregorio Casar
Austin City Council Member



Fernando Cabrera
New York City Council Member



Raquel Castaneda
Detroit City Council Member



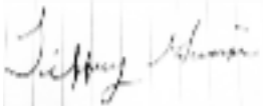
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Tiffany Garriga
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Jillian Johnson
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Peter Koo
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Farah Louis
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Zellnor Myrie
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Marcelia Nicholson
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Diana C. Richardson
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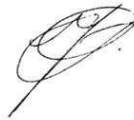
Gustavo Rivera
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Antonio Reynoso
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Debi Rose
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