

United States Senate

February 1, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Garland,

We write to urge the Department of Justice (DOJ) to investigate—and take all necessary steps to deter—the proliferation of fraudulent and counterfeit masks sold by retailers in the United States during the COVID-19 public health emergency.

Masks are an effective, low-cost tool for reducing transmission and infection from COVID-19. The Centers for Disease Control and Prevention (CDC) recommends Americans wear masks in indoor settings in areas of high COVID-19 transmission,¹ and recently updated its masking guidance to acknowledge that higher quality masks, such as N95s and KN95s, provide better protection from COVID-19 than other masks.² As COVID-19, driven by the Omicron variant, surges again in the United States, more Americans are seeking the protection of these higher quality masks. When consumers can acquire authentic masks that conform to federal or international standards, these masks offer strong protection from COVID-19.

However, numerous reports indicate the retailers where many consumers go to purchase high-quality masks sell counterfeit and fraudulent products; this is especially true of online marketplaces where consumers cannot physically inspect and verify product quality.³ Moreover, some online marketplaces continue to allow products to be sold on their platforms despite concerns that the information about these products is misleading and unverified.⁴ During this critical time, American consumers need assurances that the products they purchase to protect themselves and their loved ones are safe, effective, and legitimate.

Last year, you established the COVID-19 Fraud Enforcement Task Force to coordinate and improve federal enforcement efforts against COVID-19-related fraud.⁵ To date, DOJ has taken a number of enforcement actions against purveyors of fraudulent masks, including seizing millions of counterfeit N95

¹ National Center for Immunization and Respiratory Diseases, *Your Guide to Masks*, Centers for Disease Control and Prevention (Jan. 21, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.

² National Center for Immunization and Respiratory Diseases, *Types of Masks and Respirators*, Centers for Disease Control and Prevention (Jan. 21, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

³ Andrew Jacobs, *Counterfeit Covid Masks Are Still Sold Everywhere, Despite Misleading Claims*, N.Y. Times (Nov. 30, 2021), <https://www.nytimes.com/2021/11/30/health/covid-masks-counterfeit-fake.html>; Lena H. Sun and Rachel Roubein, *CDC weighs recommending better masks against omicron variant*, Wash. Post (Jan. 10, 2022), <https://www.washingtonpost.com/health/2022/01/10/cdc-weighs-n95-kg95-masks-guidance-omicron/>.

⁴ Jennah Haque, *Warren Urges DOJ, FTC to Probe Amazon for Deceit Over Mask Sales*, Bloomberg (July 12, 2021) <https://www.bloomberg.com/news/articles/2021-07-12/warren-urges-doj-ftc-to-probe-amazon-for-deceit-over-mask-sales>.

⁵ Press Release, Department of Justice, *Attorney General Announces Task Force to Combat COVID-19 Fraud* (May 17, 2021), <https://www.justice.gov/opa/pr/attorney-general-announces-task-force-combat-covid-19-fraud>.

masks sold to health care providers and state and local governments.⁶ We applaud the DOJ for these steps to protect health care workers and first responders from counterfeit products. But when the general public seeks to purchase these masks, they still find many fraudulent or counterfeit products.

We urge the DOJ to redouble its efforts to ensure that consumers are not vulnerable to fraudulent masks sold through brick-and-mortar and online retail settings. Americans trying to protect themselves, their families, and their communities should not face potentially life-threatening exploitation by unscrupulous actors.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator

⁶ Press Release, U.S. Immigration and Customs Enforcement, *HSI, FBI, CBP seize more than 460,000 counterfeit N-95 masks en route to first responders* (Feb. 25, 2021), <https://www.ice.gov/news/releases/hsi-fbi-cbp-seize-more-460000-counterfeit-n-95-masks-en-route-first-responders>; Press Release, U.S. Immigration and Customs Enforcement, *Millions of counterfeit masks seized during operation in Maine* (Jun. 29, 2021), <https://www.ice.gov/news/releases/millions-counterfeit-masks-seized-during-operation-maine>.