

RICHARD C. SHELBY, ALABAMA, CHAIRMAN

MITCH McCONNELL, KENTUCKY
LAMAR ALEXANDER, TENNESSEE
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
LINDSEY GRAHAM, SOUTH CAROLINA
ROY BLUNT, MISSOURI
JERRY MORAN, KANSAS
JOHN HOEVEN, NORTH DAKOTA
JOHN BOOZMAN, ARKANSAS
SHELLEY MOORE CAPITO, WEST VIRGINIA
JAMES LANKFORD, OKLAHOMA
STEVE DAINES, MONTANA
JOHN KENNEDY, LOUISIANA
MARCO RUBIO, FLORIDA
CINDY HYDE-SMITH, MISSISSIPPI

PATRICK J. LEAHY, VERMONT
PATTY MURRAY, WASHINGTON
DIANNE FEINSTEIN, CALIFORNIA
RICHARD J. DURBIN, ILLINOIS
JACK REED, RHODE ISLAND
JON TESTER, MONTANA
TOM UDALL, NEW MEXICO
JEANNE SHAHEEN, NEW HAMPSHIRE
JEFF MERKLEY, OREGON
CHRISTOPHER A. COONS, DELAWARE
BRIAN SCHATZ, HAWAII
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER S. MURPHY, CONNECTICUT
JOE MANCHIN, III, WEST VIRGINIA
CHRIS VAN HOLLEN, MARYLAND

SHANNON HUTCHERSON HINES, STAFF DIRECTOR
CHARLES E. KIEFFER, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

April 3, 2020

Dear Acting Secretary Wolf and Acting Director Albence:

We are writing to follow up on our March 13, 2020 letter requesting information and policies related to ICE's preparation for and response to the COVID-19 pandemic. We appreciate the March 27, 2020 telephonic briefing provided by ICE in response to our letter, and are writing to follow up on information shared during that call.

First, we understand from that telephonic briefing and further communication between Acting Secretary Wolf and Senator Murray, that ICE has been directed to develop a national, whole-of-department policy to address COVID-19 within its detention facilities. Given the potentially catastrophic consequences of a COVID-19 outbreak in our immigration detention facilities, we ask that you develop this policy immediately in order to minimize conflicting guidance and protocols between ICE-ERO, and ICE Health Service Corps (IHSC) and non-IHSC facilities.

Just in the past week, the number of confirmed cases among detainees and employees has risen to 55 as reported by ICE.¹ The Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL) medical subject matter experts have publicly warned about the unique risks inside ICE facilities that require swift and coordinated attention.² As discussed on the March 27th briefing, regular telephonic briefings by ICE would allow Congress to understand what measures and resources are required to prevent and/or mitigate a rapid outbreak of COVID-19 cases in our immigration detention facilities. At minimum, these briefings should include the number of detainees being quarantined or "cohorted," whether all intakes are being routinely cohorted pursuant to CDC guidance, the number being isolated, the number receiving tests, the number testing positive for COVID-19, the number of facilities that have paused intakes due to positive tests or local outbreaks broken down by facility and state, and any developing or ongoing challenges preventing ICE from keeping both its personnel and immigrant detainees safe.

During our March 27th briefing call, our staffs asked to see – and ICE committed to provide – written copies of any instructions or guidance about the factors being used to determine which

¹ <https://www.ice.gov/coronavirus>

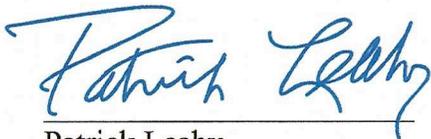
² Letter RE mitigation strategies for COVID-19 inside ICE facilities. March 19, 2020. Accessed April 3, 2020 <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>

detainees should be released from ICE custody to mitigate COVID-19 risks, as well as information about how such instructions or guidance are being distributed to ICE officials making such determinations at our immigration detention facilities. While we understand that the detainee population has decreased in recent weeks to approximately 35,000 persons and that the Department has a stated goal of reaching 70% occupancy across its facilities, we would like to understand how this reduction was achieved, including the number of detainees removed from the country, released on bond, and released through this custody review, as well as the names and qualifications of the experts who were consulted to determine this capacity threshold.

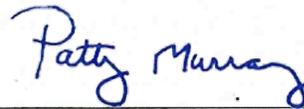
We want to underscore that it is common practice to release certain vulnerable classes of detained or incarcerated individuals during a public health crisis. For example, the Department of Justice recently instituted a policy to transfer vulnerable inmates, including the elderly and those with underlying medical conditions, to home confinement to decrease risks to their health in accordance with CDC guidance.³ We request that ICE similarly institute a policy of utilizing alternatives to detention for vulnerable detainees within its custody, as defined by the CDC.

Congress must understand whether there are coherent policies and principles governing ICE's COVID-19 prevention and mitigation practices. The safety and well-being of tens of thousands of detained immigrants in the U.S. government's custody – and thousands of DHS personnel who closely interact with them – require close coordination and open communication between Congress and the executive branch.

We look forward to seeing a prompt response to this letter and appreciate your attention to this critical matter.



Patrick Leahy
Vice Chairman
Committee on Appropriations



Patty Murray
Ranking Member
Subcommittee on Labor, Health
and Human Services, Education,
and Related Agencies

³ Memorandum from the Attorney General: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic. March 26, 2020. Accessed April 3, 2020 <https://www.justice.gov/file/1262731/download>