

**Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation**



**OVERVIEW**

**The Etowah “Super-Memo” FOIA Request:** On September 8, 2016, Adelante Alabama Worker Center, Detention Watch Network, Greater Birmingham Ministries, Immigrant Defense Project, Southerners on New Ground (“requestors”), and other civil and immigrants’ rights organizations submitted a Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS). The FOIA request sought disclosure of a memo from the DHS Office of Civil Rights and Civil Liberties (CRCL) and Office of General Counsel (OGC) to Immigration and Customs Enforcement (ICE) regarding detention conditions at Etowah County Detention Center (ECDC). This memo, referred to as a “**Super-Recommendations Memorandum**,” was mentioned in [CRCL’s 2015 annual congressional report](#) and constituted a new type of memo designed to “address long-standing concerns about specific detention facilities used by ICE.” DHS initially failed to respond to the request, and then indicated it would not release a single word of the requested records, claiming they were exempt from disclosure under the FOIA. The requestors pursued administrative appeals within DHS, but still did not receive any records in response to their request.

***Adelante v. DHS* Lawsuit:** In December 2017, Adelante and the other requestors, represented by Public Citizen Litigation Group, filed suit in federal court in the Southern District of New York to challenge DHS’s refusal to release the records. As a result of the lawsuit, DHS eventually released 127 pages of highly redacted records. The court forced DHS to lift several redactions after granting partial summary judgment to the plaintiffs in March 2019, siding with plaintiffs on many of their arguments that the records they sought were required to be disclosed under the FOIA. Pursuant to a settlement on July 22, 2019, the parties agreed to dismiss the remaining claims, and DHS agreed to pay tens of thousands of dollars in attorney’s fees to plaintiffs.

**The Records We Obtained:** DHS was required to hand over the following documents: two internal memos from DHS CRCL/OGC to ICE (one in 2015, another from 2012), and four subject-matter expert reports attached to the 2012 memo: one by a corrections specialist, another by a safety/environmental expert, the third by a psychiatrist, and the fourth by a medical doctor. The 2015 memo reflects that **there is no evidence that any of the 2012 recommendations have been implemented** at ECDC. Below are some of the major takeaways from the expert reports, followed by a more detailed summary and select quotations from the non-redacted information contained in each report.

Corrections Report:

- The investigator found that **many ECDC policies did not comport with earlier NDS standards, and still more did not comply with the 2011 PBNDS standards.**
- Even where ECDC policies appeared to follow national detention standards on paper, complaints from detainees reflected that **ECDC did not follow its own policies in practice.** An example of this is the provision of postage to indigent detainees for three pieces of general correspondence a week, and all legal correspondence; while ECDC policy provides for this, in practice, indigent detainees are not able to access postage in accordance with policy.
- The 2012 report further indicates that there are **major problems of access for detainees in segregation.** While much of this information is redacted, one example is that detainees in segregation do not have adequate access to the law library.

Safety and Environmental Report:

- Detainees voiced “**vigorous complaints**” about the meals, and there were **no specialized diabetic meals** – no dietician certified diabetic meals – and the **so-called kosher meals were not actually kosher, causing detainees who kept kosher to eat none or only part of the meal.**

Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation



- The **conditions of the showers was dismal**; there were no dividers, many drains were blocked with scum and organic debris, and lights were out.
- All detainees were issued XL boxers upon intake, regardless of what sized they actually needed.

Mental Health Report:

- As of the time of the report in June 2012, there was **only one mental health officer at ECDC**. As a radiology technician, she appeared **entirely unqualified**; she was trained by her predecessor, who similarly had **no mental health qualifications**.
- One doctor prescribed all the psychotropic medications to ECDC detainees, and **he never met with detainees**. He relied solely on notes from others to prescribe the medication.
- Detainees complained consistently about the **lack of access to mental health care**.

Medical Report:

- The only way detainees could access medical assistance was through written request, and **the bulk of medical requests were responded to with written responses, including potentially serious complaints**.
- While almost all of the recommendations are redacted, one was not: **“ECDC must make efforts to ensure that medically necessary medications are provided without gap**. Such efforts would include staff training and supervisory alerts in the electronic health record.”

DETAILED SUMMARY OF RECORDS

**May 28, 2015 Memorandum from DHS Office of General Counsel and Office for Civil Rights and Civil Liberties to ICE**

- Purpose of memo: 1) notify of complaints involving Etowah County Jail (ECJ) that CRCL has received since its 2012 visit to the facility, 2) detail CRCL’s history of investigations, site visits, and recommendations at or about ECJ, and; recommend that ICE act to resolve the facility’s ongoing problems (p1)
- Over three site visits (September 2006 [corrections and environmental health and safety experts], June 2008 [medical expert], and May 2012 [“after continued receipt of serious complaints...CRCL returned a third time, bring with it corrections, medical care, mental health care, and environmental health and safety experts), “subject-matter experts identified a number of concerns, including [redacted].” (pp2-3)
- Details additional discussions with ICE in August 2014 (“A major focus of the discussion [was] . . . compliance with the 2011 Performance Based National Detention Standards.”), December 2014, and January 2015 (p4)
- As of the writing of the memo in May 2015, “ICE [had] not yet provided its response to the recommendations in the CRCL November 2012 memorandum.” (p4)
- **“To date, there have been no known changes at ECJ.”** (p4)
- **“Since CRCL’s last site visit in 2012, CRCL has received approximately 50 complaints about the same or similar problems that CRCL and its experts found in three prior site visits. We therefore conclude that serious problems persist at ECJ.”** (p4)
- Although mostly redacted, the memo refers to the “deficiencies identified at ECJ through previous site visits and complaint investigations” and recommends that ICE “transition to the 2011 Performance Based National Detention standards.” This strongly indicates that ICE practices at ECJ do not comport with these standards. (pp4-5)

Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation



**November 2, 2012 Memorandum from DHS CRCL to ICE**

- “From July to October 2011, CRCL has received seven complaints, including multiple group complaints related to conditions at [Etowah County Detention Center] ECDC. Following a review of these complaints, CRC: decided to conduct a site review of ECDC.” (p1)
- “As part of the review, CRCL engaged the assistance of four subject-matter experts: a medical consultant; a mental health consultant; a penologist; and, an environmental health and safety consultant. As a result of detainee and staff interviews, document review, and direct observation, *the subject-matter experts identified concerns regarding conditions at the facility.*” (p2)
- The memo lists a number of standards, but all recommendations and analyses are redacted.
- While most of the recommendations are redacted, a recommendation regarding medications was not: “ECDC must make efforts to ensure that medically necessary medications are provided without gap. Such efforts would include staff training and supervisory alerts in the electronic health record.” It is followed by a footnote: “This latter change was already implemented by the HAS prior to our expert’s departure.” (p4)
- “Currently, there is a total of 36 square feet of dedicated medical examination floor space.” (p5)
- “[W]e hope that you will take immediate action to address the recommendations contained in their memorandum.” (p15)

**Correction Expert’s Report on Etowah County Detention Center – Wendy S. Still, MAS – June 10, 2012**

- **Qualifications:** The report was conducted by an “expert corrections consultant” with a “Master’s Degree in Criminology, Law, and Society from the University of California of Irvine” and “26 years operating, managing, and performing direct supervision and oversight for up to ten male and female prisons with approximately 40,000 inmates and 15,000 staff for the California Department of Corrections and Rehabilitation.” The consultant also taught “criminal justice related subject matter at Stanford University.” (pp2-3)
- The specific complaints that the consultant reviewed raised allegations of *“excessive detainee transfer interfering with detainee immigration court matters; discrimination; retaliation; lack of access to law library and legal resources; excessive lockdowns; inadequate recreation access; ineffective detainee grievance procedures; overcrowding; difficult in making and receiving telephone calls; difficulty [sic] in sending outgoing mail; harassment by staff; and an inadequate visitation program.”* (p2)
- In order to make her findings, the consultant “examined a variety of documents; conducted a site visit at ECDC on May 23-25, 2012, along with CRCL staff and experts who examined medical care, mental health care, and environmental health and safety issues; and interviewed staff and detainees.” (p4)
- Allegation 1: Excessive Lockdowns, Disciplinary, and Counts:
- “I determined that *housing unit officers are by facility practice, but not written policy, authorized to informally lock detainees down for disciplinary purposes for up to 24-hour periods without following any due process or formal disciplinary process. The NDS standards do not authorize this practice.*” (p7)
- “Based on discussions with custody staff, all movement is frozen until the entire facility count is cleared for all six formal institutional counts. Each formal count can take at least 30 minutes or more to clear . . . The PBNDS 2011 language also requires ‘counts shall be scheduled to

Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation



achieve full accountability with *minimal interference* with daily work and activity schedules.”  
What follows is redacted. (p7)

- Allegation 2: Lockdowns Related to Commissary Distribution:
- “[NDS] requires in the Vending Machines or Commissary Section that times and procedures for commissary usage be [included in the handbook or posted] . . . The commissary delivery times are not included in the Detainee Handbook and are not posted in the housing units,” in violation of NDS. (p8)
- Allegation 3: Excessive Transfers – Missed Court Dates, Denied Access to Legal Materials:
- The expert report documents instances whereby detainees had been moved excessively, including 7 moves in 24 days, causing him to miss his immigration court date. (p9)
- ***“A review of the ECDC Access to Legal Materials policy confirms that detainees have routine access to legal materials,” according to the report, but all evaluation of detainee grievances are redacted*** (p9)
- The revised ICE policy on detainee transfers, issued in January 2012 after the detainee’s complaints, “should reduce the number of transfers that detainees are subjected to.” (p10)
- Allegation 4: Inadequate Transfer Notice and Inhumane Conditions During Transportation
- A detainee reported that in June 2011, he was transported without the required Detainee Transfer Notification Letter; the investigator confirmed that there was no such letter in his file. ***He was forced to travel on a bus without bathroom facilities; during this time, another detainee with a medical problem was made to defecate at the back of the bus, while the rest of the detainees were told to go to the front of the bus.*** The relevant standards, including the PBNDS, require that detainees be transported in a safe and humane manner and that vehicles must be kept clean and sanitary at all times. (p10)
- Allegation 5: Legal Services:
- Over 100 detainees reported that there were only two computers for 100 detainees, and the law library was accessible only four hours daily. The investigator found that that additional computers and printers were being installed, for a total of five computers and two printers for each unit. ***Detainees reported that the computers and printers often did not work, and they were often denied access to implements like paper and other office supplies to prepare for legal proceedings.*** (p11)
- ***Detainees in segregation also reported that they could not meaningfully access the law library;*** ECDC staff reported that detainees in these units had access from 2:30 – 5:30 AM daily. However, ***the actual printed law library schedule did not have a specific time listed for detainees in segregation; they had to request law library time in writing to the unit officer,*** in contravention of the NDS standard, which states that detainees in segregation “shall have the same law library access as the general population unless compelling security concerns require limitation.” (p12)
- ***While many detainees need to research criminal law to appeal their own cases, criminal case law is not part of the legal collection provided for all detainee law libraries.*** (p12)
- Allegation 6: Visitation:
- ECDC visitation is completed through a video visitation system.
- ***The 2011 PBNDS standard encourages facilities to provide both contact and non-contact visitation, for not less than one hour. The ECDC policy specifies a 30-minute period for visits.*** (p13)
- Allegation 7: Recreation:
- Detainees alleged that they cannot exercise on equipment “like human beings.” The investigator found that detainees in only three units – 4, 9, and 10 – had access to outdoor recreation area. While her findings in this area are largely redacted, the investigator cited the

Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation



NDS standard that detainees housed in a facility without access to open-air recreation area may, after six months of incarceration, be transferred to a different facility with an outdoor recreation area. The 2011 PBNDS changed the review period from six to three months. (p14)

- Allegation 8: Mail:
- *The NDS standards require that indigent detainees should receive free postage for three pieces of outgoing general correspondence and all correspondence related to legal matters, which the ECDC Correspondence Policy complies with on paper, the investigator’s review of twelve months of the ICE Detainee Request Logbook identified six complaints for lack of access to weekly postage mail allotment from indigent detainees.* (p15)
- Allegation 9: Staff-Detainee Communication, Discourteous Treatment, and Staff Intimidation:
- A detainee reported that he was threatened with lock up and physical intimidation by an officer when he was trying to bring to the officer’s attention an urgent medical issue. The investigator found that the detainee was experiencing a pressing medical issue, but the rest of her findings are redacted regarding this incident. (p16)
- *The ICE Detainee log book reflects over 1,767 detainee requests for assistance in less than one year.* While the rest of the investigator’s findings giving context to this statement are redacted, the large number of requests suggests that conditions at ECDC are very wanting. (p16)
- Allegation 10: Classification:
- *ECDC classification policy allows for the housing of high, medium, and maximum level detainees in the same unit,* meaning that low-level offenders are housed with maximum-level detainees. (p17)
- Allegation 11: Identification:
- Detainees complained that they only used a wristband for identification, and they were concerned about medication being distributed to the wrong detainee as a result. Staff interviewed reported that the ECDC used to have picture identification cards but that they were routinely lost. The rest of this section is redacted. (pp17-18)
- Allegation 12: Telephone Access:
- There were over 20 requests that ICE provide free phone calls. *While the ECDC policy aligns with the NDS policy, which states that detainees will be permitted to make direct and free calls “in a personal or family emergency or when the detainee can otherwise demonstrate a compelling need (to be interpreted liberally),” in practice detainees are not able to make free calls.* (p18)
- *The investigator identified a number of other major concerns, including food service for special, medical, and religious diets, and access in the special management (segregation) unit, but almost all of the information in those sections is redacted.*

**Report for the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties: Environmental Health and Safety Report – Diane Skipworth – June 26, 2012**

- **Qualifications:** none provided, other than her degrees: (RD, LD, RD, CLLM)
- ECDC lacks registered dietitian approved meals for medically therapeutic diets, including the diabetic diet. (p3)
- *ECDC does not have a kosher kitchen . . . the facility does not keep meat nad dairy food items and the preparation and service utensils used with each group stored in areas separate from each other as required by the NDS.* (p3)
- Of the 28 detainees receiving “kosher” meals, they report that they do not eat the meal or only



Summary of Records Obtained Through  
*Adelante v. DHS FOIA Litigation*



eat certain components, as it is not truly kosher. (p3)

- The majority of entrees are bean, pasta, or rice based, and there is little fresh fruit or milk. Detainees voiced “vigorous complaints” about the food during interviews (p4)
- ECDC issues all detainees extra-large (XL) boxer shorts during the intake process, regardless of the actual size needed. (p6)
- Detainees reported that clothing and linen sent to the laundry comes back gray and has an unpleasant odor, therefore, they prefer to self-laundry their clothing in the cell and bathroom lavatories. (p10)
- ***The showers do not have dividers. Although the NDS standards is silent at to privacy in bathrooms and showers, ECDC should comply with the ACA Plumbing Fixtures standard, “Detainees shall be provided with a reasonably private environment in accordance with safety and security needs.” ECDC should also comply with the PBNDS standard requiring a “minimum ratio of one shower for every 12 inmates.” (p14)***
- Further, the shower drains were almost completely blocked in some units, and mildew was growing in the grout and on the ceiling. Many shower and sinkroom lights were out, producing a very dim and unsafe environment. (p15)

**Report for the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties:  
Kenneth Appelbaum, M.D. – June 26, 2012 (Mental Health Report)**

- **Qualifications:** Investigator is the Clinical Professor of Psychiatry and Director of Correctional Mental Health Policy and Research for the Center of Health Policy and Research at the Commonwealth Medicine division of the University of Massachusetts Medical School. The investigator spent two full days at ECDC on May 23 and 24 2012, conducted interviews with staff and detainees and conducted document reviews (pp2-3)
- ***ECDC has had only one individual designated as their mental health staff person. She was unlicensed, with only a bachelor’s degree, and trained a radiology technician to function as her backup mental health staff person. She recently had left ECDC, so the radiology technician is the designated mental health staff person at the facility.*** (p6) The National Commission on Correctional Health Care (NCCHC) standards defined “qualified mental health professional” as “a psychiatrist, psychologist, psychiatric social worker, licensed professional counselor, psychiatric nurse, or others who by virtue of their education, credentials, and experience are permitted by law to evaluation and care for the mental health needs of patients. (p9)
- ***One doctor provides all of the psychotropic medications used at ECDC; notably, he does not meet with patients himself.*** (p6)
- The NCCHC Standards focusing on suicide state that “mental health staff should assess and *interact with* the suicidal inmate on a daily basis.” Inmates on suicide watch are placed in suicide safety smocks, but interaction with mental health staff does not appear to have been a part of protocol. (pp7, 17) Furthermore, the NCCHC Suicide Prevention Protocol state that restraint jackets / smocks “should be avoided whenever possible, and used only as a last resort when the inmate is physically engaging in self-destructive behavior.” (p17)
- ***A number of detainees consistently reported that they have no access to a psychiatrist, and some appeared to have significant unaddressed mental health issues.*** (p8). The NCCHC states that mental health services should be available for all inmates who require them. (p10)
- The NDS and the NCCJC standards require that there be medical staff large enough to perform basic exams and treatments for all detainees. (p12)

Summary of Records Obtained Through  
*Adelante v. DHS* FOIA Litigation



**Medical Report by Marc F. Stern – August 4, 2012**

- **Qualifications:** (none listed other than his degrees: MPH and MD)
- Despite the “generally well-run” healthcare operation at ECDC, the investigator identified “a number of operational problems.” (p2)
- Written requests for medical care (SCRs, Sick Call Requests) are the only way detainees can get medical care. At ECDC, the majority of SCRs result in a written response only, even when responding to “potentially more serious complaints.” He cited the example of one detainee who requested medical assistance multiple times, all resulting in a written response. He finally said that it was an “emergency.” What follows is redacted. (pp4-5)
- The bulk of this report is redacted, but the standards cited to provide some insight into the content. For example, “Each facility will have a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officer.” (p6)  
“Adequate space and equipment will be furnished in all facilities so that detainees may be provided basic health examinations and treatment in private.” (p7)
- While almost all of the recommendations are redacted, one was not: “ECDC must make efforts to ensure that medically necessary medications are provided without gap. Such efforts would include staff training and supervisory alerts in the electronic health record.” (p14)

The complete FOIA documents are available at [www.shutdownetowah.org/resources/super-memo](http://www.shutdownetowah.org/resources/super-memo).

To learn more about Adelante, visit [www.adelantelabama.org](http://www.adelantelabama.org).

Adelante is part of the Shut Down Etowah campaign, aimed at exposing human rights abuses at the Etowah County Detention Center. To learn more about the campaign, visit [www.shutdownetowah.org](http://www.shutdownetowah.org) and follow @shutdownetowah on social media.