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# DHS Must Turn In Full Memo On ICE Detention Center Abuses

By [Suzanne Monyak](#)

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Law360 (March 27, 2019, 3:23 PM EDT) -- The [U.S. Department of Homeland Security](#) must turn over to the court unredacted versions of documents related to its civil rights division's findings and

recommendations regarding allegations of abuse at an Alabama immigration detention center, a federal judge in Manhattan ordered Tuesday.

U.S. District Judge Gregory H. Woods told DHS and the department's Office for Civil Rights and Civil Liberties, which investigates civil rights abuses within DHS, to provide him with unredacted copies of all records released in response to a Freedom of Information Act request filed by immigrant advocacy groups and nonprofits, including the Adelante Alabama Worker Center, the Detention Watch Network and the [Immigrant Defense Project](#).

"[The federal agencies] have advanced an argument which leads the court to conclude that their redactions of factual material may, despite being conducted in good faith, have nonetheless been overbroad," the judge said.

Judge Woods said he plans to confidentially review the civil rights office's "super-recommendations memorandum," which the office sent to [U.S. Immigration and Customs Enforcement](#) in 2015 flagging concerns about the ICE-run Etowah County Detention Center in Adelante, Alabama, to determine whether the federal government had redacted the document too heavily.

The civil rights office summarized that recommendations memo in a 2015 annual report to Congress describing allegations of abuse and civil rights violations by DHS employees, saying the memo recommended that ICE "either transition the facility" to performance standards or "cease use" of it.

But in their lawsuit, the advocacy groups say the entire recommendations section was withheld in the redacted version of the civil rights office's memo they received, and the federal government now says the memo never actually recommended that the agency stop using the facility, despite indicating otherwise to Congress.

"The court is presented with a contradiction between the [Office for Civil Rights and Civil Liberties]'s public statements, and defendants' contentions," Judge Woods said. "Rather than attempt to resolve the conflict between the language of the report and the agency declarations in the abstract, the court will review the document in camera."

The judge also told the government to re-review the reports compiled by subject matter experts who helped the civil rights office with the investigation of the detention center, and to release "any severable material which constitutes the adopted policy or working law" that would not fall under a FOIA exemption known as deliberative process privilege. That exemption, called FOIA Exemption Five, protects a federal agency's "pre-decisional" process.

Judge Woods also ordered that DHS disclose the identities and professional backgrounds of those experts, finding that the public interest in that information outweighs any risk of harassment. DHS had refused to release that information under a second exemption, FOIA Exemption Six, which protects individual privacy interests.

The advocacy organizations filed their FOIA request for the recommendations memo to DHS' civil rights office in September 2016, after the office told Congress in its 2015 report that the memo discussed "the seriousness of problems found in previous investigations, the continued receipt of additional correspondence raising similar concerns and [the Office for Civil Rights and Civil Liberties]'s belief that ... prior recommendations are likely not being fully implemented," according to

court filings.

After some back-and-forth with DHS involving two administrative appeals, the organizations brought the instant lawsuit in New York federal court in December 2017. The agency then released 127 pages of records with "significant" redactions, the nonprofits said, including the five-page 2015 super-recommendations memo, along with earlier memos about the Adelante detention center and expert reports.

Both sides moved for summary judgment last year, with the federal government standing by the two FOIA exemptions it invoked for the redactions and the organizations claiming the exemptions were unjustified.

Patrick Llewellyn of Public Citizen Litigation Group, an attorney for the nonprofits and advocacy groups, said in a statement to Law360 on Wednesday that the court's ruling "reaffirms key principles of FOIA that prevent the government from improperly applying exemptions to withhold broad swaths of information."

"We are also pleased the court acknowledged that DHS' justifications for withholding certain material as deliberative raise concerns that require further review," Llewellyn said.

A representative for DHS declined to comment Wednesday.

The advocacy groups are represented by Patrick D. Llewellyn and Adam R. Pulver of Public Citizen Litigation Group, and Jessica Vosburgh of the National Day Labor Organizing Network.

The government is represented by Samuel Dolinger of the [U.S. Attorney's Office](#) for the Southern District of New York.

The case is Adelante Alabama Worker Center et al. v. Department of Homeland Security et al., case number [1:17-cv-09557](#), in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.

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[1:17-cv-09557](#)

### Court

New York Southern

### Nature of Suit

Freedom of Information Act

Judge

[Gregory H. Woods](#)

Date Filed

December 6, 2017

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