

“I Want Them to Know We Suffer Here”: Preserving Records of Migrant Detention in Opposition to Racialized Immigration Enforcement Structures

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ABSTRACT: Thousands of detainee abuse allegations against Immigration and Customs Enforcement (ICE) have been documented since ICE was founded in 2003. However, few investigations occur, and they are often held internally. In 2017, ICE requested permission to destroy documents related to detainee abuse including violent assault, sexual assault, and death. The request remains under consideration by the National Records and Archives Administration. This proposal reflects a concerning pattern of anti-immigrant hostility that often intersects with race. Archivists must consider interventional archival practices to build collections that reflect the lives and histories of the disempowered through preserving their counternarratives to the official state narrative. This paper traces racialized border structures and their militarized apparatus to propose a new approach to the management and preservation of detainee abuse records.

Keywords: immigration, race, detention, ICE, NARA, archives, social justice, nativism, nationalism, ethno-nationalism



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Journal of Radical Librarianship, Vol. 5 (2019) pp. 16–40. Published 5 March 2019.

Introduction:

US Immigration and Customs Enforcement (ICE) is a law enforcement agency founded in 2003 to manage immigrant detention within the Department of Homeland Security (DHS) (US Immigration and Customs Enforcement 2017a). ICE has since been the target of thousands of complaints, including improper facility conditions, physical and sexual assaults, and deaths. Most allegations go uninvestigated, and those investigations that are carried out are handled within DHS (Merton and Fialho 2017). In 2017, the National Archives and Records Administration (NARA) published a notice in the Federal Register regarding a request by ICE for permission to destroy materials documenting abuse complaints after a limited period of time. No rationale was publicized. NARA granted preliminary approval for destruction of sexual abuse, assault, and death files twenty years after the end of the fiscal year of a case closure. Records related to solitary confinement would be kept for only three years (NARA 2017). However, in response to what Archivist of the United States David Ferriero (2018b) called “an unprecedented number of comments on this schedule” (including three congressional letters with a total of thirty-six signatures and a petition from the American Civil Liberties Union containing 23,758 comments), NARA has determined that it will reevaluate the proposal. Ferriero (2018b) indicates that staff are “working with ICE to revise the schedule as appropriate,” and will “conduct a comprehensive review of all ICE schedules that relate to deaths and assaults of detainees in ICE facilities.” At this time, the future of these records is uncertain.

Data obtained through a Freedom of Information Act (FOIA) request to the DHS’s Office of the Inspector General (OIG) by the nonprofit detainee visitation organization Community Initiatives for Visiting Immigrants in Confinement revealed an alarmingly low rate of investigation into detainees’ abuse complaints. Of the 33,126 complaints against DHS component agencies between January 2010 and July 2016, the OIG opened investigations into only 247 (0.07%), although it is not clear how many have been completed. The highest proportion of complaints (14,693 total or 44.4%) was lodged against ICE. However, a frustrating lack of action has been taken by the OIG after investigating; for example, of 402 complaints of coerced sexual contact lodged against ICE, ten of the eleven investigations opened were referred to ICE without requesting a response. Only three were determined by ICE to be substantiated (Merton and Fialho 2017). Notably, Merton and Fialho (2017) mention that similar FOIA requests filed with ICE and the DHS Office for Civil Rights & Civil Liberties received no response. The limited data on investigation results is largely a result of the agencies’ practices of withholding information. Since 2014, DHS regulations

have required ICE to release “all aggregated sexual abuse and assault data” annually, but the agency has never complied (Speri 2018). Withholding information to conceal the severity of abuse is especially problematic given the broader systemic disadvantages faced by racial minorities in areas such as law enforcement and the criminal justice system.

This paper argues that all ICE records related to detainee physical or sexual assaults or deaths should be scheduled for permanent retention given their historical and sociological significance and their evidential value. The abuses they describe reflect the racial disparities existing in the US criminal justice system, and their occurrence naturally follows from the United States’ history of racialized immigration policy culminating in the practices of the Trump administration. After tracing this background and introducing the topic of ICE’s records destruction request, the paper will explore other ways that record keeping has been used as a means of control by the state, as well as ways that records may be used to return power to marginalized peoples (including the use of counternarratives and archival descriptive practices). Finally, the paper will recommend a strategy for preserving detainee abuse records that will increase public oversight and accessibility so that the evidential and sociological power of detainee experiences will be safeguarded.

Race, Immigration, and Law Enforcement

Race-based inequalities have far-reaching consequences within the criminal justice system, and a basic understanding of this relationship is necessary before the consequences of destroying detainee abuse records can be grasped. Race and class have played significant roles in formulation of law enforcement, prosecution, and sentencing policies, and these disparities lead to further societal inequalities among different racial groups (Mauer 2004). The legitimacy and effectiveness of the criminal justice system are undermined by race- and class-based double standards (David Cole 1999). Inequalities in immigration law and enforcement are no exception. Race relations in the United States have historically shaped the evolution of immigration law, contributing to the adoption of discriminatory policies such as the Chinese Exclusion Act of 1882 and the National Origins Act of 1924 (Johnson 1998). While the Immigration Act of 1965 ended the racial discrimination of national origin quotas, current regulations such as economic requirements and annual limitations on the number of immigrants per country produce no less racially disparate impacts (Johnson 2009). Efforts to deny undocumented migrants eligibility for federal programs have led to racial profiling by law enforcement officials attempting to identify them based on physical appearance (Fan 1997; Romero and Serag 2005). For example, in 2010 Arizona’s 49th

Legislature passed Senate Bill 1070, making it a state misdemeanor crime for an immigrant to be in Arizona without carrying immigration documents and requiring state law enforcement officers to attempt to determine the immigration status of an individual suspected of being an undocumented immigrant during any lawful stop. After an injunction was filed blocking the most controversial provisions of the law, the US Supreme Court ruled it permissible to require immigration status checks as written, but found three other provisions (requiring immigrants to carry registration paperwork, criminalizing work solicitation while in the country illegally, and allowing warrantless arrest of suspected undocumented immigrants) unconstitutional (Duara 2016).

Interactions between migrants and US law enforcement officials are embedded in broader historical and political-economic contexts. In the 1980s, the “war on drugs” resulted in escalated police activity against undocumented migrants when mandatory drug sentencing and reclassification and expansion of deportation-worthy crimes allowed targeting of noncitizen drug offenders (Hernández 2006). For example, in 1988 the Anti-Drug Abuse Act introduced a class of drug-related “aggravated felonies” for which noncitizen “criminal aliens,” including legal permanent residents, could be deported. Expanded resources were provided to the Immigration and Naturalization Service (the precursor to ICE) for migrant apprehension. The detention infrastructure grew even faster in the following decade, with bed space tripling during the 1990s. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made sweeping regressive changes, removing due process for noncitizens and retroactively expanding the definition of an “aggravated felony” to include minor nonviolent offenses committed by noncitizens. It also allowed ICE to build partnerships with state or local police departments where officers would be deputized to perform law enforcement functions of federal immigration agents (US Immigration and Customs Enforcement 2018). These changes paved the way for punitive enforcement to reach new heights following the terrorist attacks of September 11, 2001, and further throughout the Trump administration. Responses to the events of September 11 have solidified the perceived link between international migration and domestic security. During this period, the US government placed the country in a “state of exception” justifying the use of extraordinary means and increased noncitizen incarceration as temporary strategies necessary to protect the homeland during the “war on terror” (Hernández 2016). However, history has not borne out this assertion.

The growing use of detention has been accompanied by an increasing privatization of detention facilities. The first privately owned and operated immigrant detention facility

opened in the mid-1980s, leading to major changes in the conduction of detention operations. More revenue is generated as detention capacity expands. When operations shift to the private sector, the profit motive creates a revenue-driven detention industry where detainees become commodities (Hernández 2016). Correspondingly reduced federal oversight makes it even more appealing for facilities to adopt strategies that maximize profit at the expense of detainees, setting up an immigration industrial complex that discourages political reform and is analogous in many ways to the racialized prison industrial complex (Brewer and Heitzeg 2008; Golash-Boza 2009; Doty and Wheatley 2013).

Undocumented migrants who are racial minorities may be particularly vulnerable due to the intersection of race and immigration status. Immigration policy is structured around promoting state capital accumulation on a global scale, and enforcement reflects state investment in acquiring greater economic power. Just as the construct of legality within immigration creates an exploitable underground “illegal” workforce, definitions of “illegality” have historically shifted in relation to production and accumulation of capital (Trujillo-Pagán 2014).

Periods of heightened immigrant detention are characterized by a construction of citizenship whereby citizenship status is treated as a racial marker, imbuing terms such as “aliens” and “illegals” with racial meaning. Likewise, terminology surrounding criminal activity such as “suspected terrorist” and “person of interest” are conflated with race and used as euphemisms for racial minorities in public discourse after being codified by government statistics and media reports (Hernández 2006). Detention and other forms of punitive enforcement have contributed significantly to the race-based and citizenship-based inequalities that many immigrants face.

Existing socioeconomic disadvantages are exacerbated by periodic “moral panics” and ensuing political responses that disproportionately affect racial minorities (Sampson and Lauritsen 1997; Provine and Doty 2011). Provine and Doty (2011) argue that “Immigrant” has long been treated as a racialized category and a tool through which the state can generate public support for policy that is economically advantageous for the state by exploiting and reinforcing racial anxieties. This involves directing attention towards the “threat” represented by “physically distinctive” and economically marginalized migrant populations; conducting immigration enforcement activities that help racial anxieties flourish and become embedded in the social consciousness; and racializing immigrants themselves so that immigration enforcement becomes a racial project that targets and penalizes unauthorized immigrants.

The racialized physical attributes referenced here are often constructed by the racial fear that shapes and is shaped by anti-immigrant discourse, despite the inadequacy of physical appearance as an indicator of race or immigration status.

This state-driven racialization not only bolsters support for restrictive immigration policies but also provides a safe haven for insidious anti-immigrant sentiment. Modern racial nativism comingles “a new American racism with traditional hostility towards new immigrants” (Sanchez 1997, 1009). American nativism is fostered by racialized stereotypes that encourage harsh punitive measures against undocumented detainees in order to be “tough on crime.” Race affects public perceptions of immigrant criminality despite evidence that immigration does not increase crime rates (Reid et al. 2005). Higgins, Gabbidon, and Martin (2010) suggest that immigration is more likely to be perceived as threatening by those with limited firsthand experience with immigrant communities and thus greater reliance on stereotypical images of immigrants when forming opinions. Other research indicates that voters exposed to news stories regarding immigration and crime are more likely to vote for anti-immigrant parties (Burscher, van Spanje, and de Vreese 2015). Racialization and criminalization of immigrants contribute to a lack of public concern for immigrant welfare and a heightened concern for self-preservation and maintenance of the societal status quo.

Fears of potential cultural marginality following the loss of culturally dominant status escalate nativist political movements (Fetzer 2010). Public acceptance of immigration is conditional on immigrants’ willingness and ability to adopt white American values and norms (Leitner 2011). This acceptance is also influenced by immigrants’ perceived ethnicity; in a study where participants read a fabricated news story about detention of a suspected undocumented immigrant, they endorsed harsher punishment when the immigrant was described as Mexican versus Canadian. This effect was stronger in participants who related the definition of American identity to assimilation of Anglocentric cultural values (Mukherjee, Molina, and Adams 2013). Ultimately, racialization of immigrants defends white privilege in the existing societal power structure.

Punitive enforcement reproduces existing racial hierarchies of privilege and oppression by treating different migrant subpopulations differently and violently asserting state dominance over people perceived by agents of the state to be racial minorities. Punitive acts are considered to be obstacles that migrants must overcome to prove their benefit to the public good, or alternately to be disciplinary methods against the “unworthy.” Migrants are

transformed into a racialized threat existing in opposition to the law, thereby justifying use of force against them in the public eye. Thus, punitive enforcement of immigration simultaneously targets and shapes race (Valdez 2016). It creates a dichotomy between the threat of racialized law-breaking migrants and the victimization of white law-abiding citizens.

ICE and other agencies that feed into and profit from the immigration industrial complex are structures of racial capitalism, or “the process of deriving social and economic value from the racial identity of another person” (Leong 2013, 2153). ICE derives value by commodifying nonwhite migrants and contributing to a cycle of white supremacy and racial subjugation while collecting federal funding in the process. Disparities in capital accumulation (e.g., between detainees and immigration enforcement institutions) “require loss, disposability, and the unequal differentiation of human value, and racism enshrines the inequalities that capitalism requires” (Melamed 2015, 77). The documents that ICE wishes to destroy are physical representations of violence enacted on nonwhite migrants by powerful institutions exploiting racial differences for social and economic purposes.

Changing Climate During the Trump Administration

The use of detention has markedly increased during the Trump administration. This trend is concerning given the racialized backdrop of American immigration history and the systemic disadvantages of punitive immigration enforcement. The number of people booked into ICE detention centers was 42% higher during fiscal year 2017 than fiscal year 2016, reflecting policy decisions in President Trump’s Executive Order 13768, “Enhancing Public Safety in the Interior of the United States” (US Immigration and Customs Enforcement 2017b). ICE has expanded use of detainers (requests to federal, state, and local law enforcement agencies to hold immigrants in custody before turning them over to ICE) as an enforcement strategy and has threatened to withhold normally allocated federal funding from local jurisdictions for noncompliance. Transactional Records Access Clearinghouse of Syracuse University (TRAC 2017) reports that beginning in January 2017, ICE began refusing to disclose much of the information about detainer usage that it had provided in response to previous FOIA requests.

On April 6, 2018, Attorney General Jeff Sessions announced the administration’s “zero-tolerance” policy, an aggressive attempt to deter immigration by mandating criminal prosecution for every adult (including asylum-seekers) illegally entering or attempting to

enter the United States (US Office of Public Affairs 2018). Although illegal entry is a misdemeanor for first-time offenders, Executive Order 13767 (“Border Security and Immigration Enforcement Improvements”) undid Obama-era directives prioritizing removal of violent offenders and national-security threats, making misdemeanor entrants equally eligible for deportation (President 2017).

Punitive immigration enforcement was even extended to include children. The Trump administration came under fire for processing children as unaccompanied minors under the zero-tolerance policy, removing them from parents and transferring them to separate detention facilities or into foster care. This represented a significant departure from the policies of previous administrations, by which families were often released into the United States to await immigration court hearings. As a result of this policy, more than 2,300 children were separated from their parents before a federal judge issued a preliminary injunction to halt the practice and set a reunification timetable for all previously separated families provided the parents were not judged unfit (unfortunately still granting ICE officials the agency to determine parental fitness, maintaining their ability to threaten families with separation). ICE’s failure to create proper documentation at immigrant processing centers and detention facilities hindered many reunification efforts, allowing the agency to skirt oversight and preemptively avoid consulting NARA about managing such records (Jordan 2018). Despite family reunification efforts, there were still 497 minors in custody over a month after the court deadline had passed; nearly two-thirds of their parents had already been deported (Sacchetti 2018).

Sadly, detained children are not exempt from the abuses visited on adults. Children’s allegations from between 2015 and 2018 describe verbal abuse including racial epithets, physical assaults while being restrained, solitary confinement, and being strapped down nude in a cold room with bags over their heads for days at a time (Biesecker, Pearson, and Burke 2018). A lawsuit filed in June 2018 alleges that detained children have been arbitrarily denied release to relatives and drugged with multiple psychotropic medications without appropriate authorization (NCYL 2018). Although not all incidents took place during the Trump administration, the abrupt escalation in the intake of children under the zero-tolerance policy means that agency resources necessary for caring for them in custody and monitoring their welfare after release are spread increasingly thin, increasing the likelihood of abuse. Even pregnant women are endangered by the reversal of the prior practice of avoiding their prolonged detention except in “extraordinary circumstances” (Abrams 2018). If NARA is truly seeking closer alignment with ICE and the Trump administration, the

public should be wary of shifts toward destruction of records documenting abuse and suppression of racial minorities and vulnerable populations.

Destruction of Detainee Abuse Records

These recent escalations in punitive enforcement and the racial politics surrounding them must be considered when determining the validity of ICE's request to destroy abuse records resulting from its detention activities. In a statement recommending approval, NARA appraiser Ashby Crowder (2017) explains that these files do not "document significant actions of Federal officials." He states that "ICE creates annual reports on incidents or allegations of sexual abuse or assault of individuals in ICE custody," meaning that these summaries are of sufficient evidential value to replace individual records. He also suggests that the retention period of death files "ensures that individuals and organizations who may wish to obtain the review files have many years to request them from the Agency" (Crowder 2017)

However, this statement mitigates or outright ignores several areas of concern. It is difficult to accept that actions leading to harm against detainees can be considered insignificant, and equally difficult to trust that ICE will grant access to documents as required by law rather than complying in an artificially slow and complex manner or refusing altogether. In any case, destroying original documents prevents further examination of their significance, leaving a gap in the historical record that cannot be reassessed in light of future developments or research requests. Similarly, after condensing the extensive information in the original records into a single annual report, remaining details are likely to have far less evidential value than the complete record. For example, original death review files include "investigative reports, correspondence, witness statements, extracts of pertinent information, immigration records, medical records, photographs, video and voice recordings, death certificates, and autopsy reports" (NARA 2017, 3). This contradicts NARA's (2016) appraisal guidelines, which include uniqueness as a factor in determining preservation schedules and state that appraisers "must determine whether the records under consideration are the only or are the most complete source for significant information." While the guidelines prioritize unique, significant records expected to be valuable for future research, destruction of the ICE records would indicate that NARA has ignored the specificity of the human rights violations claims they contain (and their research value to historians, sociologists, and human rights organizations) in favor of a smooth bureaucratic process.

Evidence does not suggest that NARA has a history of siding against racial minorities or vulnerable populations when determining records schedules or making recommendations to other agencies. Perhaps most notably, NARA questioned the Central Intelligence Agency's (CIA) compliance with institutional records preservation obligations after the CIA destroyed "enhanced interrogation" videotapes of alleged terrorist Abu Zubaydah (Cox 2011). It is worth mentioning that President Trump's nominee for CIA Director, Gina Haspel, took part in the CIA's extraordinary rendition program, oversaw Zubaydah's interrogation, and drafted the cable ordering the videotape destruction (Rosenberg 2017). NARA's initial show of support for ICE's records disposition request seems unusual in light of former practices. Archivist of the United States David Ferriero (2018a) appeared to distance himself from this support in a letter addressing the concerns of James Grossman, Executive Director of the American Historical Association, writing that it was only "NARA appraisal staff's recommendation that was sent to public requesters." It is unclear how many staff were in agreement on the recommendation. Additionally, Ferriero (2018a) writes, "I will not approve the pending ICE schedule until all comments are adjudicated and resolved to my satisfaction." If Ferriero does not represent NARA's viewpoint and there is indeed a general inclination among staff toward approval, it suggests a closer cooperation between NARA and ICE under the Trump regime than during previous administrations. This would be a concerning trend given the escalation of ICE activity in response to President Trump's policy decisions.

Rather than capturing the nuances of incidents and investigations, ICE's executive reports use a top-down approach to documentation that privileges a single official narrative and only leaves room for generalizations. This allows ICE the opportunity to create and curate all public information about their own violations so that crucial details may be omitted or revised and the historical narrative need not incorporate alternate perspectives. The Archivists Round Table of Metropolitan New York (ART 2017, 3) point out that this begs the question, Whose history is worth preserving? And furthermore, who determines this worth? Archivists must consider whether this is the ideal preservation approach for detainee abuse records. On the contrary, if these records are so numerous that they are becoming too burdensome to preserve, it is clear that a serious problem exists and requires much greater oversight and regulation. The answer does not lie in sweeping the issue under the rug.

Finally, there are barriers preventing many detainees from pursuing reparation in court within the allotted timeframe even if relevant evidence still exists. The threatened records destruction imposes an arbitrary and unnecessary statute of limitations. Detainees lacking

comprehension or financial means are unfairly disadvantaged by this system. Many cannot communicate in English, or are unfamiliar with US legal systems, and so they may be unable to quickly file a suit and build a case. Others may struggle to gather financial resources required to secure decent representation and engage in the legal process. Fear of retaliation can also prevent detainees from coming forward. Some, like Laura Monterrosa, describe being threatened or placed under solitary confinement after reporting an assault. In one interview, Monterrosa states that she experienced harassment after reporting her sexual abuse and wants only a “transparent investigation” into her case. She continues, “I want them to know we suffer here . . . We aren’t criminals. We’re just immigrants” (Del Valle 2018).

Recordkeeping as a Form of State Control

Records destruction is not the only way that the state has manipulated documentation to establish and enforce control over migrant populations, and it is important to be aware of the various tactics used before weighing potential options for the management of ICE detention records. The state may neglect records creation in the first place to deny recognition to marginalized groups. For example, the government-sponsored H-2A temporary agricultural worker program documents migrant workers’ entry into the United States via a thorough application process and complex classification schemas, but documentation of work conditions after arrival is inconsistently enforced. The Department of Labor audits employer recordkeeping, working conditions, and worker pay mainly in response to worker complaints rather than conducting proactive monitoring. Thus, the burden of enforcing H-2A employment terms and conditions is placed on those with the least power, ultimately perpetuating unequal power relations between the workers and employers. Workers who report employers’ unlawful actions must accept contract termination and return to their home countries (Garcia 2014). In contrast to the exhaustive documentation of these migrants when entering the country, its absence afterwards indicates a desire to control workers’ movements and freedoms but little concern for their welfare; records are not created without benefit to the state. Garcia (2014) observes that although federal agencies’ selective documentation practices and the risks of self-reporting prevent H-2A administrative records from being objective, “their placement at NARA preserves their ability to be used as ‘facts’ that influence larger national narrative surrounding temporary worker programs in the USA.” The same could be said for selectively curated ICE detention records and the resulting national perception of immigration enforcement.

Records may also be created by the state as a means of control in and of themselves.

Government records simultaneously serve as a tool for surveillance over immigrant populations and grounds for denying them agency granted to natural-born citizens; immigrants are documented as categories and statistics but not as human beings. The structure of US immigration law requires migrants to provide documentation deemed valid by the government to legally enter and remain in the country. Thus, migrants seeking permission to be in the United States must either undergo formal documentation or face refusal of entry or deportation. Their position is precarious because the same records that document legal immigration status can later expire or be revoked to deny further protection. Even migrants in full compliance with the law may live in fear of being unable to produce proof of their immigration status. Following the terrorist attacks of September 11, 2001, the federal government began including civil immigration violations in the FBI's National Crime Information Center's (NCIC) database, enabling local law enforcement officials to check for immigration-related information about anyone held during a routine stop. If information such as an order of removal appears in the database, the officer can remand the person into custody to undergo deportation or other actions (Chandler 2007). While this system is popular with law enforcement officials, 42% of immigration hits during stops between 2002 and 2004 were false positives (Gladstein et al. 2005).

Even participation in visa programs can be risky. For example, the structure of the employment-based H-1B program drives workers to accept severe exploitation by sponsoring employers to maintain employment and thus their legal immigration status (Banerjee 2006). Alternatively, overly burdensome government efforts to monitor and restrict migrants' movements result in the creation of an undocumented workforce of "illegal aliens" (De Genova 2004). If the state bars migrants from the realistic possibility of entering or remaining in the country via legal means, those desperate enough to forego documentation become highly vulnerable to exploitation. The preceding examples illustrate that just as with ICE's detention records, documents are created, destroyed, or otherwise manipulated to serve the purposes of the state unless outside interventions are employed.

Returning Power to the Marginalized

When state-created documents like those described above are transferred to archives and made available to the public, the state control over the people represented in the documents is diminished through public oversight. Thus, archives simultaneously hold institutional power and distribute it to the people (Ketelaar 2002). Even as the state implements control through documentation, individuals can appeal to the archive for access (provided the

archive is willing and able to share it). Within this system of racialized state control, it becomes the archive's responsibility to ensure that documents of potential use to marginalized peoples are preserved and made accessible in support of the peoples' future liberation. To allow the state sole control over the documents is to become complicit in subjugating the people. Should NARA accede to ICE's request, it will fail in its duty to the public and especially to those most in need of access to these records.

Given the varied motivations behind state creation of records, archivists should work toward preserving records that contribute to the public good rather than only those that benefit the state. During appraisal (or "the process of determining whether records and other materials have permanent [archival] value" [Pearce-Moses 2018, 22]), archivists select records from the bulk of all created records to be kept and passed down in institutional or societal memory. One methodology that may be of use during this process is Terry Cook's macro-appraisal approach, which allows archivists to process large volumes of materials and focus assessment on those documenting interactions between "citizens" and the state, with the end product reflecting societal values rather than state dictates. This is exactly what is needed in the case of the ICE records: practices that "put the 'citizen' back in the citizen-state relationship" (Cook 2004, 6). The reintegration of "citizen" within state is an important part of the healing process when documenting human rights abuses and societal injustices.

Archivists play a vital role in documenting human rights abuses that might otherwise be covered up by the powerful. The "state-imposed amnesia" surrounding apartheid records in South Africa is a chilling example of what can happen when the government controls all documentation of human rights abuses. Amid a climate of secrecy where access could be granted or withheld at the whim of bureaucrats unless specifically prohibited by legislation, classified records were routinely destroyed at the discretion of government agencies. This practice escalated between 1990 and 1994 in a government-wide "pre-election purge;" vast quantities of records were systematically destroyed by agencies such as the National Intelligence Service and the Security Police. By 1994 when the new democratically elected government was installed, former officials had erased a massive portion of the state's documentary memory of apartheid. In turn, this constrained social memory and reduced the people's ability to reconstruct and understand what happened. This illustrates the importance of accessibility and the need for oversight preventing sanitization of documents unfavorable to the state (Harris 1999).

With the help of archives, human rights abuse survivors can use evidentially valuable records

to seek restitution from the justice system. For example, records of interned Japanese-Americans during World War II document rights violations, contributing to the overturning of previous Supreme Court rulings on the matter. Documents originally representing government control and abuse of private individuals thus became evidence that brought redress (Hastings 2011). In Cambodia, Khmer Rouge-era records catalyzed an international tribunal that sought to hold the regime accountable for human rights abuses. The records provided evidence leading to indictment of Khmer Rouge officials and played a significant role in establishing the facts beyond survivor testimony (Caswell 2010). T.R. Schellenberg's (1956) work on evidential and informational value should be considered in any discussion of appraising detainee records for preservation, given the potential for these records to serve as evidence of state abuses against migrants. For Schellenberg, evidential value derives from evidence of government organization and functioning, while informational value relates to persons and entities with which the government dealt and is based on the criteria of uniqueness, form, and importance. Schellenberg notes that these forms of value are not mutually exclusive, and both are present in the ICE records and lend them importance as evidential materials capturing the interactions between detainees and the state. By gathering and preserving evidence of injustices, archivists also preserve the hope of future redress.

Alternatively, failure to preserve such documents (or to create them in the first place) makes it difficult or impossible for victims to receive compensation. Members of vulnerable populations are unlikely to succeed when lacking documentation of their abuse, especially when allegations are handled internally by the agency against which they have complained. If ICE destroys abuse documentation, detainees may have little recourse should they wish to pursue legal avenues for reparation. In other words, ICE would hand itself the opportunity to create and curate a narrative inevitably biased in the agency's own favor, to the exclusion of detainees' perspectives and experiences.

As several others have noted, archival work is neither neutral nor apolitical, as archival practices are inherently entangled with systems of racialized power (Ramirez 2015; Caswell 2017). At times, archives have upheld racial power disparities by selectively collecting and keeping records and providing limited services to nonwhite users (Poole 2014). Records are often deemed valuable when judged so by the dominant culture, regardless of their value to others (Douglas Cole 1985). In practice, this has resulted in devaluation of documents created by or about nonwhite people by white archival staff. The dimensions of power and race are omnipresent within archives as in greater society, and archivists' choices reflect negotiations between them for better or for worse (Harris 2002).

Thus, archives are a setting in which social justice and injustice are produced, reproduced, and reinforced depending on how materials are selected and presented. Archives are responsible for building infrastructures “that can anticipate, avert or alleviate some of the ways in which records and recordkeeping continue to traumatize or target the vulnerable, and frustrate and prevent the societal need to move past” by resisting secretive recordkeeping and implementing descriptive systems and access procedures that facilitate access and equity (Gilliland 2014, 272). Because human rights archives are sites of conflict between state interests and interests of abuse survivors, they should conduct careful historical and political analysis before navigating these tensions, and they should be assertive in promoting justice and improving access for the marginalized (Robinson 2014). Duff et al. (2013, 319) argue that “one of the most potent aspects of the content held by archives is their utility or potentiality for impacting social justice,” provided that the archives resist a myopic focus on the past to the exclusion of present injustices. They recommend that archives proactively encourage public participation and access, and that they work toward greater understanding of marginalization and suppression within archival institutions to create a more inclusive environment. This can lead to social impacts like fostering an expectation of transparency in government records, improving community members’ sense of self through connection with their heritage, and revealing deficiencies in societal memory of historical events and thereby opening the opportunity for remedies.

Dominant Narratives, Counternarratives, and Description

In order to help bring such desirable social impacts to fruition, it is vital for archives to explore and present counternarratives in the documents they preserve. Any agency such as ICE can make it appear as though only a single narrative exists within a body of records if given the ability to craft this narrative single-handedly; however, counternarratives can and do exist beneath the overarching narrative. Archivists should proactively seek out counternarratives rather than passively accepting the dominant narrative when working with documents concerning marginalized populations. In his analysis of Critical Race Theory (CRT) as applied to archival discourse, Anthony Dunbar discusses the counternarrative as a tool for exposing racial marginalization embedded in social institutions. Just as CRT challenges the privileged status of dominant (particularly white) culture as the normative standard for others, counternarratives illustrate that a diversity of valid, valuable perspectives exist (Dunbar 2006). Knowledge of alternate perspectives can counteract and rebalance existing societal hierarchies.

One key archival activity that may be especially productive in revealing counternarratives is description, “the process of analyzing, organizing, and recording details about the formal elements of a record or collection of records . . . to facilitate the work’s identification, management, and understanding” (Pearce-Moses 2018, 25). This tool allows archivists to showcase the facts and context of documented events, thereby asserting alternative interpretations hidden beneath dominant narratives (e.g. ICE’s narrative) and bringing them to readers’ attention. Wood et al. (2014) note that it is imperative that human rights archives provide descriptions supporting survivors’ evidential needs while reassuring them that the archives are not an extension of the regime that harmed them. When describing the ICE detention records, archivists should provide space for detainees’ perspectives rather than focusing solely on the perspective of the state and thus becoming an arm of the state. To facilitate access for detainees and advocates, descriptions should include terminology in Spanish and indigenous languages rather than English alone. Descriptions should be thorough to improve accessibility, with personally identifying information such as names redacted to protect privacy.

An official narrative and multiple counternarratives may exist simultaneously. By protecting documentation of detainee abuse, archivists would preserve both the official narrative of ICE and the counternarratives of detainees. The best approach to these records would address gaps in the documents scheduled for permanent preservation so that the depth of the detainee experience is not sanitized and lost. It would encourage documentation of abuses against migrant populations rather than allowing culpable federal organizations to purge unfavorable records and subsequently construct the sole narrative. Archivists handling these documents should remain steadfast and withstand opposition by working together to garner professional, political, and public support.

A New Strategy for Preservation of Detainee Records

To address the problems outlined in this paper, I argue for the implementation of a new preservation strategy for documentation of detainee abuse allegations. It is of tantamount importance that these records be protected for the foreseeable future, and I therefore propose that all interested archivists immediately begin engaging in dialogue and seeking support within professional organizations to develop a force for change. They should contact NARA and request that any records containing unique information concerning harm against detainees be preserved permanently. Furthermore, they should partner with organizations sharing this goal such as the American Civil Liberties Union to increase likelihood of

successful political action and provide financial support. Should NARA or ICE refuse to cooperate, judicial and legislative action backed by these organizations may be able to mandate appropriate records management and provide oversight preventing surreptitious destruction. Ideally, ICE would be required by law to turn over all relevant detainee files to NARA, which would redact identifying information before sharing the documents online, at which point the public could engage in dialogue about the contents of the records. This would help raise awareness and generate support for challenging the ongoing state of affairs.

Unredacted documents stored by NARA would be accessible only to the involved detainee or their legal representation and removed upon request. While the ethics of preserving and disseminating records of racial trauma are complex, archivists can do more to heal and prevent retraumatization by sensitively and respectfully protecting evidence of abuse rather than cooperating with the state in its destruction. Giving the state control over the records would cede the power they contain, making it easier to stifle dissent and maintain the status quo.

Ultimately, the best way forward is an abolitionist approach to the immigration-industrial complex—an approach, in short, that abolishes inhumane structures such as the mass detention model and replaces them with better ones. A joint report by the United States Conference of Catholic Bishops and The Center for Migration Studies of New York (USCCB and CMS 2015) offers several suggestions that may serve as a pathway toward broader reforms aimed at abolishing the immigration-industrial complex. Mass detention should be replaced with supervised release, case management, and community-based systems honoring due process and upholding the rights of noncitizens. Congress should transfer responsibility for managing this infrastructure from DHS-ICE to an agency such as the Office of Refugee Resettlement better suited to caring for noncitizens. Congress should reserve mandatory detention for the most egregious criminal and national security cases and permit immigration judges to pursue release options for the rest. Finally, use of for-profit detention centers should be at minimum greatly reduced and ideally eliminated because the profit motive treats detainees as an investment opportunity rather than human beings.

What might a broader-scale abolitionist approach look like for immigration policy? Laws that negate basic civil rights such as due process and that treat illegal migration as a criminal offense demanding draconian punishment should be repealed. Immigrant detention should no longer be used except in those relatively few cases where it is strictly necessary due to an immediate risk of violent criminal behavior or other similar infraction; in all other cases, the

community-based systems described previously (USCCB and CMS 2015) should be pursued in order to allow immigrants to remain with their families and to continue participating within society while their cases are being processed. Instead of funding ICE's destructive enforcement activities such as raiding workplaces and homes in search of deportable immigrants, resources should be invested in humanitarian efforts such as providing counsel to assist asylum-seekers in navigating the legal system. Redirecting the focus from criminalization and penalization to maintenance of families and communities will help create a system that rejects figurative and literal violence against migrants, ultimately reducing detainee abuse and enacting consequences when it occurs.¹

Conclusion

Given the existing anti-immigrant and nativist climate within the United States, ICE's request to destroy documents is disappointing but unsurprising. There is still hope that NARA will commit to preserving the documents indefinitely, but this would not correct the systemic challenges of under-reported abuse, lack of investigative action, or the immigration-industrial complex fomented by private detention centers. What preserving these documents can do, however, is raise awareness and contribute to a shift toward humane, community-based solutions instead of enforcement strategies that draw on racialized fears and punish for intimidation purposes. Archivists must preserve counternarratives present in detention records; the state is not the only stakeholder and should not be the only storyteller. As ART asked earlier, Whose history is worth preserving? And who has the right to decide this? How do we develop an inclusive preservation process that won't leave these histories out? By disseminating information about detainee abuse instead of being complicit in its destruction, archivists can help shift the balance of power away from those who have mishandled it and back toward those in captivity.

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1 Abolitionist approaches to immigration enforcement are far from monolithic; in particular, perspectives vary regarding the abolition of immigration enforcement tools such as detention and surveillance, of mandatory state cooperation with ICE enforcement activities, of ICE as a federal agency, and even of international borders themselves. See ACLU (2014), Tabarrok (2015), Dalmia (2017), Hernández (2017), Freedom for Immigrants (2018), and McElwee (2018) for several alternate perspectives.

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