

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON; AMERICAN
HISTORICAL ASSOCIATION; and
SOCIETY FOR HISTORIANS OF
AMERICAN FOREIGN RELATIONS,

Plaintiffs,

v.

Civil Action No. 20-cv-739-APM

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION; DAVID S.
FERRIERO, in his official capacity as
Archivist of the United States; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; and MATTHEW T.
ALBENCE, in his official
capacity as Acting Director of U.S.
Immigration and Customs Enforcement,

Defendants.

DECLARATION OF JAMES GROSSMAN

I, James Grossman, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Executive Director of the American Historical Association (“AHA”), a plaintiff in the above-captioned case. I have served in that position since 2010.

2. The AHA is a nonprofit membership organization founded in 1884 and incorporated by Congress in 1889 for the promotion of historical studies. The AHA is a trusted voice that advocates for history education, works to sustain and enhance the professional work of historians, and promotes the critical role of historical thinking in public life. As the largest organization of professional historians in the world, the AHA represents more than 11,500 members and serves historians representing every historical period and geographical area in a

wide variety of professions. The AHA's journal, the *American Historical Review*, is the most widely read and cited professional historical journal in the world.

3. As the AHA's Executive Director, I have knowledge of and am familiar with the work of the AHA's members, as well as their research and academic interests.

4. The AHA's members include historians, researchers, and educators who depend on preservation of and access to federal records in order to present a full and accurate accounting of the past in their teaching, public speaking, exhibitions, publications, and research endeavors. These members routinely rely on permanent federal records stored at National Archives and Records Administration ("NARA") facilities, and have filed thousands of Freedom of Information Act ("FOIA") and mandatory declassification review requests. On behalf of its members, the AHA has long advocated for the preservation, declassification, and public availability of federal records, because of the fundamental importance of these records for their investigation of the country's past. Thus, the AHA and its members have a strong interest in federal agencies' compliance with their recordkeeping obligations under the Federal Records Act. The destruction of federal records relevant to AHA members' work thwarts the AHA's mission and impede its members' informational rights under FOIA.

5. I have reviewed the complaint in this action and understand that it concerns NARA's approval of the records disposition schedule for Detainee Records (Schedule No. DAA-0567-2015-0013) proposed by U.S. Immigration and Customs Enforcement (the "ICE Schedule"). The AHA submitted a public comment urging NARA to deny approval of the ICE Schedule. *See* Administrative Record 186.

6. The AHA is dedicated to sustaining and enhancing the work of all historians, including immigration historians. The AHA recognizes that immigration from across the globe is a defining element of the history of the United States that has been vigorously debated since our nation's founding. The AHA is committed to protecting the ability of its members to document and interpret those debates, as well as the policies and practices that have stimulated such conversation.

7. The AHA's members include numerous historians who focus on U.S. immigration issues in their research, scholarship, and teaching. As part of that work, AHA members routinely rely on U.S. immigration records—including immigration detention records like those listed in the ICE Schedule—as primary source material, and will continue to rely on such records decades into the future. AHA's members gain access to these records by, among other things, visiting NARA facilities where the records are stored permanently and through FOIA requests submitted to relevant agencies. Given the nature of historians' work, AHA members frequently seek these records many decades after their creation—far beyond the temporary retention periods set forth in the ICE Schedule. If the records listed in the ICE Schedule are destroyed, AHA's members will be irreparably harmed because they will be deprived of current and future access to critical records on which they routinely rely for their research, scholarship, and teaching. For example:

- a. AHA member S. Deborah Kang is an Associate Professor of History at California State University San Marcos. She specializes in U.S. immigration law and policy, immigration history, and the U.S.-Mexico border. Professor Kang has relied extensively on INS detention records (the predecessors of the ICE records) as part of her research and educational work, including in her award-winning book *The*

INS on the Line: Making Immigration Law on the US-Mexico Border, 1917-1945

(New York: Oxford University Press, 2017). That book relied on INS records documenting the circumstances of detention of Mexican immigrants during the “Bracero Program” and “Operation Wetback,” two of the most important moments in the history of Mexican immigration and immigration law and policy in the United States. Professor Kang gained access to those records by visiting the National Archives facilities in Washington, D.C., College Park, Maryland, Fort Worth, Texas, and San Bruno, California. In keeping with her research interests, I have been informed that Professor Kang intends to seek and use ICE records, including those listed in the ICE Schedule, as part of her future work.

- b. AHA member Lucy Salyer is Professor of History at the University of New Hampshire. She specializes in the history of immigration and citizenship policies, focusing especially on the Chinese exclusion policy and Asian American citizenship. Professor Salyer has relied extensively on INS records (the predecessors of the ICE records) as part of her research and educational work, including in her award-winning book *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill & London: Univ. of North Carolina Press, 1995). That book relied on INS records documenting the circumstances of the government’s detention of Chinese immigrants in California in the early 20th century, including records concerning complaints outside groups submitted to the government about the poor conditions of immigrant detention, and the government’s investigation of those complaints. Professor Salyer gained

access to those records by visiting NARA's Record Group 85 in Washington, D.C.

- c. AHA member Krystyn R. Moon is Professor of History and Program Director of American Studies at the University of Mary Washington. She specializes in the history of U.S. immigration, ethnicity, and race relations. Professor Moon has worked extensively with the Case Files of Chinese Immigrants from NARA's regional offices and the Correspondence Files of the Immigration and Naturalization Service (INS), 1903-1959 at NARA's Washington, D.C. location (Record Group 85), which are the predecessors of ICE's detention records. In addition to relying on INS records for research purposes, Professor Moon uses the records as valuable teaching aids. For example, she teaches a seminar course entitled American Immigrant Experience, for which last fall she took students to the National Archives in Washington, D.C. so they could work firsthand with the case files of individual immigrants and administrative correspondence found in Record Group 85.
- d. AHA member Brianna Nofil recently graduated with a doctorate in U.S. history from Columbia University. She specializes in the history of immigration, immigration detention, and the criminal justice system. Ms. Nofil has relied on INS detention records (the predecessors of the ICE records) as part of her research work, including in her dissertation "Detention Power: Jails, Camps, and the Origins of Immigrant Incarceration." This work examines the use of carceral sites in the enforcement of immigration law, from borderland jails used to enforce the

Chinese Exclusion Act in the 1900s to for-profit jails holding Caribbean migrants in the 1980s and 1990s. It relies extensively on INS records documenting the conditions of U.S. immigration detention, including records documenting cases of sexual and physical abuse of incarcerated migrants in contract detention facilities, and records obtained through FOIA about detainee uprisings and resistance. In keeping with her research interests, I have been informed that Ms. Nofil intends to seek and use ICE records, including those listed in the ICE Schedule, as part of her future work.

- e. AHA member Jennifer Cullison is a postdoctoral fellow in the Core Humanities program at the University of Nevada, Reno. She specializes in U.S. history and global issues of race, migration and citizenship, with a particular focus on immigration detention. Dr. Cullison has relied extensively on immigration detention records of INS and ICE, including in her dissertation “Spawning a Hydra: The Policy and Practice of Immigrant Caging in Postwar America” (filed Spring 2018). That dissertation explores the growth of immigrant detention writ large in the U.S. since World War II, and includes case studies focused on individual detainee experiences. Dr. Cullison gained access to immigration detention records by, among other things, visiting the NARA facilities in Washington, D.C., and College Park, Maryland, and through FOIA requests. In keeping with her research interests, I have been informed that Dr. Cullison intends to seek and use ICE records, including those listed in the ICE Schedule, as part of her future work.

8. In the AHA's view, the ICE records scheduled for destruction document a pivotal moment in U.S. immigration policy that is of significant public interest, and have research and historical value comparable to other immigration records NARA has appraised as permanent, such as those found in NARA's Record Group 85. Case-specific records concerning individual immigrants and agency officials, such as the ICE records, provide immigration historians vital proof of the on-the-ground implementation of our nation's immigration policy, which often cannot be discerned from higher-level agency records. The records also hold unique historic value because ICE is a relatively new agency, having been established in 2003. Records from this period will therefore provide critical insight to historians and researchers as to the operations of a newly formed federal agency, which, as discussed above, has the been the subject of extensive public criticism and scrutiny with respect to its treatment of immigrant detainees. Because these records will serve as essential evidence needed to piece together the historical record decades into the future, their destruction will inflict irreparable harm to the work of the AHA's members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 23, 2020.

A handwritten signature in black ink, appearing to read "James Grossman", written in a cursive style.

James Grossman