

September 29th, 2020

Via e-mail and on the Federal Register

Ms Kimberly Keravuori, Regulatory and External Policy Program Manager,
National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001
regulation_comments@nara.gov

Re: Comments to DHS Document Destruction Proposal (NARA-20-0017-0014; Control Number
DAA-0568-2018-0001)

Dear Ms. Keravuori,

We the undersigned submit the following comments in response to the records schedule proposed by the Department of Homeland Security (DHS) (DAA-0568-2018-0001), 85 FR 58399.

- 1) We oppose the reclassification of complaint records that relate to DHS's alleged violation of civil rights and civil liberties as "temporary" records.

DHS is the subject of numerous lawsuits, media reports and ongoing Congressional inquiries related to the systematic violation of civil rights and civil liberties of American citizens. Just this year, federal agents with DHS reportedly seized protestors in unmarked vans and deported a key witness who alleged systematic sexual abuse in an ICE facility.¹² The same DHS component is accused of performing unnecessary hysterectomies on women in immigration detention over many years for no discernable medical purpose.³ The records in this schedule help inform the public about the persistent and ongoing abuses at DHS and its components and must be preserved.

As proposed, the record schedule would further allow DHS to obstruct oversight and

¹ Levinson, Wilson, Doubek, Nuyen. "Federal Officers Use Unmarked Vehicles To Grab People In Portland, DHS Confirms." *National Public Radio*, July 17th, 2020. <https://www.npr.org/2020/07/17/892277592/federal-officers-use-unmarked-vehicles-to-grab-protesters-in-portland>

² Kriel, Lomi. "ICE Guards "Systematically" Sexually Assault Detainees in an El Paso Detention Center, Lawyers Say." *Propublica*, August 14th, 2020. <https://www.propublica.org/article/ice-guards-systematically-sexually-assault-detainees-in-an-el-paso-detention-center-lawyers-say>

³ Bryant, Miranda. "Allegations of Unwanted ICE Hysterectomies Recall Grim Time in US History." *The Guardian*, September 21st, 2020. <https://www.theguardian.com/us-news/2020/sep/21/unwanted-hysterectomy-allegations-ice-georgia-immigration>

transparency over critical matters. Over the last four years, DHS has routinely refused to testify in front of Congress, ignored rulings by the Supreme Court, and is run by senior leadership that is, according to the Government Accountability Office, serving illegally.⁴⁵⁶ We urge NARA to reject this proposal as DHS has demonstrated an entrenched and persistent refusal to submit itself to routine checks and balances. By adopting the proposed records schedule, NARA would contribute to DHS' obstruction of oversight on serious misconduct and destruction of records.

- 2) The proposed record policy would allow the disposal of Customs and Border Protection's (CBP) administrative and criminal records related to misconduct, which are of critical public importance. We disagree with the proposed retention period and urge NARA to adopt a longer time period.

Similar to its parent organization, Customs and Border Protection has demonstrated a persistent pattern of misconduct and we oppose the reclassification of its records policy. As recently as this summer, CBP was reported to have flown its drones over protests and captured live video. In another instance, officials within CBP deported an Iranian student despite a federal court order.⁷⁸ The issue of misconduct is so widespread at CBP that "between 2005 and 2012, nearly one CBP officer was arrested for misconduct every single day."⁹ The records covered in this schedule also include those related to the misuse of weapons, especially concerning given CBP's history of using deadly force that does "not appear to meet the test of objective

⁴ Brufke, Jennifer. "DHS Rejects House Democrats' Call for Wolf to Testify." *The Hill*, September 11th, 2020. <https://thehill.com/homenews/house/516097-dhs-rejects-house-democrats-call-for-wolf-to-testify>

⁵ Egelko, Bob. "Trump Administration Appears to be Ignoring Court Rulings on DACA." *San Francisco Chronicle*, August 26th 2020. <https://www.sfchronicle.com/nation/article/Trump-administration-appears-to-be-ignoring-court-15516924.php>

⁶ Michael, Shear D. "Top Homeland Security Officials Are Serving Illegally, G.A.O. Says." *The New York Times*, August 14th, 2020. <https://www.nytimes.com/2020/08/14/us/politics/homeland-security-illegal-gao.html>

⁷ Sands, Geneva. "Customs and Border Protection Drone Flew over Minneapolis to Provide Live Video to Law Enforcement." *CNN*, May 29th, 2020. <https://www.cnn.com/2020/05/29/politics/cbp-drone-minneapolis/index.html>

⁸ Rose, Carol. "CBP Deported an Iranian Student with Valid Visa, Defying Court Order." *American Civil Liberties Union*, January 21st, 2020. <https://www.aclu.org/news/immigrants-rights/cbp-deported-an-iranian-student-with-valid-visa-defying-court-order/>

⁹ Luce, Kristen. "The Green Monster, How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency." *Politico*, December 1st, 2014. <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>

reasonableness.”¹⁰ For the above reasons, we firmly reject the description that these records “are not of significant enough historical interest to warrant preservation in the National Archives.” We therefore urge NARA to reject the proposed schedule and store these records permanently.

- 3) The proposed record schedule would allow the destruction of records collected under the Prison Rape Elimination Act (PREA). Given the serious nature of these documents, we oppose classifying them as “temporary records.”

The proposed classification of PREA documents as “temporary” records is severely misguided given they contain information of the government’s response to allegations of abuse. Survivors of sexual assaults in prisons already face steep challenges when reporting abuse such as retribution by guards and an endemic culture of indifference.¹¹ Further, we know that LGBTQ migrants are ninety-seven times more likely to be assaulted in detention, a staggering number that warrants further investigation by Congress.¹² Given the gravity of the information contained within these records and their historical value, we urge NARA to swiftly reject CBP’s proposal to reclassifying the documents as temporary.

As proposed, NARA-20-0017-0014 would allow vital public records to be destroyed as quickly as within four years and we strongly reject proposed items one through three. Given the long history of DHS and CBP misconduct and the critical public importance of these records, we urge NARA to reject the reclassification. Our organizations call on NARA to refuse to treat records of serious misconduct, including sexual assaults in prisons, as “temporary” and instead move to preserve them for a longer time frame in the public’s interest. The National Archive owes it the American people to treat these records with the seriousness they require.

Please do not hesitate to contact me with any questions at fmartinez@openthegovernment.org.

Respectfully,

American Historical Association
Defending Rights & Dissent

¹⁰ Brian Bennett. “Border Patrol’s Use of Deadly Force Criticized in Report.” *LA Times*, February 27th, 2014. <https://www.latimes.com/nation/la-xpm-2014-feb-27-la-na-border-killings-20140227-story.html>

¹¹ Kriel, *supra* note 2.

¹² Moreau, Julie. “LGBTQ migrants 97 times More Likely to be Sexually Assaulted in Detention, Report Says.” *NBC News*, June 6th, 2018. <https://www.nbcnews.com/feature/nbc-out/lgbtq-migrants-97-times-more-likely-be-sexually-assaulted-detention-n880101>

Electronic Privacy Information Center (EPIC)
Government Accountability Project
National Coalition Against Censorship
National Coalition for History
National Immigrant Justice Center
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