

June 1, 2012

The Honorable Janet Napolitano  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Napolitano:

The undersigned organizations write to express our concerns regarding the Department of Homeland Security's (DHS) April 16, 2012 memorandum ("April 2012 Memo") on the National Security Entry-Exit Registration System (NSEERS).<sup>1</sup> While our organizations appreciate the initial measures outlined in the memo which may potentially benefit some individuals affected by NSEERS, we remain deeply concerned by its significant limitations.<sup>2</sup> Specifically, we are disappointed that it retains the program's regulatory framework; fails to provide redress for *all* individuals who continue to face adverse immigration consequences as a result of the program; and lacks information regarding the status of databases created under the program. We urge DHS, in consultation with individuals and organizations with expertise on NSEERS, to issue and implement regulations that terminate the program in its entirety; remove residual penalties associated with NSEERS for all affected individuals; and discontinue the use of data collected through NSEERS by DHS and other law enforcement agencies.

Notably, the April 2012 Memo to the U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE)

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<sup>1</sup> As you are aware, NSEERS was established in 2002 by the Department of Justice and resulted in a wide-scale registration program targeting male visitors from countries with Muslim-majority populations. The implementation of NSEERS was controversial from the start because of the discriminatory nature of the program, lack of notice or accurate information about the registration requirements, and resulting immigration consequences. This led to widespread fear and confusion within Arab, Middle Eastern, Muslim, and South Asian communities across the country resulting in many community members not registering or experiencing harsh immigration consequences, regardless of compliance. Though the program has undergone some changes since it was inherited by the DHS in 2003, targeted visitors were subject to NSEERS until April 2011. See American Arab Anti-Discrimination Committee and Penn State Dickinson School of Law, Center for Immigrants' Rights, *NSEERS: The Consequences of America's Efforts to Secure Its Borders* (March 2009), available at <http://www.adc.org/PDF/nseerspaper.pdf>; *Race Matters Blog*, available at <http://endnseers.blogspot.com>; DRUM - Desis Rising Up and Moving, The Sikh Coalition, UNITED SIKHS, South Asian Youth Action (SAYA!), Coney Island Avenue Project, Council of Peoples Organization, and South Asian Americans Leading Together, *In Our Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling* (March 2012), available at <http://www.saalt.org/filestore/Reports/In%20Our%20Own%20Words%20Web%20FINAL.pdf>; and Rights Working Group and Penn State Dickinson School of Law, Center for Immigrants' Rights, *The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy* (Forthcoming, June 2012).

In April 2011, DHS issued a rule ("April 2011 Rule") stating that the 25 countries would be "delisted" and nationals and citizens from these countries who were previously subject to NSEERS would no longer be required to register. See 76 Fed. Reg. 23830, 23831 (Apr. 28, 2011); available at <http://www.gpo.gov/fdsys/pkg/FR-2011-04-28/html/2011-10305.htm>. While DHS asserted that the April 2011 Rule was the "end" of NSEERS, this rule did not eliminate the program's underlying infrastructure and individuals continue to face adverse immigration consequences, including removal and denial of immigration benefits for which they are otherwise eligible. See "Letter to DHS Secretary Regarding Unfinished Work Around NSEERS" (May 17, 2011); available at <http://endnseers.blogspot.com/2011/05/letter-to-dhs-secretary-regarding.html>.

<sup>2</sup> See Press Release, "Rights Groups Continue to Call for Dismantling of NSEERS and Criticize Department of Homeland Security's Refusal to Repudiate This Discriminatory Program" (May 7, 2012); available at <http://endnseers.blogspot.com/2012/05/rights-groups-continue-to-call-for.html>.

sets up a framework for relief for certain NSEERS-related cases.<sup>3</sup> Specifically, it provides a definition for “willful” and instructs that in cases “where DHS personnel have determined that noncompliance was not willful, DHS should not pursue immigration enforcement action, nor deny any immigration benefit, solely on the basis of the alien's failure to comply with NSEERS.”<sup>4</sup> However, the memo nevertheless raises numerous concerns, including the fact that it retains the program’s regulatory framework, fails to articulate a policy for individuals who actually *did* comply with NSEERS, and adopts a potentially vague definition of “willful.”<sup>5</sup>

NSEERS has been widely acknowledged as a counterproductive response to the September 11<sup>th</sup> attacks and a clear example of racial and religious profiling. The program has been condemned for its ineffectiveness for counterterrorism purposes and its discriminatory nature by both advocacy organizations and members of Congress. In February 2012, even DHS’ own Office of Inspector General called for a full termination of NSEERS as the “database that supports this program is obsolete” and it “does not provide any increase in security.”<sup>6</sup> Yet, rather than eliminating NSEERS, the April 2012 Memo maintains its core regulatory architecture, raising the possibility that it could be resurrected by DHS in the future. Furthermore, it continues to allow DHS to use information that was obtained through or in connection with the NSEERS program.<sup>7</sup>

We urge DHS to take additional measures in order to achieve the goal of eliminating the program and its effects on families and community members. Specifically, we urge DHS, in consultation with individuals and organizations with expertise on NSEERS, to issue and implement regulations that:

- Dismantle the regulatory framework of NSEERS in its entirety and instead adopt programs that target individuals based on legitimate and particularized evidence, not identity-based criteria such as race, religion, ethnicity, gender, or nationality
- Remove residual NSEERS penalties, both immigration and criminal, by regulation for *all* individuals affected by NSEERS and apply such regulations retroactively

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<sup>3</sup> Memorandum from DHS Deputy Secretary to USCIS, ICE, and CBP, “Department of Homeland Security Guidance on Treatment of Individuals Previously Subject to the Reporting and Registration Requirements of the National Security Entry Exit Registration System” (April 16, 2012); available at <https://law.psu.edu/file/NSEERSMemoPublic.pdf>.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> For further analysis of the April 2012 memo, *see supra* note 2; *see also* Denyse Sabagh, American Immigration Lawyers Association, “DHS Releases Long-Awaited Memo on Controversial 9/11 Program” (May 3, 2012); available at <http://ailaleadershipblog.org/2012/05/03/dhs-releases-long-awaited-memo-on-controversial-911-program/>.

<sup>6</sup> U.S. Department of Homeland Security, Office of Inspector General, “Information Sharing on Foreign Nationals: Border Security (Redacted), OIG-12-39” (February 2012); available at [http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr\\_12-39\\_Feb12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-39_Feb12.pdf).

<sup>7</sup> In fact, a recent Systems of Records Notice (SORN) issued by DHS demonstrates that NSEERS data is continuing to be “ingested” into the agency’s databases. In the SORN, DHS proposes “to update and expand the categories of individuals, categories of records, routine uses, access provisions, and sources of data stored in [the Automated Targeting System] ATS” and states that “ATS maintains copies of key elements of certain CBP databases ... including: ... historical National Security Entry-Exit Registration System (NSEERS).” *See* 77 Fed.Reg. 30297 [Docket No. DHS-2012-0019] (May 22, 2012); available at <http://www.gpo.gov/fdsys/pkg/FR-2012-05-22/html/2012-12396.htm>.

- Discontinue the use of data collected through NSEERS by DHS and other law enforcement agencies for other purposes

Thank you for your attention to this matter. If you have any questions or require further information, please contact Sameera Hafiz, Policy Director at Rights Working Group, at [shafiz@rightsworkinggroup.org](mailto:shafiz@rightsworkinggroup.org) or Priya Murthy, Policy Director at South Asian Americans Leading Together, at [priya@saalt.org](mailto:priya@saalt.org).

Sincerely,

Adhikaar  
 The American Civil Liberties Union  
 American Immigration Lawyers Association  
 American Muslim Voice  
 American-Arab Anti-Discrimination Committee  
 Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center)  
 API Chaya  
 Apna Ghar, Inc.  
 Arab American Action Network  
 Arab American Association of New York  
 Arab American Institute  
 Asian American Justice Center, a member of Asian American Center for Advancing Justice  
 Asian & Pacific Islander American Health Forum  
 Asian Law Alliance  
 Asian Law Caucus  
 Asian Pacific American Labor Alliance  
 Asian Pacific American Labor Alliance - DC Chapter  
 Asian Pacific Partners for Empowerment, Advocacy, and Leadership (APPEAL)  
 Bill of Rights Defense Committee  
 Blacks in Law Enforcement of America  
 Causa Justa :: Just Cause  
 Center for Constitutional Rights  
 Center for National Security Studies  
 Chhaya CDC  
 Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)  
 Community to Community  
 Coney Island Avenue Project  
 The Constitution Project  
 Council of Peoples Organization  
 Council on American Islamic Relations  
 Council on American Islamic Relations - Florida  
 Council on American Islamic Relations - Los Angeles  
 Council on American Islamic Relations - New Jersey  
 Council on American Islamic Relations - St. Louis  
 Counselors Helping (South) Asians/Indians

Creating Law Enforcement Accountability & Responsibility (CLEAR), CUNY School of Law  
DRUM - Desis Rising Up and Moving  
Equality Alliance of San Diego County  
Families for Freedom  
Indo-American Center  
Interfaith Coalition on Immigration, Minnesota (IOCM, Inc.)  
International Center for Advocates Against Discrimination  
Japanese American Citizens League  
Khadijah's Caravan  
Laotian American National Alliance, Inc.  
Latina Institute for Reproductive Justice  
Lawrence Action Network for Diversity (LAND)  
The Leadership Conference on Civil and Human Rights  
Maitri  
Massachusetts Immigrant and Refugee Advocacy Coalition  
Minority Executive Directors Coalition  
Muslim Advocates  
Muslim Legal Fund of America  
Muslim Public Affairs Council  
NAACP  
National Asian Pacific American Families Against Substance Abuse  
National Fair Housing Alliance  
National Immigrant Solidarity Network  
National Immigration Forum  
National Network for Arab American Communities  
National Network for Immigrant and Refugee Rights  
NC Immigrant Rights Project  
North American South Asian Bar Association (NASABA)  
OCA  
OneAmerica  
Priority Africa Network  
Raksha  
Reformed Church of Highland Park  
Rights Working Group  
Sakhi for South Asian Women  
San Diego Immigrant Rights Consortium  
Sikh American Legal Defense and Education Fund (SALDEF)  
The Sikh Coalition  
Sneha, Inc.  
South Asian American Policy & Research Institute (SAAPRI)  
South Asian Americans Leading Together (SAALT)  
South Asian Bar Association of New York  
South Asian Council for Social Services (SACSS)  
South Asian Network  
South Asian Youth Action (SAYA!)  
Southern Border Communities Coalition

Tennessee Immigrant & Refugee Rights Coalition  
UNITED SIKHS  
The Westchester Square Partnership  
Who is My Neighbor? Inc. (WIMNI)  
The Woodhull Sexual Freedom Alliance

Cc: John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS  
Kelly Ryan, Acting Deputy Assistant Secretary, DHS  
Francis Cissna, Director of Immigration Policy, DHS  
Tamara Kessler, Acting Officer for Civil Rights and Civil Liberties, DHS  
David Aguilar, Acting Commissioner, CBP  
Alejandro Mayorkas, Director, USCIS  
John Morton, Director, ICE  
Cecilia Muñoz, Director, White House Domestic Policy Council  
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