

December 7, 2009

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW, Washington, DC 20520

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

Dear Secretary Clinton and Secretary Napolitano:

We are writing to request that your departments terminate the National Security Entry-Exit Registration System (NSEERS). Implemented in the wake of September 11, 2001, NSEERS required non-immigrant males from predominantly Muslim-majority countries to register at ports of entry and at local immigration offices--where they were fingerprinted, photographed, and subjected to lengthy questioning. Although certain registration requirements have been suspended,¹ non-compliance with the program can still subject individuals to severe penalties.² Among others,³ such individuals include those who were in the process of adjusting their status to become U.S. lawful permanent residents, but were denied adjustment because they did not register due to lack of knowledge or fear of the program or due to late registration;⁴ and those who were removed from the U.S. when they registered, though they had families and/or pending immigration benefits applications in the U.S.

Foreign Policy Implications

NSEERS has damaged your departments' outreach efforts to our nation's foreign allies and to Arab-American, Muslim-American and South Asian-American communities in the United States. The very structure of the program - explicitly targeting males based on their religion, national origin and nationality - reinforced the perception that Arabs, Muslims, and South Asians were being targeted by the United States.⁵ From a foreign policy perspective, NSEERS left an unfortunate but lasting imprint. Many of our close allies were "opposed to having their nationals subject to NSEERS registration."⁶ Moreover, fewer visitors from NSEERS countries are coming to the United States, even as travel has largely recovered from most countries in the world to near pre-9/11 levels.⁷ This has meant that significantly fewer Arab and Muslim visitors are having "the opportunity to observe first-hand the unique nature of American democracy and freedom and [returning] to their countries as good-will ambassadors for the U.S."⁸ However, good-will ambassadors rate the United States approximately 25 to 30 percentage points more favorably than those who have not visited the U.S.⁹ Increasing the number of tourist, business and student visitors from these countries would help to break down misconceptions about the U.S., enhance our national security, and fuel the economy.

Domestic Impact and Costs

Domestically, NSEERS was created as a counterterrorism tool. However, there is no clear evidence that NSEERS has made our nation any safer, a conclusion reached in a thorough

investigation by the National Commission on Terrorist Attacks Upon the United States.¹⁰ Additionally, profiles of individuals currently impacted by NSEERS indicate that the program has not focused on high-risk individuals.¹¹ With counterterrorism being one of the top priorities for the Department of Homeland Security, we strongly recommend that scarce resources be focused on high-risk individuals and not on NSEERS registrants, many of whom have no criminal backgrounds, have very strong equities in our nation, and have made significant contributions to their communities. The costs incurred with NSEERS have far outweighed any counterterrorism benefits. For instance, the haphazard treatment of late NSEERS registrants has been very costly not only for the individuals but for both the Department of Justice and the Department of Homeland Security.¹²

Conclusion and Recommendations

We believe that the continuing problems with NSEERS can only be remedied by terminating the program and providing reprieve for well-intentioned individuals impacted by NSEERS.¹³ Terminating the program would go a long way towards improving public diplomacy efforts with the Arab and Muslim worlds; ensuring that potential U.S. citizens impacted by the residual effects of NSEERS are provided relief so that they are capable of enriching our great nation as future Arab-Americans, Muslim-Americans and South Asian-Americans; and in signaling a shift away from ineffective policies that involve racial and religious profiling. Recent developments have suggested a growing momentum for finally resolving the issues created by NSEERS.¹⁴ We urge you to end this ineffective program.

Thank you in advance for your time and attention to this letter. If you have any questions, please contact Nawar Shora (nshora@adc.org or 202-244-2990), Legal Director at the American-Arab Anti-Discrimination Committee and Shoba Sivaprasad Wadhia (ssw11@psu.edu or 814-65-3823), Clinical Professor and Director of the Center for Immigrants' Rights at Penn State Dickinson School of Law.

Sincerely,

American-Arab Anti-Discrimination Committee (ADC)
American Immigration Lawyers Association (AILA)
Arab American Institute (AAI)
National Immigration Forum (NIF)
Rights Working Group (RWG)
South Asian Americans Leading Together (SAALT)
Shoba Sivaprasad Wadhia, Clinical Professor and Director of the Center for Immigrants' Rights,
Penn State Dickinson School of Law¹⁵

CC:

Department of State (DOS)

James Steinberg	Deputy Secretary of State
Janice Jacob	Assistant Secretary of State for Consular Affairs
Judith McHale	Undersecretary of State for Public Diplomacy and Public Affairs
Anne-Marie Slaughter	Department of State, Director of Policy Planning
Michele Bond	Deputy Assistant Secretary of State for Consular Affairs

Department of Homeland Security (DHS)

Jane Holl Lute	DHS Deputy Secretary
David Heyman	DHS Assistant Secretary for Policy
Alan Bersin	DHS Assistant Secretary for International Affairs
Juliette Kayyem	DHS Assistant Secretary of Intergovernmental Programs
Esther Olavarria	DHS Deputy Assistant Secretary for Policy
David Martin	DHS Principal Deputy General Counsel
Alejandro Mayorkas	DHS Director of United States Citizenship and Immigration Services
Roxana Bacon	DHS Chief Counsel of United States Citizenship and Immigration Services
John Morton	DHS Assistant Secretary for Immigration and Customs Enforcement
Susan Cullen	DHS Director for the Office of Policy at Immigration and Customs Enforcement
Jayson Ahern	DHS Acting Commissioner for Customs and Border Protection
Stephen Shih	DHS Acting Officer for the Office for Civil Rights and Civil Liberties

Endnotes

¹ Department of Homeland Security, Suspending the 30-Day and Annual Interview Requirements from the Special Registration Process for Certain Nonimmigrants, 68 Fed. Reg. 67578 (Dec. 2, 2003).

² See *id.*; see also Immigration and Naturalization Service, Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 67766 (Nov. 6, 2002) (“A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237 (a)(1)(C)(i) of the [Immigration and Nationality] Act”).

³ See the American-Arab Anti-Discrimination Comm. and the Ctr. for Immigrations’ Rights at Penn State Dickinson School of Law, *NSEERS: The Consequences of America’s Efforts to Secure Its Borders* 6-7 (2009), <http://www.adc.org/PDF/nseerspaper.pdf>.

⁴ Some individuals did not register as there was a “lack of awareness by the public and affected communities about the NSEERS rule and the remaining requirements.” Moreover, “whether the government’s release of special registration through publications in the Federal Register constitutes adequate notice” is still in question. See *id.* at 20.

⁵ See Department of Homeland Security, *Roundtable on Security and Liberty: Perspectives of Young Leaders Post-9/11 Washington, D.C.: Report For Government Officials and Policy Makers*, http://www.dhs.gov/xcitizens/gc_1249420143090.shtm (last visited Dec. 6, 2009) (Young leaders from the Post-9/11 communities believe that “NSEERS [...] disproportionately target[s] their communities.”).

⁶ National Commission on Terrorist Attacks Upon the United States, Staff Report, *9/11 and Terrorist Travel* 159 (2004), http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf.

⁷ See Council on Foreign Relations, *U.S. Immigration Policy* 25 (Council on Foreign Relations, Inc. 2009), available at <http://www.cfr.org/publication/20030/> (For instance, “in 2008, the number of visas issued to nationals of Egypt, Pakistan, Bangladesh, Jordan, Indonesia, and Saudi Arabia remained well below their pre-9/11 levels, in some cases half or less.”).

⁸ Letter from the Senators Durbin and Feingold, and late Senator Kennedy to the Honorable Tom Ridge, January 23, 2004.

⁹ See Council on Foreign Relations, *supra* note 7, at 24.

¹⁰ See National Commission on Terrorist Attacks Upon the United States, *supra* note 6, at 157-60.

¹¹ See the American-Arab Anti-Discrimination Comm. and the Ctr. for Immigrations’ Rights at Penn State Dickinson School of Law, *supra* note 3, at 25-26.

¹² Posting of Shoba Sivaprasad Wadhia to Race Matters blog, <http://endnseers.blogspot.com/2009/11/commentary-on-late-nseers-registration.html> (Nov. 19, 2009) (“This wastes precious EOIR resources, and moreover reflects a poor judgment or failure of DHS to exercise prosecutorial discretion prudently and favorably toward individuals who present strong equities.”).

¹³ See the American-Arab Anti-Discrimination Comm. and the Ctr. for Immigrations’ Rights at Penn State Dickinson School of Law, *supra* note 3, at 38-39.

¹⁴ See Press Release, American-Arab Anti Discrimination Committee, Office of Inspector General at DHS to Audit NSEERS at the Request of ADC and Other Major Organizations (Nov. 19, 2009), <http://www.adc.org/index.php?id=3524>; see also Robert Bonner & Edward Alden, *The Wrong Way to Screen Visitors*, Wash. Post, Nov. 21, 2009, available at http://www.washingtonpost.com/wpdyn/content/article/2009/11/20/AR2009112003375_pf.html.

¹⁵ Affiliation listed for informational purposes only.