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).1 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.2 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)

1 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).

2 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.  

sets up a framework for relief for certain NSEERS-related cases. 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.” 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.”

NSEERS has been widely acknowledged as a counterproductive response to the September 11th 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.” 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.

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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3 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.
4 Id. at 4.
5 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/.
7 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.epo.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@rightworkinggroup.org or Priya Murthy, Policy Director at South Asian Americans Leading Together, at 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
     Felicia Escobar, Senior Policy Director for Immigration, White House Domestic Policy Counsel
     Julie Rodriguez, Associate Director of Latino Affairs and Immigration, White House Office of Public Engagement