

September 16, 2009

Richard L. Skinner  
Inspector General  
U.S. Department of Homeland Security  
1120 Vermont Avenue, NW  
Washington, D.C. 20528

Dear IG Skinner:

We write to follow up on a written request dated November 29, 2005,<sup>1</sup> and a meeting held on May 7, 2009, between your office and the DHS CRCL Committee during which the National Security Entry-Exit Registration System (NSEERS) was discussed. We also write to request an audit on NSEERS.

As you know, the NSEERS program was implemented as a counterterrorism tool in the wake of September 11, 2001, and required certain non-immigrants to register at ports of entry and local immigration offices and complete fingerprints, photographs and lengthy questioning. “The most controversial aspect of the NSEERS program was a “domestic” component that solicited registrations from more than 80,000 males who were inside the United States on temporary visas from Muslim-majority countries.”<sup>2</sup>

In September 2003, of the more than 80,000 individuals who complied with call-in registration, 13,799 were referred to investigations and received notices to appear, and 2,870 were detained.<sup>3</sup> As documented in a recent report entitled “*NSEERS: The Consequences of America’s Efforts to Secure Its Borders*,”<sup>4</sup> “many non-immigrants subjected to the NSEERS program did not understand the details of the program, as the rules were unclear and public outreach and notice were insufficient.”<sup>5</sup> “NSEERS’s initial mission was [in fact] to keep track of non-immigrants and prevent terrorist attacks. However, interviews with immigration attorneys representing individuals impacted by NSEERS and policy advocates, and a review of multiple reports and federal court decisions reveal that the NSEERS program was unsuccessful as a counterterrorism tool.”<sup>6</sup>

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<sup>1</sup> For your reference, please find enclosed the November 29, 2005 letter.

<sup>2</sup> *NSEERS: The Consequences of America’s Efforts To Secure Its Borders*, March 31, 2009, prepared for the American-Arab Anti-Discrimination Committee (ADC) by Penn State University’s Dickinson School of Law Center for Immigrants’ Rights, <http://www.adc.org/PDF/nseerspaper.pdf>, hereinafter NSEERS Report.

<sup>3</sup> Immigration and Customs Enforcement, *Changes to the National Security Entry/Exit System*, December 1, 2003, <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>.

<sup>4</sup> See NSEERS Report page 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

“Many of the individuals who legally challenged the NSEERS program entered the United States lawfully, diligently complied with the NSEERS program, were predominantly male and Muslim, and had an immigration violation such as overstaying a visa that came to the attention of the immigration agency after complying with NSEERS. Moreover, many individuals impacted by NSEERS do not appear to have terrorism charges or criminal histories. [In fact,] many of these individuals have meaningful family, business and cultural ties to the United States.”<sup>7</sup>

“Indeed, more than seven years after its implementation, NSEERS continues to impact the Arab-American, [South Asian American, and Muslim-American] communit[ies]. Impacted individuals include those who are married to United States citizens or meaningfully employed in the United States. Well-intentioned individuals who failed to comply with NSEERS due to a lack of knowledge or fear have been denied “adjustment of status” (green cards), and in some cases have been placed in removal proceedings under the premise that they “willfully” failed to register. This scenario has torn apart families because of the real implications of having a parent or spouse without a legal status.”<sup>8</sup>

The Department of Homeland Security (Department) has also continued to use the NSEERS database, most notably in its implementation of a program named “Operation Frontline.” The first phase of this Operation occurred in May 2004 “to support the government-wide Interagency Security Plan” in order to “detect, prevent, and disrupt terrorist activities.”<sup>9</sup> This was performed “through targeted enforcement and reassignment of resources.”<sup>10</sup> The second phase of the Operation started in October 2004, and lasted until the 2005 presidential inauguration. This phase was implemented by combining ICE resources, intelligence and authorities with the support from the Detention and Removal Operations, and the National Fugitive Operations Program.

In short, the “[t]wo major elements to Frontline [were]: 1. Exploiting unique information databases, including SEVIS, NSEERS, US VISIT, and tactically act upon that information, [and] 2. Dynamic intelligence driven enforcement initiatives of Immigration and Customs Laws resulting in the prevention and disruption of terrorist travel both domestically and abroad.”<sup>11</sup> The usage of the NSEERS database in the Operation highlights the Department’s continued usage of NSEERS data to target and punish men based on an ill-conceived program and an already tainted

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Immigration and Customs Enforcement (ICE) Memo from Marcy Forman, Acting Director, Office of Investigations, to all Special Agents in Charge, and all Deputy Assistant Directors, dated September 24, 2004, <http://www.adc.org/PDF/frontlinedocs.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> Briefing by the ICE National Security Division on Operation Frontline in front of the Subcommittee on Immigration, Border Security and Claims, on November 10, 2004. <http://www.adc.org/PDF/frontlinedocs.pdf>.

database. Moreover, the usage of NSEERS data in the Operation is troubling, since the Department's practice of profiling communities based largely on national origin and religion seems to endure.

We are requesting for your office to audit and make findings on the following points:

- I. Effectiveness of NSEERS
  - a. Effectiveness of the NSEERS program (2002-current) as a counterterrorism strategy.
  - b. The number of suspected terrorists apprehended and convicted through the NSEERS program (call-in and at ports of entry).
- II. Effectiveness of the NSEERS database in Operation Frontline
  - a. The number of suspected terrorists apprehended and convicted through Operation Frontline due to the NSEERS database.
- III. Costs incurred with NSEERS
  - a. Past and existing costs of NSEERS program, including on local immigration offices.
  - b. Costs and operations associated with ICE's Compliance Enforcement Unit (CEU) and its relationship to the NSEERS database.
  - c. National security implications of the NSEERS program, including but not limited to the damaged relationship between law enforcement and affected communities.
- IV. Review of the information obtained through NSEERS
  - a. Review of how information obtained during each component of NSEERS (including suspended components of the program such as call-in registration) is currently being used by the government.
  - b. A review of how information obtained by the NSEERS program was used during Operation Frontline and any other DHS backed programs.
  - c. A review of the 14,000+ men placed in removal proceedings, including how many have been deported and for what types of immigration violations.
  - d. Number of people referred by CEU to investigations for an NSEERS violation.
- V. Relationship between NSEERS and US-VISIT
  - a. Relationship between NSEERS and US-VISIT programs.
  - b. Whether information collected during NSEERS is duplicative of information collected through other databases, including US VISIT.
- VI. Impact of NSEERS Non-compliance on Individuals and Families
  - a. Instrument that USCIS is using to calculate whether someone has "willfully" failed to register.
  - b. The number of people denied an immigration benefit or discretionary relief from removal based in part or solely because of noncompliance with the NSEERS program.
- VII. Notice on NSEERS
  - a. Adequacy of government's dissemination of accurate information about the NSEERS program and results of the dissemination of

incorrect information including DOJ's mistranslation of Arabic on its website and confusion about requirements for Palestinians.

- b. Adequacy of government's outreach and education about the NSEERS program.

Thank you for your consideration. For follow-up, please contact Fahed Al-Rawaf at the American-Arab Anti-Discrimination Committee (ADC) at [fahed@adc.org](mailto:fahed@adc.org), or (202)-244-2990.

Sincerely,

American Arab Anti-Discrimination Committee (ADC)  
American Arab Anti-Discrimination Committee, Washington, DC Chapter  
American Civil Liberties Union (ACLU)  
American Gateways  
American Immigration Lawyers Association (AILA)  
American Muslim Voice  
Amnesty International USA  
Arab American Family Support Center  
Arab American Institute (AAI)  
Arab Community Center for Economic and Social Services (ACCESS)  
Asian American Justice Center (AAJC)  
Asian Law Caucus  
Bill of Rights Defense Committee (BORDC)  
Border Network for Human Rights, El Paso, Texas  
Center for Constitutional Rights  
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)  
Community to Community Development  
Council of Peoples Organization (COPO)  
Council on American-Islamic Relations (CAIR)  
Defending Dissent Foundation  
Heartland Alliance's National Immigrant Justice Center  
Immigration Equality  
Latin American Coalition, Charlotte, NC  
Lutheran Immigration and Refugee Service (LIRS)  
Michigan Asian Indian Family Services  
Muslim Advocates  
Muslim Public Affairs Council (MPAC)  
National Council of La Raza  
National Immigrant Solidarity Network  
National Immigration Forum  
National Network for Arab American Communities  
Pax Christi, N.J.  
Rashida Tlaib, Michigan State Representative, 12th district  
Rights Working Group  
South Asian Americans Leading Together (SAALT)

South Asian Network (SAN)  
Southern Coalition for Social Justice  
The Pakistani American Public Affairs Committee  
The Sikh Coalition  
United Sikhs  
Washington Defender Association's Immigration Project, Seattle, WA  
World Organization for Human Rights  
Shoba Sivaprasad Wadhia, Clinical Professor and Director of the Center for  
Immigrants' Rights, Penn State Dickinson School of Law <sup>12</sup>

Cc: Jane Holl Lute DHS Deputy Secretary  
Arif Alikhan DHS Assistant Secretary for Policy Development  
Esther Olavarria DHS Deputy Assistant Secretary for Policy  
David Martin DHS Principal Deputy General Counsel  
Susan Cullen DHS-ICE, Director, Office of Policy  
Carlton I. Mann Assistant Inspector General, DHS Office of Inspector  
General  
David Gersten Acting Deputy Director, DHS Office for Civil Rights and  
Civil Liberties

Enc.: November 29, 2005 letter to the IG office by ADC, AAI, and the National  
Immigration Forum

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<sup>12</sup> Affiliation listed for informational purposes only.