



Congress of the United States
Washington, DC 20515

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Executive Board

June 21, 2012

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The Honorable Janet Napolitano

Secretary of Homeland Security

Vice-Chair

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U.S. Department of Homeland Security

Whip

Rep. Colleen Hanabusa

Dear Secretary Napolitano,

Chair Emeritus

Rep. Michael M. Honda

We, on behalf of the 43 Members of the Congressional Asian Pacific American Caucus (CAPAC), write to express concern about the National Security Entry-Exit Registration System (NSEERS), which went into effect following the terrorist attacks of September 11th and primarily targeted Muslim and Arab visitors to the United States. The NSEERS program directly challenges our country's fundamental principles of fairness and equality and is based on the false assumption that people of a particular religion or nationality pose a greater national security risk and should be subject to profiling. This program harkens back to a dark day in our country's history where innocent people were interned based on their Japanese ancestry.

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The NSEERS program was first applied to select visitors at ports of entry and later expanded to certain individuals already living in the United States. Specifically, the domestic portion of NSEERS required certain male visitors from 25 specified countries to register at local immigration offices for fingerprints, photographs and lengthy interrogations. All but one of the 25 specified countries was predominantly Muslim. According to statistics provided by the Department of Homeland Security in 2003, over 80,000 individuals registered under the program and more than 13,000 were placed in removal proceedings. At its height, the program cost over \$10 million per year,¹ yet no terrorism convictions resulted from the program.²

While the NSEERS program has undergone several changes since it was transferred to the Department in 2003, it still remains on the books today, available for resurrection when our country's national security policies aim to target a new group for discrimination.

In April of 2011, the Department announced that it was delisting the countries subject to registration under NSEERS, essentially suspending the program.³ However, the Department failed to address how the individuals impacted by the program would benefit from this policy shift.

¹ See Department of Homeland Security Office of Inspector General, *Information Sharing on Foreign Nationals: Border Security (Redacted)*, February 2012 available at http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-39_Feb12.pdf at 10.

² Doris Meissner and Donald Kerwin, DHS and Immigration: Taking Stock and Correcting Course available at www.migrationpolicy.org/pubs/DHS_Feb09.pdf.

³ *Removing Designated Countries from the National Security Entry-Exit Registration System (NSEERS)*, 76 Fed. Reg. 82, 23830-23831 (Apr. 28, 2011) available at <https://www.federalregister.gov/articles/2011/04/28/2011-10305/removing-designated-countries-from-the-national-security-entry-exit-registration-system-nseers>.

In April of 2012, the Department issued a memorandum on NSEERS addressing this very question.⁴ The April 2012 memo calls for DHS personnel to determine whether or not an individual's noncompliance with NSEERS was "willful."⁵ Those determined to have willfully failed to comply with NSEERS may continue to face negative immigration consequences. According to the memo, willful noncompliance includes fear of immigration consequences. This reflects a complete lack of understanding of the widespread and palpable fear NSEERS caused as Arabs, Muslims, Middle Easterners, and South Asians saw members of their communities held in overcrowded jails, disappear in the middle of the night, and deported without due process. In addition, the memo places the burden of proving non-willful compliance on the individual, demonstrating a lack of accountability on the part of the Department regarding NSEERS and its reliance on discriminatory profiling. The memo also indicates that DHS can continue to use information obtained through this discriminatory program for various purposes.

We commend the Department on issuing this memo and making significant steps in addressing the residual impacts of NSEERS. However, we are disappointed by the glaring gaps in the memo and DHS' policy analysis on how to move forward. Specifically, the April 2012 Memo continues to leave the NSEERS infrastructure intact. In addition, the memo fails to address how all individuals impacted by the program will be treated. The memo focuses only on those who failed to comply with NSEERS, leaving unanswered the question of how those who complied with the program but continue to face negative immigration consequences. Third, the memo sets forth a narrow definition of non-willful noncompliance, citing extreme scenarios that will limit the ability for individuals to benefit from the memo. Finally, the memo states that DHS will continue using information obtained through this program.

The Department should revise its policy and the April 2012 memo to ensure that no individuals impacted by the program continue to face negative consequences solely as a result of NSEERS. The Department should also acknowledge how the program violates valued principles of fairness and equality and cease using data acquired through this tainted program. Most importantly, the Department should completely and fully dismantle NSEERS so that it is never resurrected. Notably, the Department's own Office of the Inspector General has called for the full termination of the program and has classified the data obtained through the program as unreliable.⁶

⁴ See *Memo on Department of Homeland Security Guidance on Treatment of Individuals Previously Subject to the Reporting and Registration Requirements on the National Security Entry Exit Registration System*, April 16, 2012 available at *Senator Dick Durbin: Opening Statement at the Hearing on Ending Racial Profiling in America*, Subcommittee on the Constitution, Civil Rights, and Human Rights (Apr. 2012), available at <http://www.judiciary.senate.gov/pdf/12-4-17DurbinStatement.pdf>.

⁵ See *id.* See also Denyse Sabagh and Shoba Sivaprasad Wadhia, *DHS Releases Long-Awaited Memo on Controversial 9/11 Program*, May 3, 2012 available at <http://endnseers.blogspot.com/2012/05/dhs-releases-long-awaited-memo-on.html>.

⁶ See Department of Homeland Security Office of Inspector General, *Information Sharing on Foreign Nationals: Border Security (Redacted)*, February 2012 available at http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-39_Feb12.pdf.

We urge the Department to immediately address these concerns about NSEERS and direct the components within DHS to act accordingly as it establishes implementing policies. Consistent with our country's commitment to equal protection under the law, DHS should work to end the last vestiges of NSEERS and ensure that no one in this country is subject to inappropriate profiling or discrimination. We look forward to your prompt response.

Sincerely,



JUDY CHU
Member of Congress
CAPAC Chair



MIKE HONDA
Member of Congress
CAPAC Immigration Taskforce Chair