

## CHAPTER SIX

# Ending Immigration Enforcement Based on National Origin, Ethnicity or Religion

### I. The Problem

The National Security Entry and Exit Registration System (NSEERS), launched in 2002, required non-citizens from “countries of interest” (a list comprised almost exclusively of Middle Eastern and North African nations or those with a majority-Muslim populations) to register with the then-INS. Thousands complied but others were too afraid to come forward, even if they were lawfully present and had no reason to fear suspicion. Many people affected by NSEERS have U.S. citizen family members, long employment histories in the United States, or pending immigration applications.

### II. Proposed Solutions

#### A. The Administration should:

1. Rescind the NSEERS regulations and terminate the program.
2. Prohibit registration programs or other similar schemes based on criteria that can be used as a proxy for targeting individuals on the basis of race, religion, national origin, or ethnicity.
3. Ensure that those who did not register or did not register properly under NSEERS are not denied the opportunity to apply for immigration status or relief from deportation if otherwise eligible.

### III. Allies\*

#### **American Library Association**

Lynne E. Bradley, Director

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The ALA Policy Manual: Support of Immigrants' Rights (52.4.5)  
*available at*

[http://www.ala.org/ala/aboutala/governance/policymanual/policymanual.31\\_3.pdf](http://www.ala.org/ala/aboutala/governance/policymanual/policymanual.31_3.pdf)

#### **Bill of Rights Defense Committee (BORDC)**

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#### **The Constitution Project**

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The Constitution Project, *The Use and Abuse of Immigration Authority as a Counterterrorism Tool: Constitutional and Policy Considerations*, available at <http://www.constitutionproject.org>

**Defending Dissent Foundation**

Sue Udry, Director

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**Government Accountability Project**

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**International Justice Network**

[www.IJNetwork.org](http://www.IJNetwork.org)

**Liberty Coalition**

Michael D. Ostrolenk, Co-Founder/National Director

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**Open Society Policy Center**

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**OpenTheGovernment.org**

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**South Asian Americans Leading Together**

Priya Murthy

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301-270-1855

The Continuing Impact of Special Registration:

<http://www.saalt.org/attachments/1/Spec%20Reg%20Factsheet.pdf>

**Stanford Law School - Mills International Human Rights Clinic**

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**U.S. Bill of Rights Foundation**

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\* These groups and individuals support the general principles expressed in the policy proposals described above. The allies listed do not necessarily endorse the specific language in every proposal, but they do agree that the proposals reflect the general principles that should govern policy in this area. Please contact the individuals and organizations listed in this section for more information.

**IV. Counterarguments and Rebuttal:**

A. *Isn't NSEERS is an important counter-terrorism tool? Why should we allow those who did not register for NSEERS to pursue immigration relief?*

Tracking schemes such as NSEERS have not proven effective as counter-terrorism measures. Experts working with the Migration Policy Institute, an independent, non-partisan think tank, affirmed that NSEERS was not meant to identify terrorists. They concluded that NSEERS was poorly planned and implemented and that the program has not achieved its objectives (See Migration Policy Institute, *America's Challenge: Domestic Security, Civil Liberties, and National Unity after September 11* at pp. 15-17 and 155, available at [http://www.migrationpolicy.org/pubs/Americas\\_Challenges.pdf](http://www.migrationpolicy.org/pubs/Americas_Challenges.pdf)) The NSEERS program generated fear and distrust in Arab and Muslim communities, which hinders effective law enforcement. DHS itself has scaled back the program, suspending certain requirements, although others remain in force. NSEERS was poorly conceived and implemented and should not be a barrier to immigration relief in cases where a person is otherwise eligible.

## **APPENDIX**

### **Immigration Enforcement Based on Ethnicity and Religion**

#### **I. Jurisdiction:**

The NSEERS program falls under the jurisdiction of the House of Representatives' Subcommittee on Immigration, Border Security, and Claims of the Committee on the Judiciary. The Senate Committees on the Judiciary and Homeland Security also have jurisdiction. The Department of Homeland Security has in the past suspended portions of the NSEERS program.

#### **II. Status of Actions in Legislative, Executive, and Judicial Branches:**

##### **A. Judicial Branch:**

As of November 5, 2008, every circuit court of appeals (First, Second, Third, Fourth, Fifth, Seventh, and Eleventh) which had considered the issue of whether the NSEERS program violated Equal Protection guarantees under the United States Constitution concluded that NSEERS' special registration of individuals based on national origin did not violate Equal Protection. *See Rajah v. Mukasey*, 2008 WL 4350021 (C.A.2); *Kandamar v. Gonzales*, 464 F.3d 65 73-73 (1<sup>st</sup> Cir. 2006); *Ali v. Gonzalez*, 440 F.3d 678, 681 n. 4 (5<sup>th</sup> Cir. 2006); *Zafar v. U.S. Att'y Gen.*, 461 F.3d 1357, 1367 (11<sup>th</sup> Cir. 2006); *Shaybob v. Att'y Gen.*, 189 Fed.Appx. 127, 129-30 (3d Cir. 2006); *Hadayat v. Gonzales*, 458 F.3d 659 (7<sup>th</sup> Cir. 2006) (finding that the court had no jurisdiction to review the claim); *Malik v. Gonzales*, 213 Fed.Appx. 173 (4<sup>th</sup> Cir. 2007).

##### **B. Legislative Branch:**

In response to criticism of the NSEERS program, on December 2, 2003, the Department of Homeland Security suspended the requirement that all individuals previously registered with NSEERS re-register within 30 days and 1 year in the United States. However, a call-in program, through which the Department of Homeland Security may, in its discretion, notify individual nonimmigrant aliens subject to NSEERS registration to appear for one or more additional continuing registration interviews in particular cases, is still in effect. As late as 2004, the Iranian-America Bar Association documented "deplorable" conditions in NSEERS registration centers.<sup>1</sup>

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<sup>1</sup> S. Comm. On Immigration, Border Security and Claims of the Comm. on the Judiciary, Hearing: *Immigration Removal Procedures Implemented in the Aftermath of the September 11, 2001 Attacks*, 109<sup>th</sup> Cong. 1<sup>st</sup> Sess. Serial No. 109-54 at 6, 61 (June 30, 2005).

In a June 30, 2005 Hearing before the Subcommittee on Immigration, Border Security and Claims of the Committee on the Judiciary,<sup>2</sup> the NSEERS program was criticized by members of Congress for not helping effectuate its goal of assisting the U.S. government's counterterrorism efforts. One main concern is that the NSEERS program does not deal with issue of non-immigrant aliens who do not show up to register, and who may in fact be the biggest national security risk.

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<sup>2</sup> *Id.*