

## **LIBERTY AND SECURITY: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS**

A coalition of more than twenty organizations and over seventy-five individuals collaborated to create “Liberty and Security: Recommendations for the Next Administration and Congress.” The Constitution Project coordinated the production of the report, which was released in November 2008.

“Liberty and Security” indexes policy proposals across 20 different issue areas, including privacy, secrecy and surveillance; detention, interrogation, and trials of so-called “enemy combatants”; and discrimination in immigration and charities policy. It includes recommendations for congressional and executive action, and provides in-depth background information to support action by policy makers. It also includes lists of issue-based resources and experts in the community. The report includes the following chapters:

### ***Charities, Foundations, and National Security***

**CHAPTER 1:** Eliminate Unnecessary Barriers to Legitimate Charitable Work

### ***Detention, Interrogation, and Trials of Suspected Terrorists***

**CHAPTER 2:** Closing Guantánamo

**CHAPTER 3:** End Illegal Detention, Torture, and Rendition

**CHAPTER 4:** Prosecute Terrorist Suspects in Accordance with the Law

### ***Immigration and National Security***

**CHAPTER 5:** Failing to Protect Refugees and Asylum Seekers: Overly Broad Definition of Material support for Terrorism.

**CHAPTER 6:** Ending Immigration Enforcement Based on National Origin, Ethnicity, and Religion

**CHAPTER 7:** Misuse of Immigration Detention Laws in Counterterrorism Efforts

### ***Secrecy, Surveillance, and Privacy***

**CHAPTER 8:** Revising Attorney General Guidelines on FBI Investigations

**CHAPTER 9:** Updating the Law Governing the Privacy of Electronic Communications

**CHAPTER 10:** Fusion Centers and the Expansion of Domestic Intelligence

**CHAPTER 11:** Promoting Government Transparency

**CHAPTER 12:** National Security Letters and Section 215 of the USA PATRIOT Act

**CHAPTER 13:** Reform of the National Security Surveillance Laws and Procedures

**CHAPTER 14:** Preventing Over-Classification and Retroactive Classification and Promoting Declassification of Government Documents

**CHAPTER 15:** Reforming the State Secrets Privilege

**CHAPTER 16:** Reforming Watch Lists

### ***Separation of Powers and Executive Authority***

**CHAPTER 17:** Assertion of Executive Authority in National Security Matters

**CHAPTER 18:** Executive Privilege and Congressional Oversight

**CHAPTER 19:** Signing Statements

**CHAPTER 20:** War Powers Authority

The full report is available online at <http://2009transition.org/liberty-security/>, at [www.constitutionproject.org](http://www.constitutionproject.org), and on the websites of many members of the coalition.

For policy questions, please contact the individuals or organizations identified in the catalogue as allies. Please direct general questions to Daniel Schuman, Director of Communications and Counsel, the Constitution Project, at 202-580-6922.

## APPENDIX

### Chapter 6: Ending 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.*