January 3, 2017

U.S. Department of Homeland Security
245 Murray Lane, SW
STOP-0655
Washington, D.C. 20528-0655
Attn: Jonathan Cantor, Chief FOIA Officer

U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW
Room 3.3D
Washington, D.C. 20229
Attn: Sabrina Burroughs, FOIA Officer

U.S. Citizenship & Immigration Services
P. O. Box 648010
Lee's Summit, MO 64064-8010
Attn: Jill Eggleston, FOIA Officer

U.S. Immigration & Customs Enforcement
500 12th Street, SW
Stop 5009
Washington, D.C. 20536-5009
Attn: Catrina Pavlik-Keenan, FOIA Officer

Department of Justice
FOIA/PA Mail Referral Unit
Room 115
LOC Building
Washington, D.C. 20530-0001

Federal Bureau of Investigation
170 Marcel Drive
Winchester, VA 22602-4843
Attn: David M. Hardy, Chief FOIA Officer

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the Center for Constitutional Rights ("CCR"), and Desis Rising Up and Moving ("DRUM") (collectively "the Requesters") for information regarding the National Security Entry-Exit Registration System ("NSEERS") implemented by the Department of Homeland Security ("DHS"). We ask that you please direct this request to all appropriate offices and departments: within DHS, including, but not limited to, the Office of Civil Rights and Civil Liberties, the Office of Inspector General, the Office of Intelligence & Analysis, the Office of Biometric Identity Management, U.S. Customs & Border Protection, U.S. Citizenship & Immigration Services, and U.S. Immigration & Customs Enforcement; and within the Department of Justice ("DOJ"), including, but not limited to, the Federal Bureau of Investigation ("FBI").

Purpose of Request

The purpose of this request is to obtain information for the public about NSEERS and its impact on Arab, Middle Eastern, Muslim and South Asian ("AMEMSA") communities that were specifically targeted by the program.[1] As organizations that engage in legal advocacy and grassroots organizing, respectively, with AMEMSA communities, CCR and DRUM have an interest in understanding the implementation and impact of NSEERS so as to better inform their work. Information obtained from this FOIA request will enable the public to understand the impact of NSEERS and ensure that any future implementation upholds individuals' constitutional rights.

In June 2002, Attorney General John Ashcroft unveiled NSEERS as a program to track and scrutinize nonimmigrant visitors to the United States who may pose a national security risk.[2] As described by the Attorney General, the program had three components—port-of-entry registration, domestic registration, and exit controls—and its purported objective was to "intercept terrorists."[3] Although initially housed in the DOJ and implemented by the Immigration and Naturalization Service ("INS"), NSEERS was transferred to DHS in 2003[4] and administered by that agency until Designated Countries were delisted in April 2011.[5]

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[1] American Immigration Council, *Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs and South Asians in the US* (May 1, 2004), available at https://www.americanimmigrationcouncil.org/sites/default/files/research/Targets%20of%20Suspicion.pdf.

[2] Dep't of Justice, *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System* (June 6, 2002), available at https://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm.

[3] Dep't of Justice, *Attorney General's Remarks: Implementation of NSEERS* (Nov. 7, 2002), available at https://www.justice.gov/archive/ag/speeches/2002/110702agremarksnseers_niagarafalls.htm.

[4] Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 Fed. Reg. 67578 (Dec. 2, 2003).

[5] Removing Designated Countries From the National Security Entry-Exit Registration Program (NSEERS), 76 Fed. Reg. 23830-01 (Apr. 28, 2011). The 2011 announcement removed Designated Countries from NSEERS registration but did not rescind the underlying NSEERS regulations. Dep't of Homeland Security, *DHS Removes designated Countries from NSEERS Registration* (May 2011), available at https://www.dhs.gov/dhs-removes-designated-countries-nseers-registration-may-2011.

The Requesters seek information about NSEERS and any proposed, contemplated, or recommended policies, guidelines, or practices to revive it or create similar programs.[6] It is imperative that the public have the requested information to meaningfully engage in any future public debate surrounding the utility, constitutionality, necessity, and efficacy of NSEERS. Little information is known about the promulgation, purpose, implementation, and impact of NSEERS. Despite repeated pressure from Congress[7] and advocacy groups[8], DOJ (and later, DHS) has released minimal information about individuals and communities selected for NSEERS, the criteria used to selected potential registrants, and the process whereby selection criteria were promulgated. There is no publicly available data regarding the number of people who were referred for investigation, arrested, detained, charged, convicted, and/or deported for failure to comply with NSEERS requirements, and whether the program was successful in apprehending potential terrorists. The impact NSEERS had on local communities, particularly AMEMSA communities, is unclear. The public has no information about the constitutional compliance of NSEERS and whether and to what extent people affected by the program experienced Due Process, Equal Protection, and First and Fourth Amendment violations.

A. Definitions

1) **Port-of-Entry registration.** In this request, "port-of-entry registration" refers to the special registration, fingerprinting, and photographic requirements certain categories of nonimmigrant foreign visitors were subject to upon arrival to the United States under NSEERS.
2) **Domestic registration.** In this request, "domestic registration" refers to special registration requirements, including interviews and periodic check-ins with immigration officials, imposed under NSEERS on nonimmigrant foreign visitors who were: males; age 16 or older; from a Designated Country, and; intending to stay in the United States for more than 30 days.
3) **Exit controls and/or exit registration.** In this request, "exit controls" and/or "exit registration" refers to the requirement under NSEERS that certain nonimmigrant foreign visitors depart the United States from specified ports so that they may be inspected by a DHS officer and have their departure recorded.
4) **Nonimmigrant(s).** In this request, "nonimmigrant(s)" refers to an individual who enters the United States on a work, tourism, or student visa.

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[6] David Weigel, *Trump advisor accidentally reveals border wall, immigrant-tracking ideas*, Washington Post (Nov. 21, 2016), available at https://www.washingtonpost.com/news/powerpost/wp/2016/11/21/trump-adviser-accidentally-reveals-border-wall-immigrant-tracking-ideas/?utm_term=.f1659dbb9d3a.

[7] Letter to John Ashcroft, Attorney General, U.S. Dep't of Justice (Dec. 23, 2002), available at www.adc.org/media/press-releases/2002/december-2002/senators-and-congressman-demand-ashcroft-suspend-ins-special-registration/; Civil Liberties Restoration Act, S.B. 2528/ H.R. 4591, 108th Cong. (2004); H.R. 1502, 109th Cong. (2005).

[8] American Civil Liberties Union, *ACLU Letter to the Department of Justice on the "Registration and Monitoring of Certain Nonimmigrants" Program (NSEERS)*, available at https://www.aclu.org/letter/aclu-letter-department-justice-registration-and-monitoring-certain-nonimmigrants-program.

5) **Registrant(s).** In this request, "registrant(s)" refers to an individual who has registered under the port-of-entry, domestic, and/or exit registration component of NSEERS.
6) **Designated Countries.** In this request, "designated countries" refers to countries whose nonimmigrant nationals are subject to domestic registration requirements under NSEERS. They include: Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, the United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait.
7) **Delist.** In this request, "delist" refers to the removal of a country from the Designated Country list and relieving its nonimmigrant nationals of the requirement to comply with the domestic registration component of NSEERS.
8) **Subject to NSEERS.** In this request, "subject to NSEERS" refers to those individuals subject to port-of-entry, domestic, and/or exit registration requirements under NSEERS.
9) **Record(s).** In this request the term "Record(s)" includes, but is not limited to, all Records or communications preserved in electronic or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. Acronyms

Arab, Middle Eastern, Muslim, South Asian	AMEMSA
Department of Homeland Security	DHS
Department of Justice	DOJ
Federal Bureau of Investigation	FBI
Immigration and Naturalization Service	INS
National Security Entry-Exit Program	NSEERS

C. Request for Information

Policies, Procedures, and Objectives of NSEERS

Any and all Records, received, maintained, or created by any government agency or subdivision, related to the policies, procedures or objectives of NSEERS. Specifically, the Requesters seek Records received, maintained, or created in relation to: the first public announcement of NSEERS on June 06, 2002;[9] the publication of notices, comments, and rules relating to NSEERS in the Federal Register from June 13, 2002 to February 19, 2003;[10] the termination of domestic registration in April 2011; and, the

[9] Dep't of Justice, *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System* (June 6, 2002).
[10] *See, e.g.,* 67 Fed. Reg. 40581-86 (June 13, 2002); 67 Fed. Reg. 52584 (Aug. 12, 2002); 67 Fed. Reg. 57032-02 (Sept. 6, 2002); 67 FR 61352-01 (Sept. 30, 2002); 67 Fed. Reg. 67766 (Nov. 6, 2002); 67 Fed.

decision by DHS in February 2012 to retain the regulatory framework for the NSEERS program.[11] Such Records include but are not limited to:

1) **Overview Documents:** policies, operating procedures, rules, internal policy guidance, training materials, legal opinions or memoranda referencing NSEERS or discussing the mandate, goals, legal authority, objectives, function responsibility, purpose, implementation, and/or deployment strategy of NSEERS.
    a. Any and All Records including, but not limited to, the following memoranda and their creation and use:
        i. U.S. Citizenship and Immigration Services (USCIS), Memorandum from William R. Yates, Acting Associate Director for Operations, Adjudication of Benefit Applications Involving NSEERS Registrants (April 2, 2004);
        ii. U.S. Immigration and Customs Enforcement (ICE), Memorandum from Victor X. Cerda, Acting Principal Legal Advisor, Changes to the National Security Entry Exit Registration System (NSEERS) (January 8, 2004);
        iii. ICE, Memorandum from John P. Clark, Director of Investigations, National Security Entry Exit Registration System (NSEERS) Policy Update (December 10, 2003);
        iv. ICE, Memorandum from John P. Clark, Interim Director of Investigations, Field Agent Discretion in Compliance Enforcement (September 16, 2003); and
        v. U.S. Immigration and Naturalization Service, Standard Operating Procedures for Aliens Subject to Special Registration, Also Known as the National Security Entry Exit Registration System (NSEERS) (September 5, 2002), as amended.

2) **Selection of Registrants:** any and all Records related to the methods, policies, processes, and/or procedures by which individuals are selected for port-of-entry, domestic, and/or exit registration.
    a. Any and all Records related to how DHS or other agencies or divisions authorized to implement NSEERS selected individuals for NSEERS registration. Any and all Records related to any and all classes or categories of people subject to NSEERS, including, but not limited to, classes or categories based on religion, gender, race, ethnicity, national origin, age, and/or threat to the nation or community.
    b. Any and all Records related to how DHS determines whether an individual or class of individuals selected for NSEERS presents national

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Reg. 70526 (Nov. 11, 2002); 67 Fed. Reg. 70526-01 (Nov. 22, 2002); 68 Fed. Reg. 67578 (Dec. 2, 2003); 67 Fed. Reg. 77135-38 (Dec. 16, 2002); 67 Fed. Reg. 77136-01 (Dec. 18, 2002); 68 Fed. Reg. 2363-03 (Jan. 16, 2003); 68 Fed. Reg. 8046 (Feb. 19, 2003).

[11] Removing Designated Countries From the National Security Entry-Exit Registration Program (NSEERS), 76 Fed. Reg. 23830-01 (Apr. 28, 2011).

security concerns,[12] including but not limited to how DHS defines "national security concerns."

3) **Selection of Designated Countries:** any and all Records related to how countries whose nationals are subject to NSEERS registration are selected.
   a. Any and all Records related to the criteria DHS uses to decide which countries' nationals will be subject to NSEERS registration.
   b. Any and all Records related to how DHS determines whether an individual is a citizen and/or national of a foreign country for the purposes of NSEERS, including, but not limited to, how DHS defines "national" and "citizen."
   c. Any and all Records related to how DHS determines whether a designated country has an al-Qaeda presence and/or is a state sponsor of terrorism,[13] including, but not limited to, how DHS defines "al-Qaeda presence" and "state sponsor of terrorism."

4) **Delisting of Designated Countries:** any and all Records related to the decision to delist any Designated Country and/or suspend implementation of NSEERS.[14]
   a. Any and all Records related to the December 2002 decision to include, and later delist, Armenia as a designated country.[15]
   b. Any and all Records related to the 2011 decision to delist 25 Designated Countries.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the Requesters must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;

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[12] Dep't of Justice, *Attorney General Prepared Remarks on the National Security Entry-Exit Registration System* (June 6, 2002); Dep't of Justice, *Attorney General's Remarks: Implementation of NSEERS* (Nov. 7, 2002).

[13] Kris Kobach, Counsel to the Attorney General, Dep't of Justice, Foreign Press Center Briefing (Jan. 17, 2003), available at https://2002-2009-fpc.state.gov/16739.htm.

[14] Removing Designated Counties From the National Security Entry-Exit Registration Program (NSEERS), 76 Fed. Reg. 23830-01 (Apr. 28, 2011).

[15] Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77136-01 (filed Dec. 18, 2002); Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 77136-01 (filed Dec. 16, 2002).

- With any other metadata preserved.

E. The Requesters

The Center for Constitutional Rights ("CCR") is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy around immigration detention, post-9/11 immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. One of CCR's primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Legal & Advocacy Departments. CCR operates a website, http://ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and immigrant rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases, has a social media reach of over 85,000 followers, operates a listserv of over 50,000 members, and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights.

Desis Rising Up and Moving ("DRUM") is a multigenerational, membership led organization of low-wage South Asian immigrant workers and youth in New York City. Founded in 2000, DRUM has mobilized and built the leadership of thousands of low-income, South Asian immigrants to lead social and policy change that impacts their own lives—from immigrant rights to education reform, civil rights, and worker's justice. DRUM does this through policy change, public education, civic engagement, participatory data and story collection, publishing reports, media engagement, and supporting legal strategies. DRUM has a membership of 3,000 low-income South Asian immigrants, workers, and youth, and an additional engagement of 10,000 allies, whom DRUM engages through e-newsletters, monthly mailings, social media, and public events and actions.

F. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the

operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the Requesters' expertise in the subject area and ability to convey the information; the Requesters' primary interest is in disclosure; and the Requesters have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters qualify as a "representatives of the news media," defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii).

As described in Part E above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on noncitizens' rights and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies, and their effects on AMEMSA communities. Access to this information is crucial for the Requesters and the communities they serve to evaluate such enforcement actions and their potential detrimental effects. Requesters are advocacy organizations that publish reports, conduct Know-Your-Rights and other informational trainings and, in the case of CCR, engage in litigation.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). *See also* 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed $250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

G. <u>Expedited Processing</u>

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 28 C.F.R. § 16.5(d)(1)(iv), and also when there exists "a

matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence, 28 C.F.R. § 16.5(d)(1)(ii).

There is an urgent need to inform the public of the policies and decision-making regarding NSEERS and the impact it had on particular communities. Fifty-one House Democrats,[16] over 200 advocacy organizations,[17] and more than 130,000 individuals[18] have called on the Obama administration to dismantle the regulatory framework of NSEERS before he leaves office, citing the discriminatory nature of the program and its failure as a counterterrorism tool. Given such strong public critique and concern regarding NSEERS, the harmful impact it had on AMEMSA communities,[19] and its failure to produce a single terrorism prosecution,[20] the public must know the mechanisms through which NSEERS was implemented in the past and may be re-implemented in the future. It is necessary for the requested information to be made available in advance of the 2017 Presidential Inauguration, so that the public can engage meaningfully with the political issues surrounding NSEERS if and when public discussion about its re-implementation takes place. The vast implications of NSEERS and the public uncertainty surrounding its implementation make it a "matter of widespread and exceptional media interest." Correspondingly, the media has raised serious questions about NSEERS related to the "government's integrity which affect public confidence," including concerns that a re-implemented NSEERS program will serve as a dragnet instead of a mechanism to target suspected terrorists and will lead to religious, ethnic, and racial profiling.[21]

H. Certification & Conclusion

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requesters ask that DHS justify all deletions by reference to specific exemptions of FOIA. The Requesters expect DHS to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

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[16] *House Members Urge President Obama to Rescind NSEERS*, American Immigration Lawyers Association (Dec. 1, 2016), available at http://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/house-members-urge-obama-to-rescind-nseers.

[17] *ADC Letter to Administration on Behalf of Nearly 200 Organizations Requesting Rescinding of NSEERS*, American-Arab Anti-Discrimination Committee (Nov. 21, 2016), http://www.adc.org/2016/11/adc-submits-letter-to-administration-on-behalf-of-nearly-200-organization-requesting-rescinding-of-nseers/.

[18] *President Obama: Prevent Trump's Muslim Registry*, MoveOn.org Petition by Desis Rising Up and Moving, available at https://petitions.moveon.org/sign/president-obama-prevent-3.

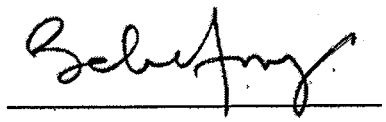
[19] Nadeem Muaddi, *The Bush-era Muslim registry failed. Yet, the US could be trying it again*, CNN.COM (Nov. 18, 2016, 7:54PM), http://www.cnn.com/2016/11/18/politics/nseers-muslim-database-qa-trnd/.

[20] Rachel L. Swarns, *Program's Value in Dispute as a Tool to Fight Terrorism*, New York Times (Dec. 21, 2004), available at http://www.nytimes.com/2004/12/21/us/programs-value-in-dispute-as-a-tool-to-fight-terrorism.html.

[21] *See, e.g.*, New York Times, Editorial, *1942 All Over Again?* (Nov. 17, 2016), available at http://www.nytimes.com/2016/11/18/opinion/1942-all-over-again.html.

If you have any questions regarding the processing of this request, please do not hesitate to contact me at 212-614-6464. Please direct all applicable Records to: Baher Azmy, Legal Director, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012. Thank you for your prompt attention to this matter.

Sincerely,



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