
A DELICATE BALANCE

Congressman José E. Serrano
on National Security and Civil Liberties



**“We never give up our rights.
That's what makes us Americans.”**

José E. Serrano, Hearing of the Subcommittee on
Commerce, Justice, State, and the Judiciary of the
Committee on Appropriations, 6 March 2003

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*We must not forget that we
seek security not solely for
its own purpose, but to
preserve our liberty.*

”

José E. Serrano

Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary
of the Committee on Appropriations. 18 June 2003.

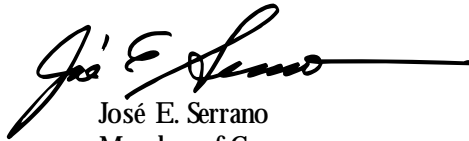
Dear Friends:

In the several months following the tragedies of September 2001, Americans have witnessed the largest restructuring of their federal government in half a century. Numerous changes, including those stipulated by the USA PATRIOT Act of 2001 and the Homeland Security Act of 2002, have extended the reach of our federal, state and local law enforcement agencies to a point at which their new powers risk imperiling our inviolable civil rights. And I fear some officials have become so focused on fighting against terror that they forget what we are fighting for.

As a New Yorker, I have witnessed firsthand the urgent need to protect our homeland against the scourge of terrorism. But even in this difficult period, we must not let our reactions to the present terrorist threats cause long-term harm to the precious civil liberties that we hold so dear.

I've often heard the argument that sometimes crises necessitate that we give up some of our rights. I disagree. We must never give up our rights; it is precisely our rights that make our system of government a beacon to the world, and our steadfastness in safeguarding them defines us as Americans.

As we continue to take measures to protect American lives against terrorism, we must at the same time work together to ensure that the civil liberties that define the American way of life—set forth in Constitution and the Bill of Rights—do not become casualties of our struggle.

A handwritten signature in black ink, reading "José E. Serrano", followed by a horizontal line extending to the right.

José E. Serrano
Member of Congress

SERRANO ON PRIVACY AND SURVEILLANCE

Several new programs and initiatives are changing how law enforcement organizations handle information that they collect about American citizens. The Fourth Amendment and other related laws have historically maintained a balance between the privacy rights of individuals and the informational needs of law enforcement. But that balance has shifted to afford less privacy protection since September 2001.

“I don't like people reading my e-mails or listening to my phone calls. The books I buy are my own business. I don't like people poking around in my personal life, for my personal life is not a threat to my country. And my constituents feel the same.”

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 6 March 2003.

Restrictions on surveillance are rapidly eroding as law enforcement agencies on all levels—federal, state and local—clamor for greater powers to gather information. Furthermore, new laws such as the USA PATRIOT Act lessen restrictions on the law enforcement

community's legal ability to wiretap, conduct searches, analyze private and public electronic databases and engage in other invasive investigative procedures. As a result, the FBI, for one example, may now more easily gain access to records ranging from individuals' Internet usage patterns to the library books that they check out.

Information is also being stored and used in new ways. The Transportation Security Administration (TSA), for instance, is currently developing upgrades to the Computer Assisted Passenger Prescreening System (CAPPS II). Not only would CAPPS II incorporate the federal watch lists already used by the current CAPPS system, but the new system could also give the

TSA access to numerous private business databases ranging from purchasing records to credit ratings. Such a system may be a first step down a slippery slope leading to a monolithic depository of personal information, subject to egregious misuses by federal government.

All these disquieting developments threaten to edge the United States toward a surveillance society. Congressman Serrano has continually reminded law enforcement officials that that “in the process of getting the bad guys, we can't trample on the rights of the good guys.”

“As databases containing an enormous variety about large numbers of people explode at all levels of government and agencies struggle to achieve better information-sharing, we increasingly need protections against collection of inappropriate information and release of information to agencies without a legitimate need to have it.”

José E. Serrano, Hearing of the Subcommittee on Homeland Security of the Committee on Appropriations. 20 March 2003.

SERRANO ON RELIGIOUS AND ETHNIC PROFILING

Profiling based on religion and nationality has always been ineffective, discriminatory and contrary to the principle of equal treatment under the law. War on terrorism or not, this essential fact remains. Yet in the last several months, the current administration has coercively questioned and fingerprinted 83,000 Muslims in the name of counterterrorism, with scant results to show for the effort. Instead, such sweeping actions alienate precisely the Muslim communities whose cooperation will be important to stemming the real threats—extremists with actual malicious intent.

To fully grasp the dangers of these types of profiling, Americans need to look no further than the troubling period of our own history during the Second World War, when baseless

paranoia led to the internment of 120,000 innocent Japanese Americans. As the United States responds to new challenges posed by international terrorists, Congressman Serrano is dedicated to ensuring that such transgressions do not happen again.

“Not everybody who looks a certain way is going to bomb somebody.”

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 18 June 2003.

“History is full of examples of well-intentioned efforts to ensure our safety leading to serious and significant violations of the rights and privileges provided under our laws. My fear is that we may be adding another troubling chapter to this history.”

José E. Serrano, Hearing of the Subcommittee on Homeland Security of the Committee on Appropriations. 20 March 2003.

SERRANO ON DUE PROCESS AND DETENTIONS OF “ENEMY COMBATANTS”

Since 11 September, the federal government has detained at least three American citizens and 762 foreigners in connection with counterterrorist investigations. Two of the three Americans are still being held in conditions that are a clear violation of the spirit of due process in the U.S. system of justice.

By touting the “enemy combatant” label as a legal loophole, the government has imprisoned these Americans for several months without charges. Congressman Serrano supports the efforts of the Justice Department and other law enforcement organizations to combat terrorist threats, but remains staunchly committed to maintaining the constitutional protections for those detained because of alleged terrorist activity.

“You've got to be concerned that there are American citizens detained without charges.... There must have been members of Congress or somebody asking these same questions during Second World War, and the answer they got back was, ‘Chicago is a battlefield,’ and, ‘Ohio is a battlefield,’ and ‘San Francisco is a battlefield.’ And now we all realize that that was wrong.”

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 6 March 2003.

One of the detained Americans has finally been allowed to meet with an attorney. But numerous challenges remain and Congressman Serrano has taken every opportunity to reiterate the importance of civil rights in detentions related to terrorism.

SERRANO ON IMMIGRANTS' RIGHTS

The Attorney General has signed an order allowing the FBI and the U.S. Marshals Service to enforce immigration laws, and the INS, recently moved to the Department of Homeland Security, has "deputized" local law enforcement officers in certain areas. While it is true that several hijackers involved in the Sept. 11 attacks were in the country on expired student visas, mixing immigration enforcement with counterterrorism presents vexing problems of its own.

"Whether you are citizen by birth or became a citizen last week, the INS scares the hell out of you. To have anybody else acting as INS agents I think creates a wall that could be a problem."

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 27 March 2003.

First, the interests of enforcing immigration laws are often at odds with the vital goal of securing the trust and cooperation of immigrant communities, cooperation which is indispensable to capturing actual terrorists within our borders. Many immigrants

come from countries where the police are not their friends and many local police agencies have gone to great lengths to assure immigrant communities that they should feel safe assisting law enforcement. It is better for all that questions of status do not impede anyone from serving public safety.

Immigration is also not the usual domain of the FBI, the Marshals or local police departments. INS-"deputized" agents belonging to these organizations may be ill-prepared to grapple with the peculiar nuances of immigration law. With regard to the FBI and the Marshals specifically, the Justice Department's own inspector general recently reported 34 credible cases of immigrant mistreatment since Sept. 11. Given this poor track record,

Americans ought to be wary of involving the Justice Department further in immigrants' affairs.

In the face of challenges, Congressman Serrano has reaffirmed his determination to protect the rights and fair treatment of immigrants. He has raised these concerns in discussions with law enforcement officials on all levels and has applied pressure on them to make certain that enforcers of immigration laws receive the necessary training and supervision.

I suspect that eventually one or two things will happen — either our government, to the satisfaction of people like me, will kind of pull back on that behavior, or there'll be a lot of court cases in this country regarding all of those issues.

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 9 April 2003.

SERRANO ON TRANSPARENCY AND OVERSIGHT OF LAW ENFORCEMENT ACTIVITIES

Perhaps the most worrisome aspect of the changes to law enforcement has been the disturbing lack of checks and balances on its new powers. Several proposed and implemented measures whittle away many of our essential freedoms at the same time that the usual mechanisms used to curb abuses of excessive power have been impaired in the name of security.

Congress has thus far been limited in its power to supervise detentions, interrogations and other counterterrorist law enforcement actions because of the secrecy that has surrounded such procedures. The Justice Department has withheld information and statistics with regard to the post-Sept. 11 detentions.

“There is no member [of Congress] that can honestly tell you they know how many people are detained in this country right now related to September 11th or the war in Iraq.... No one knows it, and no one will tell us.... And that's scary.”

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 27 March 2003.

Hence, in the current political climate with an executive plagued by power-grabbing impulses and a Congress beset with political vagaries, the judiciary is the last line of defense against overreaching acts of government.

“The Supreme Court must remain a protector of the rights of individuals... Please do not let our Constitution be trampled in the name of fighting terrorism.”

José E. Serrano, Hearing of the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations. 9 April 2003.

Congressman José E. Serrano is currently serving his eighth term in the 108th Congress, representing the Sixteenth Congressional District in the South Bronx. He is Ranking Minority Member of the Subcommittee on Commerce, Justice, State, and the Judiciary of the House Appropriations Committee, as well as a senior member of the newly-created Appropriations Subcommittee on Homeland Security.



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