

FOR IMMEDIATE RELEASE

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Albany Common Council Passes Resolution Supporting Review Of Terror Prosecutions

Albany, NY —The City of Albany's Common Council passed an amended resolution on Monday that urges the U.S. Justice Department to implement the recommendation of its own Inspector General and establish an independent panel to review the convictions of Muslims who have been "preemptively prosecuted" to ensure their fair treatment under the Constitution and Bill of Rights. Ten council members voted yes; four voted present. (Resolution included below.)

A rally and march, organized by Albany's Muslim Solidarity Committee and attended by citizen-representatives from several area peace, justice, and civil liberties organizations, preceded the start of the Common Council meeting. The Muslim Solidarity Committee was founded in 2006 to advocate for the families of two Albany Muslims, Yassin Aref and Mohammed Hossain, who were convicted of terrorism in 2006 in an FBI "sting." Speakers in favor of the resolution during the public comment period preceding the council's vote included family members from the Newburgh 4 (New York), Fort Dix 5 (New Jersey), and Betim Kaziu (Brooklyn) cases, members of the Capital District's Muslim community, the founder of a nationwide peace and justice organization based in Maryland, and supporters of Aref and Hossain. Two of Mohammed Hossain's children also spoke, as did 12-year-old Lejla Duka, daughter of one of the Fort Dix 5.

The resolution, introduced by council members Dominick Calsolaro, Ronald Bailey, Richard Conti, Catherine Fahey, Anton Konev, James Sano, and Barbara Smith, was inspired by a declassified July 2009 report by the Justice Department's Inspector General on domestic surveillance programs. His report recommended that the Justice Department carefully consider whether it should re-examine past [terrorism] cases to see whether potentially exculpatory evidence was collected under President George Bush's secret President's Surveillance Program (PSP), which was established in 2001 and included the National Security Agency's (NSA) warrantless wiretapping program. If such exculpatory information was uncovered during a classified surveillance operation, the government must nevertheless provide the information to the defense or else make adjustments, such as dropping the charges, so that the defendant is not penalized by the fact that the information is classified. Because so many "preemptive" Muslim prosecutions have been based on classified information from the PSP, the issue of disclosure of exculpatory classified information has always been critical in such cases.

Under the preemptive prosecution program, hundreds of Muslims all over the country have been prosecuted and convicted to "preempt" them from committing crimes in the future. If people are being prosecuted before they commit a crime, there is a substantial danger that innocent people will be convicted who had no intention of ever breaking the law.

Council member Dominick Calsolaro said, "We showed that the impact of a federal government sting affects more than just the family, it affects the community. That people came to the Albany Common Council last night from so far, Newburgh, Brooklyn, Cherry Hill, New Jersey, and Maryland, shows that when the federal government does not follow its laws, more people than just the family are affected. I was thrilled by the statements made by the public and the responses made by the Common Council members."

Council member Barbara Smith said, "I think the Common Council made an important statement this evening in calling attention to the improper prosecution and targeting of Muslims. It is important for us to communicate with the federal government, and this is a good way to do it."

Lynne Jackson, a spokeswoman for Albany-based Project SALAM, which examines cases of unjust terrorism prosecutions of Muslims, said “We hope that passage of this resolution encourages other cities and counties to pass similar resolutions, to show that citizens demand a second look into some of the most unjust prosecutions that withheld classified evidence, such as the Fort Dix 5, the Newburgh 4, Betim Kaziu, Fahad Hashmi, and possibly hundreds of other cases.”

Attorney Stephen Downs, a member of the Muslim Solidarity Committee, said, “Albany’s Aref/Hossain case represents a classic example of preemptive prosecution. Two Muslims who were not involved in any illegal activity were entrapped and framed because of the remote possibility that they might become involved in illegal activities at some time in the future. Preemptive prosecution has entrapped and convicted hundreds of other innocent Muslims essentially because of their religion and has wreaked havoc in Muslims families and communities all across America. The program is illegal, unjust, and contributes nothing to national security.”

A recent judicial decision seems to support the need for Muslim terrorism case review. On March 31, a federal district judge in San Francisco ruled that the government violated the law when the NSA wiretapped lawyers for and administrators of Al-Haramain, a now-defunct Islamic charity in Oregon, in 2004 without a warrant. The decision also said the government is liable for damages. The charity was considered to have contributed to terrorism. It is unclear whether or not the Obama Administration will appeal the ruling. #

Resolution Number 39.41.10R (As Amended)

RESOLUTION URGING THE U.S. DEPARTMENT OF JUSTICE TO REVIEW THE CONVICTIONS OF MUSLIMS WHO WERE “PREEMPTIVELY PROSECUTED” TO ENSURE THEIR FAIR TREATMENT UNDER THE U.S. CONSTITUTION AND BILL OF RIGHTS

WHEREAS, the Declaration of Independence of the United States and the United States Constitution and the Bill of Rights are the cornerstone of our democracy; and

WHEREAS, since 9/11 some Muslims in the United States have been targeted by the U.S. government for increased scrutiny, surveillance and prosecution; and

WHEREAS, the United States government created a warrantless electronic surveillance program which obtained secret classified information on Americans, apparently in violation of various laws including the Foreign Intelligence Surveillance Act, and the First and Fourth Amendments to the U.S. Constitution; and

WHEREAS, the Department of Justice and the FBI created a program called “preemptive prosecution” in which Muslims who are not involved in criminal activity are targeted and prosecuted based on “secret evidence,” often derived from warrantless electronic surveillance; and

WHEREAS, there is a substantial probability that the activities and programs of the U.S. government which target a religious minority in such a manner violate their civil rights as Americans; and

WHEREAS, in 2003 the Albany Common Council voted unanimously to object to the Patriot Act because of the dangers that this act posed to the civil rights and liberties of all Americans; and

WHEREAS, in 2009 the Albany Common Council voted to support immigrant rights in the City of Albany so that immigrant families would not live in constant fear of repression, jail, or deportation; and

WHEREAS, because of excessive secrecy by the U.S. government about its warrantless eavesdropping and preemptive prosecution programs, substantial doubt remains as to whether hundreds of Muslims were preemptively prosecuted, and guilty of crimes, and whether the defendants received their civil rights guaranteed under the U.S. Constitution, including the right to receive exculpatory information and a fair trial; and

WHEREAS, after Senator Ted Stevens was convicted of bribery, the Justice Department did an independent assessment of how his case was prosecuted, determined that exculpatory information had been withheld by prosecutors, and dismissed the case; and

WHEREAS, the Inspector General of the Department of Justice, in a July 10, 2009 report on U.S. surveillance programs recommended “that Department of Justice carefully consider whether it must re-examine past [terrorism] cases to see whether potentially discoverable but undisclosed Rule 16 or *Brady* material was collected under the President's Surveillance Program, and take appropriate steps to ensure that it has complied with its discovery obligations in such cases” (report p. 19).

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany requests that the U.S. Department of Justice implement the recommendation of its own Inspector General, and establish an independent panel within the Department of Justice, similar to what was done in the *Stevens* case, and to what was recommended by the Inspector General, to review all of the convictions of Muslims who were “preemptively prosecuted” to determine if these defendants were properly given exculpatory information and other rights of discovery to which defendants in criminal prosecutions are entitled, and whether these prosecutions in all ways met the high standards of truth, openness, fairness, and justice that are embodied in the U.S. Constitution and the Bill of Rights.

BE IT FURTHER RESOLVED, that the Common Council of the City of Albany requests that the Clerk of this Council forward copies of this resolution to United States Senators Kirsten Gillibrand and Charles Schumer and United States Representative Paul Tonko.