



CITY OF ALBANY
COMMON COUNCIL

Council Member 1st Ward

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GENERAL SERVICES, HEALTH
AND ENVIRONMENT

April 7, 2010

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Sir:

On Monday, April 5, 2010, the Common Council of the City of Albany, New York, passed Resolution No. 39.41.10R (as amended). The resolution urges the United States 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.

We passed this resolution because many of us, and our constituents, are concerned that the use of warrantless wiretaps and agents provocateurs by the FBI is illegal and unconstitutional – violating the First, Fourth and Sixth amendments of the Constitution. We based our resolution on the following:

1. Inspectors Generals of numerous federal government departments in a report entitled, “(U) Unclassified report on the president’s surveillance program”, dated 10 July 2009, recommended “...that DOJ carefully consider whether it must re-examine past cases to see whether potentially discoverable but undisclosed Rule 16 or *Brady* material was collected under the PSP,...”;
2. The recent federal court ruling by Judge Vaughn R. Walker in the Al Haramain case where Judge Vaughn ruled that the government had violated a 1978 federal statute requiring court approval for domestic surveillance strengthens the argument that “preemptively prosecuted” Muslims should have their cases reopened and reviewed by the United States Attorney General; and
3. Our own experience with a local case from 2004 that involved two local Muslims, Yassin Aref and Mohammad Hossain. The case against these two men was based in part on secret evidence, warrantless electronic surveillance, and an agent provocateur. The defense attorneys for these men were not allowed to see evidence deemed “classified”, even after the attorneys received clearance following an intensive background check

In addition, during the presidential campaign, you declared that it was “unconstitutional and illegal” for the Bush administration to conduct warrantless surveillance of Americans. Furthermore, current United States Attorney General, Eric Holder, said in 2008, that Mr. Bush had authorized the National Security Agency’s wiretapping program in “direct defiance of federal law”. (New York Times Court Ruling on Wiretap Is a Challenge for Obama, Risen and Savage, April 1, 2010.)

The use of illegal wiretapping/surveillance, agents provocateurs, and the withholding of evidence from defendants and their attorneys is unconstitutional and goes against the foundation of our legal system. Our Constitution and Bill of Rights should not be circumvented in the name of security. Even Supreme Court Justice Antonin Scalia (a very “conservative” justice in my opinion), when hearing arguments on the scope of the Second Amendment in the Chicago gun control law case, objected to the inquiry that by banning guns hundreds of lives would be saved. Justice Scalia said that a constitutional right cannot be overcome because it may have negative consequences. I believe this same principal should apply in the cases of “preemptively prosecuted” Muslims.

Please have the United States Attorney General and the United States Department of Justice act on implementing the recommendations of the “(U) Unclassified report on the president’s surveillance program”. The “preemptive prosecution” of Muslims in the United States has caused the destruction of families, disrupted whole communities, and sends a bad message that our government is above the law. In this time of international unrest, it is imperative that we continue to act in a constitutionally acceptable manner and that we demonstrate to the world that we will function legally as a government. We must not veer from the Constitution nor from the Bill of Rights in the name of security. But we must make sure that the words of our *Pledge of Allegiance*, “...with liberty and justice for all”, remain a cornerstone of our legal system.

Thank you for your time and consideration in this matter.

Sincerely,

Dominick Calsolaro
Common Council member – First Ward
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cc: U. S. Attorney General Eric Holder

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