



Department of Justice

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STATEMENT OF UNITED STATES ATTORNEY REGARDING DECISION NOT TO INITIATE A FEDERAL PROSECUTION OF BRIAN NICHOLS

ATLANTA, Georgia - David E. Nahmias, United States Attorney for the Northern District of Georgia, issued the following statement today:

On November 7, 2008, after a seven-week trial in Fulton County (Georgia) Superior Court, Brian Nichols was convicted of all 54 counts charged against him arising from his violent rampage after escaping from custody during his rape trial on March 11, 2005. Nichols was convicted of murdering Fulton County Superior Court Judge Rowland Barnes, Court Reporter Julie Brandau, Fulton County Sheriff's Sergeant Hoyt Teasley, and U.S. Immigration and Customs Enforcement (ICE) Assistant Special Agent in Charge David Wilhelm. On December 13, 2008, after a multi-week capital sentencing proceeding, the state jury could not reach a unanimous decision as to whether Nichols should be sentenced to death. Consequently, Nichols was sentenced to serve multiple life sentences in prison, without the possibility of parole, plus hundreds of additional years.

Following the resolution of the state case against Nichols, a team that included myself, several other experienced federal prosecutors, and FBI agents familiar with the Nichols case initiated a review to determine if federal prosecution of Nichols would be appropriate. Our review was guided by the Justice Department's Principles of Federal Prosecution and our Dual and Successive Prosecution Policy (also known as the "Petite Policy"). Under the Petite Policy, federal prosecution based on substantially the same acts involved in a prior state proceeding that results in a conviction is permissible, but only where the prior state sentence is "manifestly inadequate in light of the federal interest involved" and it is believed that "a substantially enhanced sentence" will be achieved through the federal prosecution.

Our review included analysis of the relevant evidence and the applicable federal statutes and case law; meetings with the Fulton County District Attorney and his prosecution team, the defense lawyers from the state case, and survivors of the four murder victims as well as other victims; and evaluation of security issues. Our analysis included the fact that Nichols has not filed a timely appeal of his state convictions and sentence and that the Georgia Department of Corrections has advised that it intends to

continue incarcerating Nichols under extraordinarily secure conditions.

After a careful and thorough review, we have decided not to initiate a federal prosecution of Brian Nichols. The federal capital charges that might be applied to Nichols' conduct would be limited to the murder of David Wilhelm and would require proof beyond a reasonable doubt of additional essential elements that did not need to be proved in the state prosecution. Even if those significant evidentiary issues were overcome and Nichols were convicted on a death-eligible charge, a federal jury might well not return a unanimous death sentence, as occurred in the state trial. In addition, there is considerable value in not disrupting the finality that the state case provided to the many victims, survivors of victims, other witnesses, and the community. The prosecution of federal charges, even if fully successful, would again require extensive pre-trial proceedings, a lengthy trial and sentencing proceeding, and extended appeals. Finally, the Fulton County District Attorney's prosecution of Brian Nichols was skillful and aggressive and it achieved a commendable and severe result - his conviction for all four murders and on all other charges and multiple life sentences without possibility of parole. In short, this is not a case in which the prior state prosecution left a substantial federal interest "demonstrably unvindicated" or resulted in a "manifestly inadequate" sentence.

We note, however, that our decision could be re-considered should circumstances ever materially change, including if Nichols challenges his state sentence or if his security situation changes.

We can never forget the devastating impact that Brian Nichols' criminal conduct had on his victims and our entire community. We again express our deepest condolences to all of the victims, and particularly to the families and friends of David Wilhelm, Rowland Barnes, Julie Brandau, and Hoyt Teasley.

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For further information, please contact David E. Nahmias (pronounced NAH-me-us), United States Attorney, or Charysse L. Alexander, Executive Assistant United States Attorney, through Patrick Crosby, Public Affairs Officer, U.S. Attorney's Office, at (404) 581-6016. The Internet address for the HomePage for the U.S. Attorney's Office for the Northern District of Georgia is www.usdoj.gov/usao/gan.