

CIVIL RIGHTS DIVISION

Notice to Close File

File No. 144-19M-1757

Date April 12, 2010

To: Chief, Criminal Section

Re: XXXXXXXXXXXX,  
Albany, Georgia - Subject;  
Alphonso Harris (Deceased) - Victim  
CIVIL RIGHTS

It is recommended that the above case be closed for the following reasons:

**Case Synopsis**

According to a December 1, 1966, *Albany Herald* newspaper article, at about 1:25 a.m. on that date, Alphonso Harris, a 36-year-old African-American member of the Southern Christian Leadership Conference (SPLC), was shot and killed while grappling over a pistol held by XXXX, an African-American XXXXXXXXXXXX, outside the Les Ames Club in Albany, Georgia. According to the article, the incident began when a man named XXXX bumped into XXXX's girlfriend inside the club and they began to argue. Sometime during the argument, XXXX exited the club, and retrieved a pistol from his car. XXXX then approached the table where the victim was sitting with XXXXXXXXXXXXXXXXXXXX and told them that he thought he was about to be shot. The victim and the three other men exited the club with XXXX and ran into XXXX, who was

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Cristina Gamondi  
Attorney

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To: Records Section  
Office of Legal Administration

The above numbered file has been closed as of this date.

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Date

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Chief, Criminal Section  
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returning to the club, armed with a pistol. XXXX fired one shot into the ground. He and the victim then began struggling. During the struggle, the pistol discharged twice. The victim sustained a fatal gunshot wound to the stomach, and XXXX sustained a gunshot wound to a thigh. Both the victim and subject were transported to Phoebe Putney Hospital where the victim was pronounced dead on arrival.

### **Federal Review**

In the fall of 2008, the Federal Bureau of Investigation (FBI) initiated a review of the circumstances surrounding the victim's death, pursuant to the Department of Justice's "Cold Case" initiative and the "Emmett Till Unsolved Civil Rights Crime Act of 2007," which charges the Department of Justice to investigate "violations of criminal civil rights statutes . . . result[ing] in death" that "occurred not later than December 31, 1969." The SCLC initially alleged that the victim might have been killed because he had organized a walkout by African-American students from a school in Grenada, Mississippi, in October 1966. The FBI case agent contacted an Albany court, Albany police officials, and the Marine Corps; and obtained a local newspaper article and the victim's death certificate.<sup>1</sup>

Jeanette Smith, Clerk of Court, Dougherty County (Albany), Georgia, told the FBI case agent that XXXX was charged in March 1967 with carrying a weapon without a permit. The subject pled guilty in May 1967, and paid a \$200 fine and \$45 in court costs. Ms. Smith informed the case agent that she was unable to locate the actual docket sheet relating to the subject's plea.

The FBI case agent also contacted Albany Police Department (APD) XXXXXXXXX, who stated the APD had purged its old investigative reports. Contact with the Marine Corps Logistics Base also determined that there were no records identifying the subject at the base. An additional search of military records found none relevant to the case.

### **Legal Analysis**

This matter does not constitute a prosecutable violation of the federal criminal civil rights statutes. First, prior to 1994, federal criminal civil rights violations were not capital offenses, thereby subjecting them to a five-year statute of limitations. See 18 U.S.C. § 3282(a). In 1994, some of these civil rights statutes, including 18 U.S.C. § 242, were amended to provide the death penalty for violations resulting in death, thereby eliminating the statute of limitations. See 18 U.S.C. § 3281 ("An indictment for any offense punishable by death may be found at any time without limitation."). However, the *Ex Post Facto* Clause prohibits the retroactive application of the 1994 increase in penalties and the resultant change in the statute of limitations to the detriment of criminal defendants. Stogner v. California, 539 U.S. 607, 611 (2003). While the Civil Rights

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<sup>1</sup> The FBI case agent also conducted searches of the Mississippi Department of Archives and History (MDAH) for records containing the victim's name and located six relating to the victim's activities in Grenada, Mississippi in the fall of 1966.

Division has used non-civil rights statutes to overcome the statute of limitations challenge in certain cases, such as those occurring on federal land and kidnaping resulting in death, the facts of the present case do not lend themselves to prosecution under other statutes.

Second, even if the federal government were not precluded from prosecuting XXXX by the *Ex Post Facto* Clause, he pled guilty to a state offense and was sentenced for it, therefore, under the Department of Justice dual and successive prosecution (Petite) policy, set forth in Section 9-2.031 of the U.S. Attorney's Manual, the government would have to show that (1) the matter involves a substantial federal interest; (2) the prior prosecution left that interest demonstrably un-vindicated; and (3) the defendant violated a federal statute and the admissible evidence probably will be sufficient to sustain a conviction by an unbiased trier of fact. The government could not meet its burden here. Under the applicable federal criminal civil rights statutes, the government would have to prove, beyond a reasonable doubt, that the subject shot the victim because of his race and because the victim was exercising a federally protected right. Based on the available evidence it appears clear that the government could not meet its burden in this case.

Based on the foregoing, this matter lacks prosecutive merit and should be closed. Additionally, because there has already been a state prosecution, this matter will not be forwarded to the state for prosecutive review. AUSA Sharon Ratley, Middle District of Georgia, concurs in this recommendation.