

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

TAWNYA BEARCOMESOUT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**RESPONSE TO RESPONDENT’S MEMORANDUM
TO PETITION FOR WRIT OF CERTIORARI**

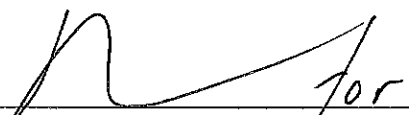
Absent analysis and without denying the merits of her claim, the United States says Petitioner Tawnya Bearcomesout’s petition should be held in abeyance pending the outcome in *Gamble v. United States*, No. 17-676. Delay is not warranted.

Indeed, the issues presented in Ms. Bearcomesout’s petition and in *Gamble* both touch on the “separate sovereign” concept. But similarities end there. Petitioner’s issues go beyond targeting federal and state prosecution and different interpretations of the plain text of the Double Jeopardy Clause. Petitioner’s discussion of the history of the Double Jeopardy Clause encompasses the criticisms espoused in various opinions by this Court regarding notions of dissolution of genuine tribal sovereignty. The decision ultimately rendered in *Gamble* will do nothing to resolve whether Indian tribes are truly sovereign given Congress’s plenary power over Indian persons and the general

erosion of tribal sovereignty.

Gamble will not reconsider this Court's Indian law precedents in the context of successive prosecutions by parts of the United States. See *United States v. Bryant*, 579 U.S. ___, 136 S. Ct. 1954, 1968 (2016) (Thomas, J., concurrence) and *Puerto Rico v. Sanchez Valle*, 579 U.S. ___, 136 S. Ct. 1863, 1877 (Ginsburg, J., concurrence). Now is the time for this Court to fully consider Tawnya Bearcomesout's petition.

Respectfully submitted,



ANTHONY R. GALLAGHER
Federal Defender
Counsel of Record

September 5, 2018