

No. 18-821

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**In the Supreme Court of the United States**

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DAVID KEITH WILLS, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES**

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Petitioner is awaiting trial on one count of aiding and abetting the sex trafficking of a minor under the age of 14, in violation of 18 U.S.C. 1591(a)(1), (b)(1), and (c) (2012 & Supp. V 2017), and 18 U.S.C. 2; and one count of conspiracy to commit such an offense, in violation of 18 U.S.C. 1594(c), and 18 U.S.C. 1591(a)(1) and (c) (2012 & Supp. V 2017). Superseding Indictment 1-2. Petitioner has moved to dismiss those charges, arguing that the Double Jeopardy Clause bars his pending federal prosecution on the theory that Texas has already “punish[ed]” him for the same underlying conduct by subjecting him to allegedly onerous conditions of pretrial release on state charges that Texas has since dismissed. Pet. 5; see Pet. App. 2, 6-15.

The court of appeals affirmed the denial of petitioner’s motion to dismiss based solely on the long-held understanding that the Double Jeopardy Clause does

not prohibit successive prosecutions by separate sovereign governments. Pet. App. 2-3. This Court granted certiorari in *Gamble v. United States*, No. 17-646 (argued Dec. 6, 2018), to consider whether to overturn that understanding and reinterpret the Double Jeopardy Clause. Because the Court's decision in *Gamble* may affect the proper disposition of the petition for a writ of certiorari, the petition in this case should be held pending the decision in *Gamble* and then disposed of as appropriate in light of that decision.\*

Respectfully submitted.

NOEL J. FRANCISCO  
*Solicitor General*

JANUARY 2019

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\* The government waives any further response to the petition unless this Court requests otherwise.