UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, v. Plaintiff, DIONDRE MAURICE OTTO STATELY, Defendant.	)	Criminal No. 19-342(1) (ECT/LIB) **DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR CONSTITUTIONAL VIOLATIONS**

INTRODUCTION

Diondre Stately is being prosecuted twice for the same offense. That's unfair. Mr. Stately is being prosecuted in Federal Court for the very same robbery offense that he was prosecuted, convicted, and sentenced last year in Red Lake Tribal Court, now having served the year long sentence imposed in that case. This is the same case, the same charge (robbery), and the same investigation (a joint Red Lake/FBI investigation). It is fundamentally unfair to put a citizen through successive prosecution for the same offense, and the United States government should only undertake successive prosecution of citizens in limited circumstances, and only after careful consideration of the fundamental unfairness of doing so; successive prosecution should not be done cavalierly, and should be reserved for cases where a compelling federal interest remains unfulfilled by the initial prosecution. That is official government policy. And in this case, the U.S. Attorney's office moved forward with this successive prosecution without giving consideration of the fundamental unfairness involved, without conducting the robust analysis required under official department policy, and without giving the question of the fairness of

pursuing a subsequent federal prosecution of Mr. Stately the kind of thorough consideration expected for a decision of this magnitude.

In fact, it appears that the U.S. Attorney's Office gave it no consideration at all to the question of fairness because it did not investigate the status of the Red Lake prosecution when making its charging decision here; it moved forward giving no consideration to the fact that this was a successive prosecution resulting in fundamental unfairness to a citizen. (This is not based on conjecture or speculation; counsel has been informed that the U.S. Attorney's office was not aware that Mr. Stately had plead guilty and already been sentenced to a year in jail before proceeding forward with the indictment in the case). However, federal government actions which are fundamentally unfair should not be condoned or tolerated by the courts; the Due Process Clause permits dismissal of this indictment based on the fundamental unfairness of this subsequent federal prosecution for the same offense that was adjudicated in Red Lake Tribal Court. Moreover, since the unfair practice of successive prosecution has a disparate impact and discriminatory effect based on race (Indians), the practice runs afoul of the Equal Protection Clause of the United States Constitution as well. Finally, this prosecution implicates the Double Jeopardy Clause of the United States Constitution. Accordingly, Mr. Stately seeks dismissal of the indictment in this case.

FACTS

This case was initiated as a joint FBI-Red Lake Police investigation after George White called the Red Lake Police Department around 2:00 a.m. on September 21, 2019, and complained that he had just been assaulted and had money stolen from him. One of

the Red Lake police officers in turn called FBI Special Agent Gregory on September 21, and he started working on the case that day as the case agent. He described this as a "joint investigation;" Agent Gregory began working on the case together with Red Lake Investigator Lebya, this involved sharing of information, conducting interviews together, and keeping each other apprised of what each other was doing, which he stated has continued up to the present day. (T.25-26, 31). As part of that joint investigation, he and Red Lake investigator Lebya interviewed Diondre Stately, who was in custody at the Red Lake jail, at the Red Lake police department on September 24, 2019, concerning his role in the George White robbery incident. Red Lake formally charged Mr. Stately with robbery and other offenses, including assault and conspiracy, concerning the George White incident in a complaint filed September 25, 2019, and Mr. Stately's case then proceeded through the normal process in the Red Lake tribal court. On November 18, 2019, a plea agreement was signed (Government Pretrial Ex. 5), and on November 20, 2019, Mr. Stately was convicted in Red Lake Tribal Court of several offenses, including robbery, and sentenced to serve a year in the Red Lake jail (the maximum tribal sentence). Prior to entering his plea in Tribal Court, Mr. Stately was never informed by anyone involved in that process (public defender, prosecutor, police, or tribal court judge) that he could still be subject to further federal prosecution for this same offense.

Despite Mr. Stately's prosecution, conviction, and having received the maximum tribal sentence in this joint FBI-Red Lake investigation on November 20, 2019, the United States Attorney's office proceeded to indict Mr. Stately for the very same offense (robbery) in United States District Court on December 19, 2019. Mr. Stately was

brought over to federal court from the Red Lake jail (where he was serving his year-long tribal court sentence for the same offense) on a writ and made his initial appearance in United States District Court on January 10, 2020. Mr. Stately then continued to serve out his year-long tribal court sentence, originally at the halfway house in Fargo, then subsequently at the Red Lake jail; he has now served out that entire sentence.

ARGUMENT

Prosecuting an individual twice for the same offense is fundamentally unfair. Although the practice has survived challenges under the double jeopardy clause "dual sovereign" doctrine, this does not at all vitiate the basic unfairness of the practice, justify the practice or provide solace to the individual citizen being subjected to serialized prosecution. Successive prosecution of individuals has historically been recognized as unfair to the individual subject to the practice. As noted by the late Justice Ginsberg in *United States v. Gamble*, 587 U.S. ____, (2019), which upheld a successive State-Federal prosecution of an individual under the Court's "dual sovereign" doctrine:

> The Double Jeopardy Clause embodies a principle, "deeply ingrained" in our system of justice, "that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *Green v. United States*, 355 U. S. 184, 187–188 (1957). "Looked at from the standpoint of the individual who is being prosecuted," the liberty-denying potential of successive prosecutions, when Federal and State Governments prosecute in tandem, is the same as it is when either prosecutes twice. *Bartkus*, 359 U.S., at 155 (Black, J., dissenting).

United States v. Gamble, 587 U.S. ____, (2019)(Ginsberg, J., dissenting).

Justice Gorsuch also dissented in *Gamble*, and voiced his concerns that the Court's "dual sovereign" doctrine did not alleviate the fundamental unfairness which occurs when a person is prosecuted twice for the same offense:

> [I]magine trying to explain the Court's separate sovereigns rule to a criminal defendant, then or now. Yes, you were sentenced to state prison for being a felon in possession of a firearm. And don't worry—the State can't prosecute you again. But a federal prosecutor can send you to prison again for exactly the same thing. What's more, that federal prosecutor may work hand-in-hand with the same state prosecutor who already went after you. They can share evidence and discuss what worked and what didn't the first time around. And the federal prosecutor can pursue you even if you were acquitted in the state case. None of that offends the Constitution's plain words protecting a person from being placed "twice . . . in jeopardy of life or limb" for "the same offence." Really?

Gamble v. United States, 587 U.S. ___, (2019)(Gorsuch, J. dissenting). Justice Gorsuch, in his dissent, also cited the long historical abhorrence towards successive prosecutions, which he characterized as "deeply unjust" and an "affront to human freedom":

> "Fear and abhorrence of governmental power to try people twice for the same conduct is one of the oldest ideas found in western civilization." Throughout history, people have worried about the vast disparity of power between governments and individuals, the capacity of the state to bring charges repeatedly until it wins the result it wants, and what little would be left of human liberty if that power remained unchecked. To address the problem, the law in ancient Athens held that "[a] man could not be tried twice for the same offense." The Roman Republic and Empire incorporated a form of double jeopardy protection in their laws. The Old Testament and later church teachings endorsed the bar against double jeopardy too. And from the earliest days of the common law, courts recognized that to "punish a man twice over for one offence" would be deeply unjust.
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> The rule against double jeopardy was firmly entrenched in both the American colonies and England at the time of our Revolution.6 And the Fifth Amendment, which prohibits placing a defendant "twice . . . in jeopardy of life or limb" for "the same offence" sought to carry the traditional common law rule into our Constitution. As Joseph Story put it, the Constitution's prohibition against double jeopardy grew from a "great privilege secured by the common law" and meant "that a party shall not be tried a second time for the same offence, after he

> has once been convicted, or acquitted of the offence charged, by the verdict of a jury, and judgment has passed thereon for or against him."

United States v. Gamble, 587 U. S. ____ (2019) (Gorsuch, J., dissenting) (footnotes omitted). Justice Gorsuch observed that it is "as much an affront to . . . human freedom for a man to be punished twice for the same offense by two parts of the people's government as it would be for one . . . to throw him in prison twice for the offense." *Gamble v. United States*, 587 U.S. ___ (2019) (Gorsuch, J., dissenting).

While Gamble's conviction was upheld, the Due Process Clause of the United States Constitution embodies principles of fundamental fairness much broader than the limited protections provided for under the United States Supreme Court's double jeopardy/dual sovereign jurisprudence. The Due Process Clause bars government actions that are fundamentally unfair, and operates as a limitation on such practices. The concept of fairness embodied in the Fifth Amendment due process guarantee is violated by government action that is fundamentally unfair or shocking to our traditional sense of justice, *see Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 246, 80 S.Ct. at 303–04, 4 L.Ed.2d 268 (1960), or conduct that is "so outrageous" that common notions of fairness and decency would be offended were judicial processes invoked to obtain a conviction against the accused. *United States v. Russell*, 411 U.S. 423, 431–32, 93 S.Ct. 1637, 1642–43, 36 L.Ed.2d 366 (1973).

Moreover, the fundamental unfairness of prosecuting a person twice for the same offense is not a hypothetical or abstract notion, the very same United States Department of Justice involved here very explicitly recognizes that successive prosecutions are unfair

and should rarely be undertaken except in rare circumstances and only in cases involving several preconditions, none of which appear in the instant case. Accordingly, to curb and limit abuse of the practice, the United States Department of Justice "Dual and Successive Prosecution Policy," (known as the "Petite Policy"), severely limits the practice of pursuing successive federal prosecutions, and that policy provides importance guidance to U.S. Attorney's when considering to prosecute an individual in federal court for the same offense previously prosecuted in State court. The Petite Policy, more or less reproduced here in full, states:

> A. **Statement of Policy:** This policy establishes guidelines for the exercise of discretion by appropriate officers of the Department of Justice in determining whether to bring a federal prosecution based on substantially the same act(s) or transactions involved in a prior state or federal proceeding. *See Rinaldi v. United States*, 434 U.S. 22, 27, (1977); *Petite v. United States*, 361 U.S. 529 (1960). Although there is no general statutory bar to a federal prosecution where the defendant's conduct already has formed the basis for a state prosecution, Congress expressly has provided that, as to certain offenses, a state judgment of conviction or acquittal on the merits shall be a bar to any subsequent federal prosecution for the same act or acts. *See* 18 U.S.C. §§ 659, 660, 1992, 2101, 2117; *see also* 15 U.S.C. §§ 80a-36, 1282.
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> The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions, to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s), to promote efficient utilization of Department resources, and to promote coordination and cooperation between federal and state prosecutors.
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> This policy precludes the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s) unless three substantive prerequisites are satisfied: first, the matter must involve a substantial federal interest; second, the prior prosecution must have left that interest demonstrably unvindicated; and third, applying the same test that is applicable to all federal prosecutions, the government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain

and sustain a conviction by an unbiased trier of fact. In addition, there is a procedural prerequisite to be satisfied, that is, the prosecution must be approved by the appropriate Assistant Attorney General.

Satisfaction of the three substantive prerequisites does not mean that a proposed prosecution must be approved or brought. The traditional elements of federal prosecutorial discretion continue to apply. See *Principles of Federal Prosecution*, JM 9-27.110.

In order to insure the most efficient use of law enforcement resources, whenever a matter involves overlapping federal and state jurisdiction, federal prosecutors should, as soon as possible, consult with their state counterparts to determine the most appropriate single forum in which to proceed to satisfy the substantial federal and state interests involved, and, if possible, to resolve all criminal liability for the acts in question.

B. **Types of Prosecution to which This Policy Applies:** This policy applies only to charging decisions; it does not apply to pre-charge investigations. Yet, where a prior prosecution has been brought based on substantially the same act(s) or transaction(s), a subsequent federal investigation should, generally speaking, initially focus on evidence relevant to determining whether a subsequent federal prosecution would be warranted in light of the three substantive prerequisites previously listed.

Keeping in mind the distinction between charging decisions and precharge investigations, this policy applies whenever the contemplated federal prosecution is based on substantially the same act(s) or transaction(s) involved in a prior state or federal prosecution.

This policy constitutes an exercise of the Department's prosecutorial discretion, and applies even where a prior state prosecution would not legally bar a subsequent federal prosecution under the Double Jeopardy Clause because of the doctrine of dual sovereignty (*see Abbate v. United States*, 359 U.S. 187 (1959)), or a prior prosecution would not legally bar a subsequent state or federal prosecution under the Double Jeopardy Clause because each offense requires proof of an element not contained in the other. *See United States v. Dixon*, 509 U.S. 688 (1993); *Blockburger v. United States*, 284 U.S. 299 (1932). . . .

Stages of Prosecution at which Policy Applies: This policy applies whenever there has been a prior state or federal prosecution resulting in an acquittal, a conviction, including one resulting from a plea agreement, or a dismissal or other termination of the case on the merits after jeopardy has attached.

Once a prior prosecution reaches one of the above-listed stages this policy applies, and approval is required before a federal prosecution can be initiated or continued, even if an indictment or information already has been filed in the federal prosecution. . . .

C. **Substantive Prerequisites for Approval of a Prosecution Governed by this Policy.** As previously stated there are three substantive prerequisites that must be met before approval will be granted for the initiation or a continuation of a prosecution governed by this policy.

The first substantive prerequisite is that the matter must involve a substantial federal interest. This determination will be made on a case-by-case basis, applying the considerations applicable to all federal prosecutions. See *Principles of Federal Prosecution*, JM 9-27.230. Matters that come within the national investigative or prosecutorial priorities established by the Department are more likely than others to satisfy this requirement.
The second substantive prerequisite is that the prior prosecution must have left that substantial federal interest demonstrably unvindicated. In general, the Department will presume that a prior prosecution, regardless of result, has vindicated the relevant federal interest. That presumption, however, may be overcome when there are factors suggesting an unvindicated federal interest. The presumption may be overcome when a conviction was not achieved because of the following sorts of factors: first, incompetence, corruption, intimidation, or undue influence; second, court or jury nullification in clear disregard of the evidence or the law; third, the unavailability of significant evidence, either because it was not timely discovered or known by the prosecution, or because it was kept from the trier of fact's consideration because of an erroneous interpretation of the law; fourth, the failure in a prior state prosecution to prove an element of a state offense that is not an element of the contemplated federal offense; and fifth, the exclusion of charges in a prior federal prosecution out of concern for fairness to other defendants, or for significant resource considerations that favored separate federal prosecutions. The presumption may be overcome even when a conviction was achieved in the prior prosecution in the following circumstances: first, if the prior sentence was manifestly inadequate in light of the federal interest involved and a substantially enhanced sentence—including forfeiture and restitution as well as imprisonment and fines—is available through the contemplated federal prosecution, or second, if the choice of charges, or the determination of guilt, or the severity of sentence in the prior prosecution was affected by the sorts of factors listed in the previous paragraph. An example might be a case in which the charges in the initial prosecution trivialized the seriousness of the contemplated federal offense, for example, a state prosecution for assault and battery in a case involving the murder of a federal official.

The presumption also may be overcome, irrespective of the result in a prior state prosecution, in those rare cases where the following three conditions are met: first, the alleged violation involves a compelling federal interest, particularly one implicating an enduring national priority; second, the alleged violation involves egregious conduct, including that which threatens or causes loss of life, severe economic or physical harm, or the impairment of the functioning of an agency of the federal government or the due administration of justice; and third, the result in the prior prosecution was manifestly inadequate in light of the federal interest involved.

The third substantive prerequisite is that the government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain and sustain a conviction by an unbiased trier of fact. This is the same test applied to all federal prosecutions. See *Principles of Federal Prosecution*, JM 9-27.200 *et seq*. This requirement turns on the evaluation of the admissible evidence that will be available at the time of trial. The possibility that, despite the law and the facts, the fact-finder may acquit the defendant because of the unpopularity of some factor involved in the prosecution, or because of the overwhelming popularity of the defendant, or his or her cause, is not a factor that should preclude a proposed prosecution. Also, when in the case of a prior conviction the unvindicated federal interest in the matter arises because of the availability of a substantially enhanced sentence, the government must believe that the admissible evidence meets the legal requirements for such sentence.

D. **Procedural prerequisite for Bringing a Prosecution Governed by This Policy.** Whenever a substantial question arises as to whether this policy applies to a prosecution, the matter should be submitted to the appropriate Assistant Attorney General for resolution. Prior approval from the appropriate Assistant Attorney General must be obtained before bringing a prosecution governed by this policy using a form available to Department attorneys. The United States will move to dismiss any prosecution governed by this policy in which prior approval was not obtained, unless the Assistant Attorney General retroactively approves it on the following grounds: first, that there unusual or overriding circumstances justifying retroactive approval, and second, that the prosecution would have been approved had approval been sought in a timely fashion. Appropriate administrative action may be initiated against prosecutors who violate this policy.

E. **Reservation and Superseding Effect: for Internal Guidance Only, No Substantive or Procedural Rights Created.** This policy has been promulgated solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any

> matter, civil or criminal, nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice.
> All of the federal circuit courts that have considered the question have held that a criminal defendant cannot invoke the Department's policy as a bar to federal prosecution. *See, e.g.*, *United States v. Snell*, 592 F.2d 1083 (9th Cir. 1979); *United States v. Howard*, 590 F.2d 564 (4th Cir. 1979); *United States v. Frederick*, 583 F.2d 273 (6th Cir. 1978); *United States v. Thompson*, 579 F.2d 1184 (10th Cir. 1978) (en banc); *United States v. Wallace*, 578 F.2d 735 (5th Cir. 1978); *United States v. Nelligan*, 573 F.2d 251 (5th Cir. 1978); *United States v. Hutul*, 416 F.2d 607 (7th Cir. 1969). The Supreme Court, in analogous contexts, has concluded that Department policies governing its internal operations do not create rights which may be enforced by defendants against the Department. *See United States v. Caceres*, 440 U.S. 741 (1979); *Sullivan v. United States*, 348 U.S. 170 (1954).
> This policy statement supersedes all prior Department guidelines and policy statements on the subject.

U.S Department of Justice, Justice Manual, Section 9-2.031 (updated January 2020).

While, as noted above, the Petite Policy itself does not confer substantive rights, (*see also*: *United States v. Lester*, 992 F.2d 174 (8th Cir. 1993)), the failure of the U.S. Attorney's office to follow that policy in a case involving subsequent federal prosecution of a case already prosecuted in the Red Lake tribal courts is alarming, discriminatory, and fundamentally unfair. The egregiousness of this practice is extenuated in this case because this involves what was a joint FBI-Red Lake investigation from the very inception, and the Red Lake prosecution was concluded and Mr. Stately sentenced to the maximum one-year sentence before the case was presented for prosecution by the U.S Attorney's office without regard (or in complete disregard) of whether Mr. Stately had been prosecuted, convicted, and sentenced in Red Lake court for the very same offense. Certainly, it would be difficult to rationalize this successive prosecution had the Petite Policy guidelines been followed: this case does not involve any compelling federal

interest that had not otherwise been fully vindicated by his prosecution in Red Lake tribal court. The case itself involves a dispute between boyfriend/girlfriend: Mr. Stately's sister (his co-defendant) felt she had been disrespected by George White and she should have shared his casino earnings with her, that allegedly led to the robbery of about $1500 taken by Ms. Stately; her younger 18-year-old brother (Mr. Stately) is alleged to have punched Mr. White once in the face, and been given $200 by his sister. This is not exactly a case where some substantial federal interest was left unresolved by the prior prosecution, or where the punishment imposed by the separate sovereign was manifestly inadequate. Certainly, the maximum sentence of a year in the Red Lake jail was a sufficient and a satisfactory sentence for Mr. Stately's wrongdoing in this case. In short, it is difficult to imagine an unfulfilled substantial federal interest not otherwise disposed of by the tribal court's handling of the case that warrants this additional federal prosecution, or that this case would has been approved for prosecution has it gone through the rigorous Petite Policy process requiring advance approval by the appropriate supervising Attorney General.

Moreover, while the U.S. Attorney's office ignored its own established Petite Policy when considering charging this case that came from the Indian Reservation, it does apply the policy when considering cases coming from similar circumstances (the same offense has been prosecuted, convicted, and sentenced) in State Court, resulting in a practice which has a discriminatory effect on Native Americans: they are subject to the prejudice, unfairness, and harassment of successive prosecutions in a manner unique to them as Native Americans. This is fundamentally unfair. In fact, successive federal prosecution

for the same offense that has already been prosecuted, convicted, and sentenced in State court, is almost unheard of in this District, the U.S. Attorney's office charging policies would not permit it, but the practice is condoned when it comes to reservation cases. That is a discriminatory charging practice. In addition, if successive prosecution of a concluded State case (prosecuted, convicted, and sentenced) were to be contemplated, it certainly would go through the rigorous analysis and approval process required by the Department of Justice Petite policy; the policy would not simply be ignored, as was done in this case. Mr. Stately, as a citizen of this country and a Native American, deserves equal treatment and consideration as any other citizen who is being prosecuted twice for the same offense.

The unequal treatment and discriminatory effect of charging a Native American twice for the same offense and ignoring official government policy violates the Equal Protection Clause of the United States Constitution. The government's prosecutorial discretion is broad, yet still "subject to constitutional constraints." *Wayte v. United States*, 470 U.S. 598, 608 (1985). For example, the equal protection component of the Fifth Amendment Due Process Clause precludes a prosecution decision based upon an arbitrary classification, such as race. *Id.* at 608-09. The claimant must demonstrate that the federal prosecutorial policy: (1) had a discriminatory effect; and (2) was motivated by a discriminatory purpose. *United States v. Armstrong*, 517 U.S. 456, 465 (1996)."To establish a discriminatory effect in a race case, the claiming must show that similarly situated individuals of a different race were not prosecuted." *Id.* This occurs, for example, where it is shown that a facially neutral criminal law is enforced against Chinese

nationals, but not against others outside that class. *Id.* at 466. In this case, when a department policy is ignored in a case involving a Red Lake Indian, the effect is race based discrimination that should not be condoned.

The failure to follow department policy on cases from Indian Country results in a race based discriminatory practice which is difficult to justify other than disregard for the principle of fairness concerning Native Americans. The U.S. Attorney's office does not permit the successive prosecution of non-Native Americans unless adhering to its Petite policy. That is a discriminatory practice prejudicial to Red Lake Indians. In addition, the effect of ignoring Petite Policy and permitting successive prosecution without adherence to that policy has a discriminatory effect on Red Lake Indians, as only they (and possibly Net Lake Indians) are treated this way by the federal government. A Government practice and policy which has a race based discriminatory effect violates the Equal Protection Clause, is unconstitutional, and, in addition to the violation of Fundamental Fairness Due Process, is another basis for dismissal of this indictment.

Finally, although acknowledging contrary precedent (*Cf. United States v. Wheeler*, 435 U.S. 313 (1978); *United States v. Lara*, 541 U.S. 193 (2004); *Gamble*, *supra*); the defense moves to dismiss this case as a violation of the defendant's right against successive prosecution under the Double Jeopardy Clause of the United States Constitution. This issue is raised to both keep the issue alive for further review, to note that the practice is being duly objected to on behalf of this young Native American defendant, and to make sure the practice is brought to the attention of the Judges in this District, who have ultimate responsibility to oversee the fair administration of justice in

this District. In addition, the joint investigation involved here and the close working relationship between the United States Attorney's Office and the Red Lake Police and Tribal Court Prosecutors raises further questions about this practice which distinguishes Red Lake cases from the U.S. Supreme Court cases relying on the "Dual Sovereign" doctrine to justify this practice. At a certain point, the interrelationship between the prosecuting offices becomes so intertwined as to become indistinguishable such that the "Dual Sovereign" rationale becomes an abuse of power such that the practice should be curtailed by the courts. *Cf*: *Bartkus v. Illinois*, 359 U. S. 121, 166-170 (1959) (Brennan, J., dissenting). In conclusion, for the reasons advanced herein, Mr. Stately objects to this successive prosecution of what was a joint Red Lake-United States Government case from its inception, and asks that the indictment be dismissed under the Double Jeopardy Clause of the United States Constitution.

CONCLUSION

"When governments may unleash all their might in multiple prosecutions against an individual, exhausting themselves only when those who hold the reins of power are content with the result, it is the poor and the weak, and the unpopular and controversial, who suffer first—and there is nothing to stop them from being the last." *United States v. Gamble*, 587 U. S. ____ (2019) (Gorsuch, J., dissenting) (quotation marks and footnote omitted). The fundamental unfairness of this subsequent federal prosecution for the same offense that was previously already fully adjudicated in Red Lake Tribal Court runs afoul of the Due Process Clause of the United States Constitution. Moreover, since the unfair practice of successive prosecution is prohibited by Justice Department Policy which was

ignored in this case, and this has a disparate impact and discriminatory effect based on race, the practice runs afoul of the Equal Protection Clause of the United States Constitution as well. Finally, this prosecution violates the Double Jeopardy Clause of the United States Constitution due to the close working relationship of the sovereigns involved. Accordingly, the indictment in this case should be dismissed.

Dated: December 7, 2020

Respectfully submitted,

s/ Douglas Olson

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