

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**  
**FIRST JUDICIAL DISTRICT AT KETCHIKAN**

**STATE OF ALASKA,**

**Plaintiff,**

**v.**

**COLETON HAYWARD,**

**Defendant.**

**Case Nos. 1KE-25-00199CR**

**ORDER INVITING RESPONSES TO TRIBAL IMMUNITY QUESTION**

The State charged Mr. Hayward with a crime primarily based on evidence it gathered after conducting an operation on Annette Island, the home of the Metlakatla Indian Community and the only tribal reservation in Alaska.

At a recent evidentiary hearing, the State described its operation as follows: in October 2024, several investigators with the Alaska Bureau of Investigations met to review allegations that the Metlakatla Police Department (MPD) was not investigating or adequately investigating reports of harm concerning child abuse and sexual abuse. A state prosecutor was present.

In early 2025, state law enforcement received state search warrants to search and seize documents and devices held by MPD, Metlakatla Social Services and Will La Mootk, a Tribe-operated behavioral health clinic in Metlakatla. Well over 40 people, civilian and state and federal law enforcement alike, traveled to Metlakatla via a United States Coast Guard

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vessel to execute these warrants. State law enforcement “took over a building” (Will La Mootk) where it set up forensic interview rooms, a conference room for digital extractions, and space for investigation-related meetings.

Law enforcement remained on scene for about one week. During this time, state law enforcement officers seized well over 20,000 paper records from the Metlakatla Police Department, physical evidence from MPD’s evidence vault, and all of MPD’s digital devices, including several of the officers’ personal devices, which were extracted on site.<sup>1</sup> In order to seize MPD’s emails, state law enforcement executed a warrant on servers housed in Metlakatla’s Tribal Administration offices. State law enforcement also seized records and devices from Metlakatla’s Social Services and from Will La Mootk. The lead investigating officer testified that state agencies removed an “exorbitant” amount of material and that this investigation has the most evidence the investigator has ever handled in her career. State law enforcement later gained access to all of MPD’s more than 2,000 body worn camera videos. The lead investigator returned to Metlakatla in June 2025, where state law enforcement seized more material from MPD, with the consent of MPD’s Chief of Police (it is unclear whether a representative with authority to waive Metlakatla’s immunity consented to the seizure).

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<sup>1</sup> The federal government initially agreed to process the digital devices the State seized. But in the fall of 2025, this responsibility shifted back to the State.

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After learning about the scope and breadth of the material seized from Metlakatla, the court advised the parties that it would likely solicit briefing on the issue of sovereign immunity. The court observed that this case presented a unique situation where state law enforcement seized an extraordinary amount of material from a sovereign government to further state law enforcement's investigation into accusations that the Tribal government was not adequately investigating certain crimes.

While it is true that the State of Alaska and Metlakatla Indian Community have concurrent jurisdiction to investigate and prosecute any crimes occurring on Metlakatla,<sup>2</sup> what is less clear at this stage is whether the doctrine of tribal immunity barred the execution of search warrants that authorized the search of tribal agencies for tribal records. Here, the majority of the State's case is built upon evidence seized from MPD, not evidence state law enforcement independently gathered during a separate investigation.

"Indian tribes are sovereign, self-governing entities."<sup>3</sup> "The powers of Indian tribes are, in general, inherent powers of a limited sovereignty which has never been extinguished."<sup>4</sup> "[T]ribal sovereignty with respect to issues of tribal self-governance exists unless divested."<sup>5</sup> Because tribes are sovereign entities, the United States Supreme Court has

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<sup>2</sup> 18 USC § 1162; *Booth v. State*, 903 P.2d 1079, 1082 (Alaska App. 1995).

<sup>3</sup> *Ollestead v. Native Village of Tyonek*, 560 P2d 31, 33 (Alaska 1977).

<sup>4</sup> *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978).

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recognized that federally recognized tribes are immune from suit unless Congress has authorized the suit or the tribe has waived its immunity.<sup>6</sup> Several federal appellate courts have concluded that this extends to the service of process and even prohibits litigants from serving tribes with subpoenas for documents.<sup>7</sup> The State appeared to acknowledge as much when the prosecutor noted during the hearing that the State limited its search of the Tribal Administration offices due to sovereignty concerns.<sup>8</sup> Tribal sovereignty extends not only to governmental activities but also business activities of the Tribe.<sup>9</sup>

Mr. Hayward has not raised this issue. But “subject matter jurisdiction may be raised at any stage of the litigation and if noticed must be raised by the court if not raised by one of the parties.”<sup>10</sup> This is because the court has an independent interest in ensuring its jurisdiction

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<sup>5</sup> *John v. Baker*, 982 P.2d 738, 752 (Alaska 1999).

<sup>6</sup> *Kiowa Tribe v. Mfg. Techs.*, 523 U.S. 751, 754 (1988).

<sup>7</sup> See *Bonnet v. Harvest Holdings, Inc.*, 741 F.3d 1155 (10th Cir. 2014); *Alltel Communications v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012).

<sup>8</sup> The prosecutor commented: “I can provide the court, with respect to the actual items that we seized. So, police department being separate, right? Individual agencies. In terms of what was addressed with the actual tribal office and the tribal administration – because they are a sovereign – it was limited to the aspects of it which housed the police department's emails because their emails went to that specific server rather than being housed at the police department.”

<sup>9</sup> *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9<sup>th</sup> Cir. 2006), citing *Am. Vantage Cos. V. Table Mountain Rancheria*, 292 F.3d 1091, 1100 (9<sup>th</sup> Cir. 2002) and *Marceau v. Blackfeet Hous. Auth.*, 455 F.3d 974, 978 (9<sup>th</sup> Cir. 2006).

<sup>10</sup> *Burrell v. Burrell*, 696 P.2d 157, 162 (Alaska 1984) (citations omitted).

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is lawfully exercised. Furthermore, even if Mr. Hayward had tactical reasons to challenge the searches on sovereign immunity grounds, his position would not adequately defend tribal interests, which are likely broader than Mr. Hayward's personal interest in this particular case.

The court is not taking a position on these issues at this time. Rather, given the unique investigation in this case, the court wants to ensure that it has thoroughly evaluated the possibility of any jurisdiction issue. And so, the court invites the parties to respond to two questions: (1) did tribal immunity bar the State of Alaska's search and seizure in February 2025? And (2) if tribal immunity did bar the search, does that require the exclusion of evidence in Mr. Hayward's case?

The court invites the State and Mr. Hayward to respond to these questions on or before February 6, 2026.

The court also invites the Metlakatla Indian Community, the Native American Rights Fund, and the Alaska Native Justice Center to respond to these questions if they wish. The court is including additional stakeholders beyond Metlakatla because the court's interest in lawfully exercising its jurisdiction is similar to but still distinct from any specific interest Metlakatla may raise regarding its own sovereignty. And so, the court wishes to invite several different entities that potentially have different interests and perspectives on this doctrine and how (if at all) it should apply in this circumstance.

The court is distributing this order to the non-parties at the following addresses:

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Metlakatla Indian Community  
PO Box 8, Metlakatla, AK 99926  
Fax: (907) 886-7997

Native American Rights Fund  
info@narf.org  
Fax: (907) 276-2466

Alaska Native Justice Center  
anjcinfo@anjc.net and tribaljustice@anjc.net  
Fax: (907) 793-3570

The court is unaware of whether Metlakatla has general counsel. If either party becomes aware of general counsel for the Tribe, the party should promptly notify the court so that the court may distribute an additional copy of this order to counsel.

**IT IS SO ORDERED.**

Dated at Ketchikan, Alaska this 10<sup>th</sup> day of January 2026.



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Katherine H. Lybrand  
Superior Court Judge

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# Alaska Trial Courts

## Certificate of Distribution

**Case Number:** 1KE-25-00199CR

**Case Title:** SOA VS. HAYWARD, COLETON CHASE

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The Alaska Trial Courts certify that the Court Order: Order Inviting Responses to Tribal Immunity Question was distributed to:

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Metlakatla Indian Community	Fax	1/12/2026
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