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

STATE OF ALASKA,

Plaintiff,

vs.

COLETON CHASE HAYWARD

Defendant.

Court No. 1KE-25-00199CR (Coleton Chase Hayward)

State's Response to Court Order Inviting Responses to Tribal Immunity Issues Question and to Notice of Intent to Unseal Search Warrants

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

On January 10, 2026, this Court issued an Order *sua sponte* inviting responses to the issue of tribal sovereign immunity. The Court raises two questions: (1) whether and how the sovereign immunity of the Metlakatla Indian Community ("Tribe") may have affected the State's service of search warrants to obtain information used in this case; and (2) if the State were to have violated the Tribe's sovereignty, whether suppression of evidence in this criminal matter is the appropriate remedy for such a violation. For the reasons provided below, this Court does not need to get to the second question, as the Tribe consented to these searches and the Tribe's sovereign immunity was therefore neither implicated nor violated. Had the Tribe not consented, and if the Tribe believed the searches were in violation of its sovereignty, the Tribe has the ability to assert and protect its rights and interests. The Tribe has access to courts and can raise violations of its sovereignty. That the Tribe has not done so in this case demonstrates its consent to the service of the warrants and the searches that occurred. The authority to waive a potential sovereign immunity claim by providing consent rests with the Tribe, and neither this Court nor the

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Defendant (nor other entities) has standing to contradict that decision or assert the Tribe's rights on behalf of the Tribe.

Before getting to either of the Court's two questions, there are two threshold problems with the Court's order. First, the Court's order states that it has *sua sponte* raised this issue–and served three non-parties to the current case–under the assertion that this issue presents a matter of tribal sovereign immunity that potentially impacts subject matter jurisdiction. But in no way do the issues raised by this Court indicate that this court lacks subject matter jurisdiction over *Mr. Hayward*, the defendant in this criminal matter. Instead, the Court's order can best be characterized as a *sua sponte* motion to suppress that is appropriate for the defendant, not the Court, to initiate. Second, the State objects to the *sua sponte* solicitation by this Court of non-parties to the Court's *sua sponte* "motion to suppress."

For the reasons provided below, the State requests this Court acknowledge it has subject matter jurisdiction over Mr. Hayward and the pending criminal matter. The Tribe can bring a cause of action on its own behalf if it believes it is warranted, and the defendant can file a motion to suppress if he believes there is a legally supported basis to do so.

I. Facts and Procedural Posture

Although the State does not believe that the specific facts underlying this case are particularly relevant to the legal analysis at issue here, the State does feel it is important to address the factual summary contained in the Court's Order. The Court paints a picture in its factual summary that suggests a level of hostility between the State investigative operation and the Metlakatla Indian Community ("MIC") that is unfounded both in reality and in the record presented the court at the evidentiary hearing in which the court was explicitly told about MIC's consent to the initial and second set of searches as well as cooperation in the investigation. The Court describes that State law enforcement "took over a building," Wil La Mootk, during its investigation.[1] While this description may technically be true, in that the law enforcement operation used Wil La Mootk as its local

[1] Order at 2.

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base of operations while in Metlakatla, it is important to note that this was done with the consent—and indeed, at the ***invitation*** of Wil La Mootk management. This was not a forcible "take over" or an imposition of any law enforcement authority on a tribal entity; rather, it was the acceptance of an offer to use a space that was quiet, private, and by design well-equipped to conduct interviews of children.

This coordination—specifically, the consent to use the space—is important to note, as it was not limited to law enforcement's interactions with Wil La Mootk, but rather was demonstrated throughout the investigative process undertaken in Metlakatla. The Tribe's leadership, to include the Mayor, Tribal Council, Acting Police Chief, and other tribal authorities, demonstrated nothing but cooperation with the investigation. Indeed, while search warrants were obtained, the Tribe provided consent for the searches that occurred. At no point did any MIC official or authority challenge any State search warrant or seek to oppose any search or seizure (whether stemming from a search warrant or by request) linked to this investigation. While it is true that law enforcement seized a large amount of material from Metlakatla Police Department ("MPD"), all of that was done with the Tribe's consent, in addition to the search warrants authorized by the Ketchikan Court.

The Mayor was informed of the operation before it began and, in fact, invited the investigative team to use an easier boat dock for its daily comings and goings. The Mayor further issued a statement via the Metlakatla Indian Community Facebook page at the end of the operation expressing his and the Council's appreciation for the investigation:

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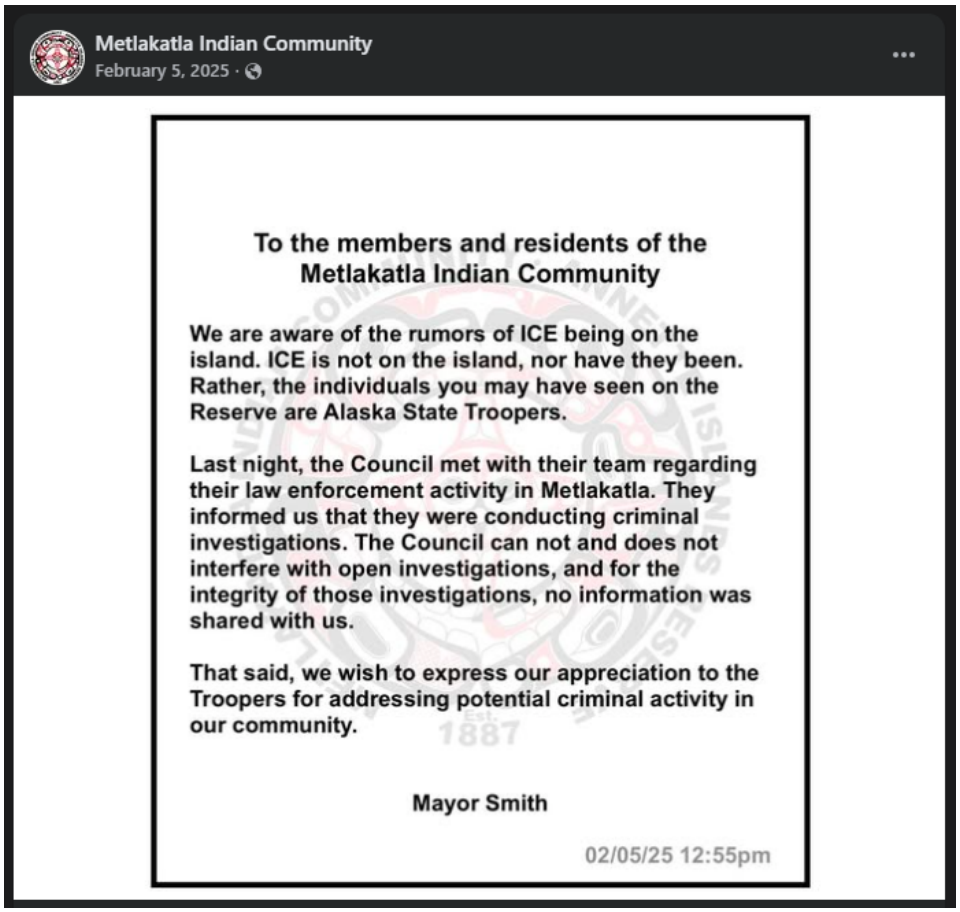

The State continues to have a collaborative working relationship with the Tribe, including MPD, and continues to this day to work with the Tribe on continuing and new investigations and training. In fact, Brandon Hunter, who testified at the hearing about his role in the operation and investigation, returned to Metlakatla in October at the invitation of the Tribe and conducted a presentation for students on internet safety.

The Court issued an order extending the time with which the State could object to numerous search warrants being unsealed and in that order made numerous factually inaccurate statements. These factual inaccuracies derive from a number of assumptions and logical leaps the court has engaged in based on the information that was introduced at the hearing. What the court fails to recognize is that the hearing was not a full description of the February 2025 Metlakatla Operation and all investigation across all cases stemming from that operation that has occurred since. Rather, the information introduced at the hearing in the instant case was solely focused on what discovery exists in this individual

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case, what it is expected is still missing, and an explanation of past and future timelines to locate evidence. So for example, the court's assumption that the June 2025 search was conducted at the consent of the MPD police chief (because Inv. Benge discussed going into the evidence room with him) is inaccurate. In reality, it was the Tribe via its Vice Mayor and newly appointed police commissioner Desmond King who consented to the additional searches. While Troopers were there in June 2026, the Mayor thanked the Alaska State Troopers for returning and continuing their investigation.

The court stated the State seized over 20,000 paper records from MPD. That is incorrect. The state seized over 20,000 pages of paper records, that certainly did not equate to over 20,000 separate individual documents or anywhere close to it. The State did not seize all physical evidence from MPD's evidence vault, a fact the court is aware of because the court learned about certain evidence still in MPD's evidence vault during the hearing. In fact, Inv. Benge testified that she only seized items she could identify as being relevant to the investigation – i.e. those which pertained to allegations of harm against children. The court also makes statements about seizing officers personal devices. The mobile devices seized from MPD officers were used by them both as work and personal devices and they were seized, extracted, and immediately returned to those officers.

The court intimates in its order that law enforcement engaged in a hostile takeover of Metlakatla, which is far from the truth. In reality, the State worked in conjunction *with* the Tribe to address crimes against children, such as those perpetrated by Coleton Hayward, that were going uninvestigated or underinvestgated by the Metlakatla Police Department.

II. Law and Analysis

a. The court should not unseal search warrants on active investigations to outside agencies not involved in the related cases or investigations

The State at the evidentiary hearing stated it was willing to provide to the defendant in discovery a copy of the search warrant that impacted his case – the search warrant of MPD. Other search warrants issued related to open, active, and ongoing investigations are not appropriate to disclose to Mr. Hayward. None of theses warrants are appropriate to disclose to outside entites who are in no way involved in the criminal litigation or

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investigations. Copies of all of the warrants listed in the court's order were provided to the Tribe. 1KE-25-00008SW is not related to MPD. 1KE-25-00009SW is not related to MPD. 1KE-25-00010SW is not related to MPD. 1KE-25-00011SW is not related to MPD. The only warrant directly related to MPD is 1KE-25-00012SW. These warrants provide significant information about cooperating witnesses and organizations in Metlakatla. They also contain information regarding specific sexual assault and sexual abuse victims and those victims have privacy rights under the Alaska Constitution and the Victims Rights act and unsealing these warrants and providing such information not only to the defense in this case but to outside entities is unprecedented and a clear violation of these victims' rights. Article 1, Section 24 of the Alaska Constitution states that "crime victims, as defined by law, shall have the following rights as provided by law," including the right to be treated with dignity, respect, and fairness during all phases of the criminal process." This includes during the investigation, and this includes the way the Court treats these victims. It is wholly inappropriate for the court with no legitimate basis to unseal the warrants which address specific allegations of sexual assault and abuse to outside entities who have no legitimate reason to review them.

The warrants related to MPD came up collaterally at the hearing related specifically to the volume of discovery investigators and the digital forensics laboratory are reviewing not only related to Mr. Haywards case but in regards to the investigation in full. In fact, it was made clear at the hearing that it is believed that Mr. Hayward has everything related to his case at this point and the likelihood of finding anything collaterally is low and there is not anything of significant evidentiary value expected in any other discovery. The volume of discovery was outlined explained the timelines in going through such discovery. However, that does not somehow make these search warrants relevant to this case or appropriate to unseal to outside entities.

The search warrants in question were obtained as part of a complex and multifaceted and *actively ongoing* investigation. As noted, 1KE-25-00012SW is an appropriate warrant to be disclosed to defense counsel in this case pursuant to Criminal Rule 37, that does not make it appropriate to unseal for the community at large or other

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outside entities. As previously noted for the court, the analysis in this case is not as straightforward or readily determinable as it might be in other cases with a narrower or individual focus. The other warrants do not have a nexus to this case and there is no reason why they should be unsealed for this case. They were only mentioned at the hearing to explain to the court the timeframe in going through and providing discovery to defense. The warrants at issue are directly related to multiple ongoing investigations, and the decision to unseal them and make them publicly available has the potential of undermining ongoing and serious investigations. Should the court determine the warrants appropriate to be unsealed in this case for this defendant, the court requests the court order the documents to remain sealed from the general public pursuant to Criminal Rule 37(e)(2) as investigations are ongoing and the disclosure of these warrants to outside agencies or the public at large could seriously jeopardize the investigation into several sexual assault and sexual abuse cases.

b. This is an evidentiary issue, not an issue of subject matter jurisdiction, and is improper for the Court to raise *sua sponte*

The Court notes that its decision to raise this issue *sua sponte* is premised on its independent requirement to raise issues of "subject matter jurisdiction." The State is somewhat confused by this assertion, as it does not believe that there can be any question that this Court has jurisdiction over Mr. Hayward. The doctrine of tribal sovereign immunity might apply if the State were filing suit against the Tribe; in that case, there might be a legal argument that this Court would not have subject matter jurisdiction over a suit brought against the Tribe.[2] However, subject matter jurisdiction does not impact the State's jurisdiction, or legal authority, to try a *person* in an Alaska superior court for a criminal offense—even if that offense is committed on Tribal land, if the defendant is a

[2] *Douglas Indian Assn. v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, 403 P.3d 1172 (Alaska 2017) (Finding that tribal sovereignty is a jurisdictional bar that can be raised in a motion to dismiss for lack of subject matter jurisdiction. "Under the doctrine of tribal sovereign immunity, an Indian tribe is immune from suit unless Congress has authorized the suit or the tribe has waived its immunity… [T]he U.S. Supreme Court recently reaffirmed that it has time and again treated the 'doctrine of tribal immunity [as] settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." (citations omitted)).

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member of a Tribe, or if evidence used against the defendant is obtained from a search of a Tribal agency.

Subject matter jurisdiction refers to "the legal authority of a court to hear and decide a particular type of case."[3] A "superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters," "extend[ing] over the whole of the state."[4] The State of Alaska has criminal jurisdiction over any and all "Indian country" within Alaska.[5] This includes jurisdiction over Metlakatla Indian Community land.[6] Mr. Hayward is alleged to have committed criminal offenses within the State of Alaska. Federal law confirms that the State has the authority to charge him with these crimes, and State superior courts have subject matter jurisdiction to proceed over the resulting criminal proceedings.

The doctrine of subject matter jurisdiction pertains to the *person* (or entity) being charged or sued, and whether they are properly under the court's authority to hear that type of case. It does not apply to questions of whether a search warrant was properly issued and/or validly served. The State believes that the Court is conflating the issue of subject matter jurisdiction—i.e., whether the Court has the authority to preside over the criminal case against Mr. Hayward—with concerns about the validity of search warrants issued by the superior court. The former issue is one which is appropriate to be raised *sua sponte,* but is inapplicable in this case. The latter is not a question of subject matter jurisdiction but rather is a question as to whether a search warrant was properly issued or served. That

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[3] *Hillyer v. State,* 537 P.3d 785, 789 (Alaska App. 2023) (citing *Nw. Med. Imaging, Inc. v. State, Dep't of Revenue*, 151 P.3d 434, 438 (Alaska 2006) (citing Erwin Chemerinsky, *Federal Jurisdiction*, at 257 (3d ed. 1999))).

[4] AS 22.10.020(a) and (b) (emphasis added).

[5] *Jones v. State,* 936 P.2d 1263, 1265-67 (Alaska App. 1997); 18 U.S.C.A. § 1162(a). The State's criminal jurisdiction would be meaningless if the State could not obtain warrants and secure evidence needed to prosecute its cases.

[6] *Booth v. State*, 903 P.2d 1079, 1084 (Alaska App. 1995)("Based both upon the wording of 18 U.S.C. § 1162(a) and upon the legislative history of that statute, we conclude that both the State of Alaska and the Metlakatla Indian Community have concurrent jurisdiction over offenses committed by Indians within the Annette Islands Reserve. The State of Alaska therefore had the legal right to bring charges against Booth, and the district court had the legal authority to adjudicate those charges, even though Booth's crime also falls within the concurrent jurisdiction of the Metlakatla Indian Community.")

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issue is for the defendant to raise in a motion to suppress; not to be raised *sua sponte* by this Court. As the issue raised by the Court does not raise a question of subject matter jurisdiction at play in the current case, the State believes it is inappropriate for the Court to raise this issue *sua sponte* when neither party has put it at issue.

c. Tribal immunity is not implicated in the current matter, as the Tribe consented to the searches in question

The Metlakatla Indian Community may have been entitled to raise a claim of sovereign immunity against the service of a State search warrant authorizing a search and seizure of documents under the control of the Tribe's entities.[7] However, the Tribe is also entitled to waive its sovereign immunity if it wishes, and is entitled to willingly provide documents within its control to a State or Federal investigating agency.[8] The State does not believe that this Court needs to make a decision as to whether tribal immunity would protect the Tribe from being served with a valid State search warrant issued in a criminal investigation, because first, the Tribe consented and cooperated with the investigation and second, the doctrine of tribal immunity is not triggered by the current case.

Importantly, neither the defendant nor the Tribe itself has raised this issue, nor has either presented evidence or argument that the Tribe did not consent to the searches. Instead, in a very unusual procedural maneuver, the Court was the first (and only entity) to raise the issue. Moreover, in an even more unusual procedural posture, the Court—without

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[7] *See U.S. v. James*, 980 F.2d 1314, 1320 (9th Cir. 1992)(finding that a Tribe expressly waived its sovereign immunity as to documents in the possession of one of its agencies when it provided documents to the State from that agency that were relevant to the State's case. The Tribe was therefore barred from asserting sovereign immunity when the defense requested different relevant documents from the same agency related to the case. The court found that the Tribe had not, however, waived its sovereign immunity as to documents from other Tribal agencies when it voluntarily gave over the documents from the original agency, and granted the Tribe's motion to quash a subsequent defense subpoena duces tecum for the other agency's records); *contra Narragansett Indian Tribe v. Rhode Island*, 449 F.3d 16 (1st Cir. 2007)(holding that the Rhode Island Indian Claims Settlement Act did abrogate the Tribe's sovereign immunity and finding that the State's execution of a search warrant of Tribally-held business on settlement lands was permissible).

[8] *Ito v. Copper River Native Association,* 547 P.3d 1003, 1010 (Alaska 2024) ("A tribe may waive its own sovereign immunity." The court also recognized that the Alaska Supreme Court has previously emphasized that "federal policies of tribal self[-] determination, economic development, and cultural autonomy are better served" by leaving the decision of whether or not to waive sovereign immunity to the tribe.)(citing *Douglas Indian Ass'n*, 403 P.3d at 1179; *Bay Mills*, 572 U.S. at 796, 134 S.Ct. 2024); *See U.S. v. James*, 980 F.2d 1314 (9th Cir. 1992).

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citing to any evidence that would support such a conclusion—went a step further and questioned whether such a granting of consent came from "a representative with authority to waive Metlakatla's immunity."[9]

Metlakatla Indian Community—with the knowledge and support of the Mayor, Tribal Council, and Acting Police Chief—consented to and cooperated with the searches and seizures linked to this investigation, and was on board with the State's investigation into a variety of suspected criminal law violations. There is no evidence that Metlakatla Indian Community was opposed to the State obtaining the records contained at Metlakatla Police Department or the Tribe's other entities. In fact, they assisted the State in gaining access to the evidence sought by investigators.

The State notes that there is no indication (much less evidence) that supports the Court's musing that the provided consent to search may not have been validly given. Rather, all available evidence known to the State demonstrates that the Tribe's authorities validly cooperated and/or explicitly gave consent to the investigators to collect the evidence obtained. It is highly unusual for the Court to raise such an issue, particularly when neither party, nor—crucially—the Tribe itself, has challenged this consensual search and there is no evidence to suggest that this consent was not properly given. Metlakatla Indian Community representatives are authorized to provide consent to search the Tribe's entities (and to legally challenge any searches they believe occurred without consent or outside the scope of the consent given), and this Court should not assert itself in questioning their decision to provide consent to search.

d. Metlakatla Indian Community is the only entity that has standing to raise the issue of tribal immunity and has not done so

The State is somewhat confounded as to the Court's decision to bring in other entities to advocate for (or potentially to provide different opinions from) the Tribe. The Court's *sua sponte* order ignores the fact that if there was a concern that the State in any way infringed on the Tribe's sovereignty without its wavier or consent, Metlakatla Indian Community has the legal mechanisms and ability to challenge the issuance of their search

[9] *Id.*

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warrant and advocate for their interests—and was also entitled to waive their sovereign immunity and cooperate with state investigators.[10] The Court appears to be seeking advisory opinions from uninvolved entities on a matter that is not actually at issue in this case.[11] Not only is this an impermissible request for an advisory opinion, but it troublingly serves to undermine the Tribe's ability to advocate on their own behalf.

The Tribe has the ability to consent to searches of their tribal entities—without the "permission" or input from the defendant, the Native American Rights Fund ("NARF"), or the Alaska Native Justice Center ("ANJC"). The Tribe also has the ability to legally advocate on its own behalf if it wishes to challenge a search warrant issued by a State court. If the Tribe did not consent (and again, all evidence in front of this Court and known to the undersigned indicates that the Tribe did give such consent), then that consent should be the end of this discussion—regardless of what this Court, the defendant, or another entity asserts on their behalf. The Tribe is the only bearer of the right to assert its tribal immunity, just as it is the only bearer of the right to waive its tribal immunity if it wishes to cooperate with a state investigation. In this matter, The Tribe opted to cooperate with a criminal investigation and to voluntarily turn over relevant evidence to the investigators in this matter. That decision is solely within its discretion to determine (as would be the decision to challenge a state search warrant).

It is not proper for the Court to insert itself—or to ask other entities such as NARF or the ANJC to assert themselves—in the Tribe's place to try and question or advocate on the Tribe's behalf. If the Tribe wished to challenge the search warrants served upon it, it was (and is) fully able to do so through their legal counsel. Similarly, if the Tribe believed that proper consent on behalf of its tribal entity was not given, the Tribe is in the best

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[10] *See Ito v. Copper River Native Association,* 547 P.3d 1003, 1010 (Alaska 2024); *See U.S. v. James*, 980 F.2d 1314 (9th Cir. 1992).

[11] *See Jefferson v. Asplund,* 458 P.2d 995, 998-99 (Alaska 1969) (citing *Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, 108 A.L.R. 1000 (1937)("A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot… The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests… It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.")).

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position to raise that issue—*not* the Court or wholly unrelated entities. As NARF and ANJC are not parties to this matter, the State would ask this Court to strike any pleadings filed by ANJC or NARF for these reasons.

e. The defendant does not have standing to assert that the State violated the Tribe's sovereignty when it completed its search of the Tribe's entities.

Lastly, but importantly, is the issue of standing. While the Court has framed this issue as one of subject matter jurisdiction and/or a question of sovereign immunity, it is in reality a matter of search and seizure: Was the seizure of the materials from the Tribe legally proper? Due to the consent provided by the Tribe, the short answer is, yes. However, assuming *arguendo,* that the tribe had not provided consent for the seizure and/or the seizure was based on an invalid warrant, the defendant still would not have standing to challenge this search or seizure in the criminal case against him.

"Before a person can complain of a search or seizure conducted by the government, the person must establish that they had a protected privacy interest in whatever was searched or seized."[12] Historically, "Fourth Amendment rights are personal rights which… may not be vicariously asserted."[13] As personal rights, Fourth Amendment rights may be asserted only by a defendant who has a legitimate expectation of privacy in the invaded place or the thing being searched.[14] "The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence."[15] In other words, simply being a "target" of an investigation does not create a legitimate expectation of privacy for a defendant.[16]

Alaska courts have addressed when a criminal defendant has standing to raise an alleged Fourth Amendment violation of another person's rights on multiple occasions. In

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[12] *Pearce v. State*, 45 P.3d 679, 682 (Alaska App. 2002).
[13] *Brown v. United States,* 411 U.S. 223, 230, 93 S.Ct. 1565, 1570, 36 L.Ed.2d 2018 (1973)(quoting *Alderman v. United States*, 394 U.S. 165, 174, 89 S.Ct. 961, 966, 22 L.Ed. 2d 176 (1969)); *see also Samson v. State*, 919 P.2d 171, 173 (Alaska App. 1996)(concurring opinion).
[14] *Rakas v. Illinois*, 439 U.S. 128, 133-34, 143 99 S.Ct. 421, 58 L.Ed.2d 387 (1978).
[15] *Alderman*, 394 U.S. at 171-72.
[16] *Rakas* at 135.

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Waring v. State,[17] the Alaska Supreme Court augmented the traditional rule of standing to allow vicarious standing—but only in very limited situations. In *Waring*, the defendants attempted to suppress evidence as well as their confessions which resulted from an illegal investigative stop of co-defendants. The *Waring* court explained the circumstances under which a co-defendant could achieve vicarious standing when raising a challenge under the fourth amendment:

> [A] defendant has standing to assert the violation of a co-defendant's fourth amendment rights if he or she can show (1) that a police officer obtained the evidence as a result of gross or shocking misconduct,[18] or (2) that the officer deliberately violated the co-defendant's rights.[19]

In upholding the search in *Waring,* the court examined the policies underlying the exclusionary rule. The *Waring* court explained:

> In considering whether a defendant has standing to assert the violation of a co-defendant's rights in search and seizure cases, we must also balance the competing interests, i.e., whether the interest in introducing reliable evidence that was obtained in violation of a co-defendant's fourth amendment rights outweighs the deterrent effect of excluding such evidence.[20]

The *Waring* court concluded that in general, unlawfully obtained evidence should only be excluded from the trial of the defendant whose rights were violated:

> To apply the rule a second time in a co-defendant's trial would not serve any additional deterrent purpose. . . . The deterrent values of preventing the incrimination of those whose rights the police have violated have been considered sufficient to justify suppression of probative evidence even though the case against the defendant is weakened or destroyed. We adhere to that judgment. But we are not convinced that the additional benefits of extending the exclusionary rule to other defendants would justify further encroachments upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which exposes the truth… Although we agree with the Supreme Court that allowing standing to assert the violation of a co-defendant's rights would not deter unlawful conduct in most situations, we believe deterrence would be

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[17] 670 P.2d 357, 360-63 (Alaska 1983).
[18] *See Giel v. State*, 681 P.2d 1364, 1367 n.3 (Alaska App. 1984) (Noting that *Waring* does not list guidelines which define gross or shocking behavior but the court did invoke a "shocks the conscience" standard); *see also State v. Sears,* 553 P.2d 907, 914 (Alaska 1976).
[19] *Waring,* 670 P.2d at 363 (footnotes omitted).
[20] *Id.* at 361.

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> furthered by such an allowance when the unlawful conduct is intentionally directed toward a particular defendant. [21]

The *Waring* analysis has been upheld and followed numerous times in the last forty years, including in *Fraiman v. State*.[22] In *Fraiman*, the defendant challenged his Department of Motor vehicle license revocation for refusal to submit to a chemical test after driving. Fraiman had been driving under the influence in a vehicle that did not have taillights. A passing state trooper observed the vehicle and attempted to pull it over. Fraiman eluded the trooper, who eventually followed the car and found it parked outside of a house.[23] The trooper contacted the owner of the property where the car was parked and searched both the main residence as well as a cabin outside of the main house.[24] Fraiman was found hiding in the cabin.[25]

At the DMV hearing, Fraiman challenged the search of the house, which he argued had been searched illegally without a warrant and absent the consent of the homeowner.[26] The administrative hearing officer stated that it was outside the scope of the hearing; Fraiman appealed and the court determined that he lacked standing to challenge the search.[27] The Alaska Supreme Court held that Fraiman was not an invited overnight guest, but a fugitive, and therefore lacked the legitimate expectation of privacy necessary to assert a violation of his personal constitutional rights.[28] Additionally, because the trooper's conduct was neither gross misconduct nor deliberate, the motion to suppress was denied.[29]

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[21] *See id.* at 361-62 (internal citations omitted).
[22] 49 P.3d 241 (Alaska 2002); *see also State v. J.R.N.*, 861 P.2d 578 n.6 (Alaska 1993)(holding that a minor cannot assert the standing rights of parent absent a *Waring* exception); *G.R. v. State*, 638 P.2d 191 (Alaska App. 1981); *Bright v. State*, 826 P.2d 765, 774 (Alaska App. 1992), *Christianson v. State*, 734 P.2d 1027, 1029 (Alaska App. 1987), *Giel*, 681 P.2d at 1366-67 (holding that the same standard as set forth in *Waring* applied to asserted violations of a co-defendant's 5th Amendment rights).
[23] *Fraiman* 49 P.3d at 242-43.
[24] *Id.*
[25] *See id*.
[26] *Id.*
[27] *Id.* at 243.
[28] *Id.* at 244-45.
[29] *See id*. at 244.

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Particularly relevant to the current issue is the plurality concurrence in *Samson v. State*.[30] In this concurrence, Judges Mannheimer and Bryner questioned whether Samson had standing to challenge the search, not of a "co-defendant's property," as in *Waring,* but rather the search of a neutral party—the utility provider's records pertaining to Samson. In *Samson*, police officers obtained a warrant to search Golden Valley Electric for records pertaining to Samson; the warrant was later found to be invalid and Samson challenged the admissibility of the evidence obtained from Golden Valley Electric under the deficient warrant.[31] While the judges recognized that Golden Valley would "clearly" be entitled to seek suppression of this evidence if the government ever attempted to use the records in a criminal proceeding against the electric company, they found that *Samson* had no such recourse.[32] The judges found "[t]he records in this case did not belong to Samson, and they were not seized from his possession; moreover… Samson had no protected expectation of privacy in the contents of those records."[33] The court found that Samson therefore did not have standing, under traditional rules of standing, to complain that the police used an invalid warrant to obtain the records.[34]

The concurring judges acknowledged that *Waring* "augmented the scope of the traditional standing rule" by allowing vicarious standing when the defendant has shown that the police purposely violated another person's rights in order to obtain evidence which they intended to use, not against this third person, but against the defendant. But in *Samson*, the concurring opinion found that because the police did not purposely violate the electric company's rights, Samson had no standing, under either *Waring* or the traditional standing rule.[35]

In this case, the police violated no one's rights: not those of the Metlakatla Indian Community, which consented to the search, nor of the defendant, who had no expectation

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[30] 919 P.2d 171, 173 (Alaska App. 1996) (Mannheimer, J., and Bryner, J., concurring).
[31] *Id.*
[32] *Id.* at 174.
[33] *Id.*
[34] *Id.*
[35] *Id.*

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of privacy in the seized material. Unlike in *Samson*, the search warrants issued have not been invalidated. More importantly, unlike Golden Valley Electric, the Tribe consented to the searches and willingly provided the records sought by the investigators.

The defendant does not have any personal protected privacy interest rights in the materials the Tribe provided to State investigators. He therefore has no standing to raise this issue under the traditional rules of standing. And there is no basis to argue that, under *Waring*, he is entitled to vicarious standing. There was simply no purposeful violation (or any violation whatsoever) of the Tribe's rights, nor was there any misconduct (much less willful, or gross or shocking misconduct); therefore, Hayward does not have vicarious standing. The defendant lacks standing to raise this matter, whether he raises it on his own motion or if the Court raises it as a *sua sponte* matter.

III. Conclusion

For the above reasons, this Court has subject matter jurisdiction over Mr. Hayward's criminal case. The Tribe's sovereign immunity was not implicated when it consented to the search at issue, and if the Tribe wished to assert its sovereign immunity it could have done so. If the defendant believes there is a valid suppression issue, then he, not the Court, should raise it. However, based on the above analysis, he does not have standing to raise such a claim.

Dated at Anchorage, Alaska, this 6th day of February, 2026.

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