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August 1, 2025

Commissioner James E. Cockrell
Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

Re: Tribal Banishment Order Enforcement
AGO No. AN2013102606

Dear Commissioner Cockrell:

You requested an opinion addressing the State's responsibility, if any, to enforce tribal banishment orders—orders that exclude an individual from a village. Specifically, you asked us to consider the 2022 reauthorization of the Violence Against Women Act (VAWA 2022),[1] which provides that Alaska tribes have "full civil jurisdiction to issue and enforce protection orders" through "exclusion of violators from the Village."[2]

Short Answer

VAWA 2022 does not require the State to enforce banishment orders. The plain language of VAWA grants Alaska tribes "*full civil jurisdiction*" to "*enforce* protection orders" by excluding violators "from the Village of the Indian tribe."[3] On its face, that

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[1] Violence Against Women Act Reauthorization Act of 2022 (Division W of the Consolidated Appropriations Act 2022, P.L. 117-103 (Mar. 15, 2022)). This Act amended and reenacted numerous statutes. The sections most applicable to this analysis are 18 U.S.C. § 2265 and 25 U.S.C. § 1305. The Alaska specific provisions are in Title VIII Safety for Indian Women, Subtitle B—Alaska Tribal Public Safety Empowerment, Sections 811-813 of the Act.

[2] 25 U.S.C. § 1305(b)(2)(C). The Act also broadly recognized and affirmed the "inherent authority" of most Alaska tribes "to exercise criminal and civil jurisdiction over all Indians present in the Village," as well as created a pilot program for "special Tribal criminal jurisdiction" (for certain covered crimes) over anyone in the Village (unless "neither the defendant nor the alleged victim is an Indian"). 25 U.S.C. § 1305(a), (c).

[3] 25 U.S.C. § 1305(b)(2)(B) (emphasis added); *see also id.* § 1305(b) (listing heading as "Tribal civil jurisdiction to enforce protection orders").

provision does not apply to the State; it applies only to Alaska tribes. And the provision requiring the State to give full faith and credit to certain tribal orders only applies to a "protection order"; it does not apply to an order issued to *enforce* that protection order.[4]

Having concluded that federal law does not require the State to enforce tribal banishment orders, we also conclude that the State has no authority to enforce tribal protection orders through banishment. Banishment conflicts with important individual rights protected by the federal and state constitutions. The State should, nevertheless, enforce any protection order, or portion of a protective order, that meets the requirements of a VAWA protection order even if it is labeled as a "banishment" order.

Analysis

I. VAWA does not require the State to enforce tribal banishment orders.

The plain language of VAWA does not require the State to enforce tribal banishment orders. When construing a statute, federal courts look first to the statutory language.[5] They focus on the "text of the statute to 'determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'"[6] If the language is clear and unambiguous, the plain meaning of the statute governs.[7] Here, the relevant statutes are clear and unambiguous.

VAWA requires only that the State give full faith and credit to tribal "protection orders," each of which the State must enforce "as if it were the order" of the State.[8] We previously addressed the meaning of this statute in a 2015 Attorney General Opinion.[9] There, we interpreted "VAWA's mandate that the State enforce a tribal or foreign protection order as if it were a state order to mean that the same enforcement tools that

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4 *See* 18 U.S.C. § 2265(a) ("Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were an order of the enforcing State or tribe.").

5 *Royal Foods Co., Inc. v. RJR Holdings, Inc.*, 252 F. 3d 1102, 1106 (9th Cir. 2001).

6 *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

7 *Id.*

8 18 U.S.C. § 2265(a).

9 *See* 2015 Op. Atty Gen. (Jul. 30), 2015 WL 4699349; available at https://law.alaska.gov/pdf/opinions/opinions_2015/15-005_AN2013102606.pdf

are available for a state order—including arrest—must be available for tribal and foreign orders that otherwise meet VAWA's requirements."[10] To illustrate, we explained that "before arresting an offender for violating the tribal or foreign protection order, a state officer must determine whether the arrest would be proper if the order had been issued instead by the State of Alaska."[11]

Nothing in VAWA 2022 changes the analysis provided in the 2015 Opinion or *requires* the State to enforce a tribal banishment order when such relief is not available under state law. Congress did not amend any of the statutory obligations of the State; instead, its focus was on the jurisdiction of Alaska tribes. In that context, Congress provided that "[a] court of any Indian tribe in the State shall have full civil jurisdiction to issue and enforce protection orders" and that "[t]he full civil jurisdiction to issue and enforce protection orders . . . includes the authority to enforce protection orders through . . . exclusion of violators from the Village of the Indian tribe."[12] The statutory language makes clear that Congress viewed banishment orders as an *enforcement* tool. As such, the State is only required to use this tool if it is available under state law. It is not.

II. Banishing a citizen from a village is not an enforcement tool available under state law.

As we stated in 2015, the State of Alaska "determines how to enforce [a tribal protection] order, including how to detain the offender, whether to notify a victim of release, the penalties for violation, and the responding officer's arrest authority."[13]

State law does not allow for the State to banish an individual from a village to enforce a protection order. The State's primary means of enforcing a protection order is to arrest the violator. Violating a protection order is a class A misdemeanor punishable by imprisonment up to one year.[14] And although a sentencing court has broad discretion to

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10 *Id.*, at *3.

11 *Id.* In 2017, the Alaska legislature added a provision that is consistent with the full faith and credit requirement of VAWA. *See* AS 18.65.867 (providing that a "protective order issued in another jurisdiction has the same effect and must be recognized and enforced in the same matter as a protective order issued by a court of this state if the protective order is, [among other requirements,] entitled to full faith and credit under 18 U.S.C. § 2265.").

12 25 U.S.C. §§ 1305(b)(1) & (2).

13 *Id.*

14 AS 11.56.740(b).

fashion conditions of probation or parole once released, every "component of a criminal sentence—including conditions of probation—must be reasonably related to at least one of the[] constitutional principles" articulated in Article 1, section 12 of the Alaska constitution.[15] Additionally, the Alaska Supreme Court has also held that these conditions "'[can]not be unduly restrictive of liberty.'"[16]

As such, a state sentencing court's broad authority to fashion conditions of probation or parole is not without limitation.[17] When a probation condition restricts an individual's constitutional rights (like the right to associate with one's family or the right to travel), that condition is subject to special scrutiny.[18] "To survive special scrutiny, a probation condition must be both 'reasonably related to the rehabilitation of the offender and protection of the public' and 'narrowly tailored to avoid unnecessary interference' with a defendant's constitutional rights."[19] A court must "'affirmatively consider and have good reason for rejecting lesser restrictions.'"[20]

Banishment orders are unlikely to satisfy "special scrutiny." To be sure, restrictions on familial association may be justified by "actual necessity and the lack of less restrictive alternatives."[21] However, banishment orders implicate more than just familial associations, they restrict a person's right to travel within the state and may separate the person from his or her home or job. Given these considerations, it is unlikely that Alaska courts would uphold a condition that banished an individual from an entire

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15 *State v. Ranstead*, 421 P.3d 15, 19–20 (Alaska 2018); *see also* Alaska Const. art. I, § 12 ("Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.").

16 *Ranstead*, 421 P.3d at 20 (quoting *Roman v. State*, 570 P.2d 1235, 1240 (Alaska 1977)).

17 *See, e.g.*, *Edison v. State*, 709 P.2d 510, 512 (Alaska App. 1985) (vacating a probation condition that prohibited an individual convicted of driving under the influence from entering the village of Marshall because the condition was not reasonably related to the individual's rehabilitation, was unnecessarily severe and restrictive, and the condition was not reasonably related to the nature of the underlying offense).

18 *Johnson v. State*, 421 P.3d 134, 139 (Alaska 2018).

19 *Id.* (quoting *Simants v. State*, 329 P.3d 1033, 1039 (Alaska App. 2014)).

20 *Id.* (quoting *Peratrovich v. State*, 903 P.3d 1071, 1079 (Alaska App. 1995)).

21 *Id.* at 140; *see also Dawson v. State*, 894 P.2d 672, 680 (Alaska App. 1995) (stating that in cases involving domestic violence, limiting marital association "would plainly be defensible").

community. Instead, Alaska courts endeavor to limit the scope of an order restricting association and/or travel based on the specific safety needs of the case at hand.[22] A reasonable distance will always depend on the size of the village and relative location of the spaces a respondent is prohibited from accessing. If a one-mile radius puts the respondent out of town in all directions from the prohibited space or limits the respondent from accessing his or her own home or job, those facts weigh in favor of the order being a de facto banishment order that is unenforceable.

III. The State must enforce protection orders that are labeled as "banishment orders" to the extent allowed for by state law.

As we said in 2015, "[t]ribal and foreign courts can best protect victims by clearly labeling a VAWA protection order as a 'protection order.'"[23] VAWA broadly defines protection orders to include:

> (A) *any . . . order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, . . .*; and
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> (B) *any* support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, *restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking*.[24]

The italicized language supports state enforcement of tribal-order terms that are intended to protect victims from domestic violence (such as a no-contact or a physical proximity term) even where the tribal order is entitled "banishment order." For example, if an order is labeled as a "banishment order" it may nevertheless be enforceable by the State if it is limited to (1) a reasonable length of time; and

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22 *See Id.* at 681. This is also consistent with state law on the scope of protective orders. *See* AS 18.66.100(c)(4) (providing that a protective order may "direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the petitioner or any designated household member"); AS 18.66.100(c)(5) (providing that a protective order may "prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner").

23 2015 Op. Atty Gen. (Jul. 30), 2015 WL 4699349, at *5.

24 18 U.S.C. § 2266(5) (emphasis added).

(2) exclusion of an individual from specific locations (e.g. buildings, parks, limited perimeters around certain addresses) within a village, and the restrictions are reasonably related to keeping safe an identified person whom the tribal court has determined is threatened by the excluded individual's presence.[25] Similarly, even if a tribal protection order contains a banishment provision—an unenforceable provision—other aspects of the tribal protection order may remain enforceable. Examples include a no-contact provision, a prohibition on entering a vehicle occupied by or possessed by the petitioner, or a prohibition against committing or threatening to commit domestic violence.[26]

But State officials should not enforce a provision of a tribal order that banishes a person from a community. This includes where a broad no-contact provision or proximity term might effectively prevent the alleged abuser from living in the village—a de facto banishment. The determination of whether a provision is a de facto banishment that is unenforceable requires a case-by-case analysis of the village's layout and the size of exclusion zone. Additionally, if an order, however labeled, is not "for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person" or "for the protection of victims of domestic violence, sexual assault, dating violence, or stalking,"[27] it would not meet VAWA's definition of a protection order and would not qualify for State enforcement of any of its terms. For example, VAWA does not require the State to enforce a no-contact provision of a tribal banishment order where the sole purpose of the order is to prevent a person from bringing drugs into the village.

Conclusion

The State is not required to give full faith and credit to tribal banishment orders—orders banning an individual from an entire village. Because banishment would not be proper if the order had been issued by the State of Alaska, banishment is not a proper enforcement mechanism for State officials. Officers should nevertheless review all orders—even those labeled as banishment orders—to determine whether they meet the definition of a protection order under VAWA and include any enforceable provisions. An

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25 *See, e.g.,* AS 12.30.011(b)(4) (permitting the court, under certain circumstances, to restrict an individual's right to "travel, association, or residence" as a condition of release before trial); AS 18.66.100 (permitting the court to enter a domestic violence protective order which would restrict an individual's right to travel, association, or residence).

26 *See* AS 18.66.100(c)(1)-(7).

27 18 U.S.C. § 2266(5)(A)-(B).

enforceable provision (1) specifies a reasonable length of time; and (2) includes provisions similar to AS 18.66.100(c)(1)-(7), including an exclusion of an individual from specific locations (e.g. buildings, parks, limited perimeters around certain addresses) that are reasonably related to keeping the petitioner safe.

Sincerely,

Treg Taylor
Attorney General