

## **TITLE 4 – CIVIL ACTIONS**

### **CHAPTER 2 - CIVIL TRESPASS; REMOVAL AND EXCLUSION OF NONMEMBERS**

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# TOHONO O’ODHAM CODE

## TITLE 4 – CIVIL ACTIONS

### CHAPTER 2 - CIVIL TRESPASS; REMOVAL AND EXCLUSION OF NONMEMBERS

#### SECTION 1 CIVIL TRESPASS

##### Section 1.1 Definitions

As used in this section:

- A. “Attorney General” means the Office of the Attorney General of the Tohono O’odham Nation, including its employees and personnel.
- B. “Days” means business days excluding weekends and tribal holidays.
- C. “Judicial Court” means the courts of the Tohono O’odham Nation.
- D. “Landowner” means any person or entity, including the Nation, who owns land in fee, or whose lands are held in trust by the United States for the benefit of the Nation or Nation’s members, within the lands of the Nation.
- E. “Lands of the Nation” means all lands within the exterior boundaries of the Tohono O’odham Nation, including any trust, allotment, and fee lands, and all other lands held in trust by the United States for the Tohono O’odham Nation or Nation’s members.
- F. “Legislative Council” means the Legislative Council of the Tohono O’odham Nation.
- G. “Object” means any item or thing brought onto the lands of the Nation, whether claimed as property, discarded, or abandoned.
- H. “Person” means, without limitation, an individual, corporation, association, government, or any other entity.
- I. “Police Department” means the Tohono O’odham Nation Police Department, which is designated and empowered to enforce the provisions of this section.
- J. “Property” means both real and personal property.
- K. “Nation” means the government of the Tohono O’odham Nation.

##### Section 1.2 Authorization

This section is authorized, without limitation, by the inherent sovereign authority of the Nation to exclude nonmembers, property, and objects from its territory, and by the Constitution of the Tohono O’odham Nation, which vests to the Legislative Council with the Nation’s inherent power to pass laws, ordinances, and resolutions that: govern the conduct of all persons and regulate all property within the Nation’s jurisdiction; provide for the maintenance of public health, peace, morals, education, and general welfare of the Nation

and its members; provide for the maintenance of law and order and the administration of justice; control and manage land; and provide for the removal or exclusion of nonmembers from the Nation whose presence may be injurious to the peace, health, or welfare of the Nation and its members.

### Section 1.3 Purpose

This section is intended to provide a means for the Nation to protect its sovereignty, property, resources, and members, as well as the peace, property, and public safety of all those living or present within the lands of the Nation, from conduct by any person that threatens, damages, injures or destroys the peace, health, safety, resources, environment, or general welfare of the Nation and all others subject to the Nation's jurisdiction. The purpose of this section is to effectuate that policy.

### Section 1.4 Jurisdiction

- A. The Legislative Council finds that acts of civil trespass as defined in this section threaten and directly affect the political integrity, the economic security, and the health and welfare of the Nation and its members, as well as the peace, safety, and environment of the Nation's lands. The Nation reserves the exclusive right to deny, rescind, or revoke consent to use or occupy its lands, to exclude nonmembers and objects from its lands, and to impose and enforce civil penalties for trespass on its property and lands.
- B. The personal and subject matter jurisdiction of the Nation and the Judicial Court, for purposes of this section, extends to all landowners and lands of the Nation, to the full extent permitted by the Nation's laws.
- C. The Nation possesses jurisdiction to legislate, regulate and adjudicate with respect to matters of civil trespass. It enjoys these powers, without limitation, pursuant to its inherent sovereign authority to exclude and to protect its territorial integrity; its authority to govern in order to advance the economic security, health, and welfare of the Nation and its members; the Nation's Constitution and laws enacted to promote legislative and judicial authority in exercise of those inherent rights; and the United States federal government's express policy of promoting tribal sovereignty. The Nation possesses personal jurisdiction over all civil trespass actions because all trespassers on tribal lands should reasonably anticipate being subject to Judicial Court jurisdiction under the Nation's Constitution, Tohono O'odham Code, and other laws. All civil trespass actions must exhaust Judicial Court remedies.
- D. The Nation affirms that it provides all respondents the rights to due process and equal protection as required by the laws of the Nation and other applicable laws.

## Section 1.5 Definition of Trespass

Any person who enters or otherwise occupies lands or structures within the exterior boundaries of the Nation or other lands of the Nation without the requisite consent, permission, or authorization of the landowner will be subject to the penalties and enforcement actions set forth in this section.

- A. A physical invasion of real property occurs when a person without valid consent, permission, or authorization:
  1. Enters upon the lands or structures of the Nation or another;
  2. Causes another person, animal, or object to enter the lands or structures;
  3. Fails to remove another person, animal, or object from the lands or structures when under a legal duty to remove; or
  4. Wrongfully remains on the lands or in a structure, despite initial legal entry.
- B. Even when a person has permission to enter or remain upon the lands or structures of the Nation, the following actions, without limitation, constitute trespass when taken without valid consent, permission, or authorization:
  1. Cutting down, destroying, injuring, carrying away, or attempting to cut down, destroy, injure, or carry away any wood, timber, plant, vegetation, crop, water, animal, animal habitat, or any other natural resources of any landowner from such lands;
  2. Digging, taking, carrying away, or attempting to dig, take, or carry away earth, soil, stone, sand, gravel, minerals, attachments, water, or any other resources, including but not limited to objects and sites of historical, cultural, religious, or archeological significance from such lands;
  3. Destroying or injuring land, waters, livestock, buildings, equipment, or any real or personal property of the Nation or another, including but not limited to objects and sites of historical, cultural, religious, or archeological significance on such lands;
  4. Conversion of the real or personal property of the Nation or another, including but not limited to objects and sites of historical, cultural, religious, or archeological significance on such lands;
  5. Stationing or operating, or allowing to be stationed or operated, any vehicle, machinery, equipment, or technology on such lands;
  6. Placing any sign, notice, advertisement, printed material, or other writing, drawing, or diagram upon such lands;
  7. Littering, placing, or leaving rubbish, trash, debris, contaminants, or other objects upon the property of the Nation or another, including on roads and in waterways on such lands;
  8. Engaging in any act or attempted act of hunting, fishing, or trapping on such lands;

9. Discharging a firearm, releasing an arrow, or otherwise using or attempting to use any weapon on such lands;
  10. Refusing to leave the lands of the Nation or the property of the Nation or another to which the person has no reasonable claim or right of possession or occupancy when requested to do so by the landowner, the property owner, or the Police Department;
  11. Entering a Gaming Facility, as defined under Tohono O’odham law, within the lands of the Nation when listed on any state or tribal patron exclusion list or otherwise excluded under the Nation’s laws;
  12. Entering upon such lands with knowledge, either actual or constructive, that permission to enter upon the lands does not exist or has been expressly denied or revoked;
  13. Using or possessing leased, assigned, or subleased property of the Nation or another beyond the possessory rights granted by such lease, assignment, or sublease on such lands; and/or
  14. Taking any action inconsistent with this section upon the lands of the Nation, including on roads, that is outside the scope and terms of an existing agreement, right-of-way, or contract or when permission has been expressly rescinded, denied, or revoked notwithstanding the agreement, right-of-way, or contract.
- C. This Section shall not apply to members of the Nation.
- D. The Nation’s districts lack authority to authorize or approve uses of national lands or the Nation’s resources by nonmembers except when expressly authorized by Article XVI, Section 5 of the Nation’s Constitution or a Nation’s law.

#### Section 1.6 Trespass Procedures

- A. **Trespass Report.** Any person who has an ownership or possessory interest in property subject to the provisions of this section, any member of the public, or any official or employee of the Nation may submit an oral or written trespass report to the Police Department.
- B. **Investigation.** The Police Department is authorized to investigate credible allegations of trespass. A report will be made available to the person alleged to have violated this section upon request.
- C. **Notice and Citation.**
1. The Police Department will take reasonable steps in writing to notify the person(s) alleged to have trespassed of the violation and that he, she, or it must vacate the property immediately and remove all unauthorized property or objects or face a civil trespass action in Judicial Court. If the person (or an employee or agent of any entity) is not present on the property, the Police Department may post a Notice of Trespass in a conspicuous place on the property and take any other reasonable actions to provide the person notice

and a chance to comply or object.

2. Within ten (10) days of delivery, service, or posting of the Notice of Trespass, the Police Department will issue a citation identifying the name or a description of the violator; the property upon which the trespass occurred or is occurring; a description of the alleged act of trespass; the potential remedies for the offense; and the date and time of a hearing to be held in Judicial Court on the trespass, which hearing will be held no later than ten (10) days from the date of the citation.
3. The Police Department will immediately serve the citation either by personal delivery to the trespassing person; by mailing the citation to the responsible person at the last known address on file; or by posting the citation in a conspicuous place on the property on which the trespass occurred.
4. Each day a violation exists may be considered a separate act of civil trespass and subject to a separate fine and/or other civil penalty.

#### Section 1.7 Hearing

- A. Generally. The Judicial Court will conduct a hearing on the record.
- B. Burden of proof. The Attorney General will have the burden of showing by a preponderance of the evidence that a civil trespass has occurred or is occurring and that the respondent(s) committed the act of civil trespass.
- C. Affirmative Defense. Proof that the respondent(s) had a legal right to enter, occupy, possess, or act upon the property of another pursuant to federal and/or tribal law is the only affirmative defense to a charge of civil trespass.
- D. Disposition. If the Judicial Court finds that the respondent(s) did commit civil trespass, it will enter an appropriate order on its record. If the Judicial Court finds the respondent(s) did not commit civil trespass, it will enter an order dismissing the case.
- E. Failure to Appear. If the respondent(s) fails to appear at the hearing, the Judicial Court may enter a default judgment.

#### Section 1.8 Remedies

Upon a finding that civil trespass has occurred or is occurring and that the respondent(s) did commit the act of civil trespass, the Judicial Court will issue an order providing for an appropriate remedy, including but not limited to:

- A. Civil monetary penalties;
- B. Civil forfeiture;
- C. Temporary or permanent injunction; and/or
- D. An order of removal.

### Section 1.9 Civil Penalties

In addition to being subject to removal from the property on which the trespass occurred and/or exclusion from the Nation, any person(s) whom the Judicial Court has found to have committed an act of civil trespass will be liable for the following.

- A. Compensatory damages resulting from each act of trespass to be paid through the Clerk of the Judicial Court for the benefit of the property owner who suffered such damages. Additional compensation to the Nation may be warranted for expenses incurred, such as for the removal of property or objects from the lands of the Nation; damages resulting from the destruction of objects or sites of historical, cultural, religious, or archeological significance; or from harm to the Nation or its members resulting from the trespass. The Attorney General may request an extension of the damages portion of the order until such time as actual damages are determined; however, the request for damages hearing must be no later than ninety (90) days from the date the order issued; and
- B. A fine of not more than five thousand dollars (\$5,000) for each act of trespass, payable to the Nation through the Clerk of the Judicial Court for costs associated with enforcement of this section.

### Section 1.10 Enforcement of Civil Penalties

- A. Any civil penalty imposed will be judgment against the respondent(s) subject to enforcement, satisfaction, or execution by the Judicial Court, and is an obligation of the respondent(s) to the Nation. A civil penalty imposed will be deemed a lien upon any personal or other property or object of the respondent(s) located within the exterior boundaries of the reservation.
- B. The Nation may bring suit or file an action to enforce the Judicial Court judgment in any other court where the respondent(s) or any property or object belonging to the respondent(s) may be located outside the exterior boundaries of the lands of the Nation as provided by the law of such other jurisdiction.

### Section 1.11 Forfeiture Authorized

Any property or object used or which reasonably may have been used to commit an act of civil trespass and any property or object, including but not limited to, personal property, furniture, vehicles, machinery, equipment, technology, construction supplies, tools, wild game and non-game animals, any vegetation or crop, green or dry wood or timber, or any rock or mineral found on the property or lands of the Nation may be temporarily seized or permanently forfeited. All forfeiture actions will be considered in rem, against the property or object only, and not against the person.

### Section 1.12 Forfeiture Procedures

Upon a finding that civil trespass has occurred, the Judicial Court may order forfeiture as set forth in this section:

- A. The Nation may request forfeiture to satisfy a judgment of civil trespass, and the Judicial Court may issue a writ of attachment or other appropriate writ in aid of, or necessary to, the action. Upon judgment and satisfaction of any civil fines and penalties assessed by the Judicial Court, the Nation may return all seized and impounded property or objects being held under its protection to the lawful owner.
- B. Seized property or objects that are not otherwise used to satisfy a judgment of civil trespass or released to an owner or claimant will be held for a period of sixty (60) days following a finding of civil trespass and determination of damages, during which period notice by personal service, regular, certified or registered mail, publication, or otherwise, will be given to all parties who, after reasonable inquiry, have been determined to have an interest in the property or objects and the pending forfeiture.
- C. During the sixty (60) day period that the property or objects are held, any party claiming an interest in the property or objects may file with the Judicial Court a claim for the recovery of the property or objects. The Judicial Court, after a hearing for which the Nation and all known interested parties have been given notice, will order the property or objects restored or transferred to the claimant if such claimant proves by a preponderance of the evidence that:
  - 1. The claimant is a lawful owner of, has a valid, recorded security interest in, or has an ownership interest by operation of law in the property or objects, or the possession, use, or other act of the claimant is or was lawful; and
  - 2. The property or objects will not be used to commit future acts of civil trespass on lands within the exterior boundaries of the Nation.
- D. After sixty (60) days, if no claimant provides the proof required in subsection (c) of this section, the Judicial Court will declare the property or objects forfeited to the Nation. If the property or object forfeited is money, currency, or other legal tender, the Judicial Court will order it released to the Nation's treasurer for deposit in the Nation's general fund. Otherwise, the Judicial Court will order the property or objects:
  - 1. Destroyed by the Police Department; or
  - 2. Sold at public auction with any expenses of keeping and selling such property or objects, and the amount of all valid liens established by a claim filed with the Judicial Court by a lienholder or other secured party, paid out of the proceeds of the sale, with any balance credited to the Nation's general fund; or
  - 3. Returned to the owner, lienholder, or other secured party upon payment of expenses if the property or objects are worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset; or
  - 4. Retained for the Nation's official use with expenses for keeping and

transferring such property or objects to be paid by the Nation.

#### Section 1.13 Injunctive Relief Authorized

The Judicial Court may issue an order temporarily or permanently enjoining the respondent(s) from taking any further action(s) that constitute trespass under this section.

#### Section 1.14 Removal Authorized

Any person(s) observed or reasonably suspected of committing an act of civil trespass as defined in this section may be forcibly removed and ejected from the property by a law enforcement official. All removal orders entered by the Judicial Court will be carried out by the Police Department, which is authorized to take reasonable action necessary to remove the trespasser(s) or trespassing property or object(s) from the property.

#### Section 1.15 Exclusion Authorized

The Nation expressly retains authority to exclude from the lands of the Nation any nonmember who has been found by the Judicial Court to have committed an act of civil trespass. All policies and procedures required for orders of exclusion of nonmembers, including appropriate notice, will apply, as set forth in Section 2 of this chapter.

#### Section 1.16 Appeal of Judgment

Respondent(s) may appeal a judgment of civil trespass to the Nation's court of appeals according to the rules and procedure governing civil appeals. Decisions of the court of appeals shall be final.

#### Section 1.17 Time Limitation

An action for civil trespass must be filed with the Judicial Court within two (2) years of the date the trespass occurred. Each day a trespass occurs constitutes a new act of trespass that is actionable under this section of the Tohono O'odham Code. On-going civil trespass violations that began more than two (2) years before the initiation of a trespass action but that are still occurring at the time the action is initiated will not be barred under this section.

### SECTION 2 REMOVAL AND EXCLUSION OF NONMEMBERS

#### Section 2.1 Persons Subject to Removal and Exclusion

- A. Any nonmember of the Tohono O'odham Nation may be removed and excluded from all or any parts of the lands of the Tohono O'odham Nation.
- B. Removal and exclusion may not be invoked to exclude nonmembers from:

1. Individually owned lands, whether held under trust, restricted or fee patent, when the nonmember(s) are present with the consent of the individual owner provided however, (a) that the consent of the owner will not stop the exclusion of any nonmember from such lands if it is determined that such nonmember poses a clear and continuing danger to the health or safety of tribal members or property; (b) that the consent of the owner will not stop the exclusion of any nonmember from such lands if it is determined that such nonmember has continually violated the laws and ordinances of the Tohono O'odham Nation; or
2. Access to state rights-of-way including highways within the exterior boundaries of the Tohono O'odham Nation unless it is determined that in addition to a violation of Sections 2.2(A) and 2.3(A), such nonmember poses a clear and continuing danger to the safety of persons or property on such highway which outweighs the interest of the nonmember in using the highway.

#### Section 2.2 Reporting of Criminal Acts

- A. When the Tohono O'odham Police Department finds evidence that a nonmember has committed an act or acts which would be a crime or crimes under the Nation's laws, Arizona Revised Statutes, or the United States Code, it shall report said evidence to the Nation's chief prosecutor, United States Attorney, or other governmental entity having jurisdiction to prosecute said act or acts. If the nonmember is an employee or contractor of the United States Government or of a state or local government, the evidence shall also be provided to the employee's or contractor's immediate supervisor and the head of the employing governmental agency.

#### Section 2.3 Grounds for Removal and Exclusion

- A. Any nonmember of the Tohono O'odham Nation may be removed and excluded pursuant to Section 2.1(A) if he or she engages in any of the following conduct
  1. commits an act which is prohibited by Federal, State or Tribal law, including a violation of State or Tribal traffic regulations; or
  2. prospects or mines without authority or permit; or
  3. trades or peddles without authority or permit; or
  4. cuts timber, or removes any protected native plant, or any rocks or artifacts without authority or permit; or
  5. commits a civil trespass, as defined in Section 1 above; or
  6. forcibly enters into the home or onto the lands of any tribal member without the consent of the occupant(s); or
  7. interferes with or photographs a tribal ceremony without authority or permit; or

8. commits fraud, or carries on a confidence game, or usury against tribal members, or induces such members to enter into grossly unconscionable contracts of any nature; or
  9. attempts to repossess lawfully any personal property for the satisfaction or discharge of any claim or debt or upon the default of any contract term;
  10. defrauds any tribal member of just compensation for his or her labor or service of any nature done at the request of the nonmember; or
  11. causes a breach of the peace or engages in repeated public drunkenness; or
  12. is infected with or carries a contagious disease; or
  13. enters without authority or permit into an area of the Tohono O'odham Nation designated as restricted; or
  14. removes or attempts to remove any tribal member under the age of eighteen (18) years from the Tohono O'odham Nation without the approval of a parent, guardian or custodian, or the Children's or Judicial Courts; or
  15. conducts missionary work or activities without prior authority or permit; or
  16. hunts, fishes, or traps without authority or permit; or
  17. camps without a valid permit or in an area designated as closed to camping; or
  18. fails or refuses to pay taxes, rents or other charges justly due the Tohono O'odham Nation after reasonable notice and opportunity to pay; or
  19. engages in conduct or activities causing property damage, or loss or clear and continued danger to the health or safety of tribal members or property
- B. Any removal and exclusion may be subject to the terms and provisions of any applicable license, lease or permit which that person may have or possess, under which that person is entitled to be upon the lands of the Tohono O'odham Nation.

#### Section 2.4 Procedure

- A. Any member of the Tohono O'odham Nation, police officer of the Nation, or prosecutor of the Nation may file a complaint with the Tohono O'odham Judicial Courts requesting removal and exclusion of a nonmember. The Complaint shall state the ground(s) upon which the request is based, a brief statement of facts relied upon which support the ground(s) for removal and exclusion, and the names and addresses of any witnesses who will provide supporting information for the proposed exclusion. The Tohono O'odham Judiciary Court shall then issue an Order to Show Cause requiring the nonmember to appear at a hearing to determine if cause exists to remove and exclude the nonmember.
- B. If the removal and exclusion action is filed by a Tohono O'odham Police officer or a Tohono O'odham Prosecutor the Nation's Prosecutor's Office shall represent the Complainant. However, if the removal and exclusion action is filed by a member of the Tohono O'odham Nation, representation may be by a private advocate or attorney as selected by the member.

- C. The Court shall issue a Temporary Restraining Order (TRO) pending the Show Cause hearing if reasonable grounds exist to believe the nonmember will cause irreparable or immediate harm to any person or property if not restrained.
- D. The Show Cause order shall state the time and place where the nonmember may appear to show cause why he or she should not be excluded and removed from the Tohono O'odham Nation.
- E. The Order may be served personally or by registered mail, or in accordance with the rules established by the Court for notice and service in Civil cases. Return receipt shall be used in any service by mail and such service shall be complete upon the date of the return receipt.

### Section 2.5 Hearing

- A. The hearing for removal and exclusion shall be conducted in the manner of a civil trial. The nonmember shall be given an opportunity to (1) confront and cross-examine any witness called by the Complainant to support exclusion, (2) to present oral and written evidence in his or her defense, and (3) to be represented by counsel at his or her own expense.
- B. Upon a finding that cause exists for removal and exclusion the Court shall either enter an Order of Exclusion or, in the discretion of the Court and in appropriate circumstances, order that the charged party remedy or eliminate the cause for exclusion within a time and subject to the terms and conditions prescribed by the Court.
- C. In cases where permanent or indefinite exclusion is sought by the Tohono O'odham Nation, or where the ground for exclusion is violation of federal, state or tribal laws, and the factual basis is disputed by the nonmembers, the facts supporting exclusion must be established by clear and convincing evidence. In any other case, the facts supporting exclusion must be established by a mere preponderance of the evidence. Each decision and order of exclusion shall be in writing and shall be based only upon facts and law presented at the hearing.
- D. Upon a finding that no cause for exclusion of the nonmember exists, the Tohono O'odham Judicial Court shall dismiss the Complaint.
- E. An Order of Exclusion shall specify the period of time during which exclusion will be effective. The Court may suspend an order of exclusion upon such reasonable terms and conditions as may be prescribed by the Court.

### Section 2.6 Enforcement of Exclusion Order

- A. Nothing in this Chapter shall prevent a member of the Nation, a Tohono O'odham Police Officer, a BIA representative, or the Nation's Chairman or the Nation's Prosecutor from applying to the Tohono O'odham Judicial Court for an emergency exclusion order removing a nonmember from all or any part of the Tohono O'odham Nation prior to an exclusion hearing if:

1. there is an immediate danger to life, health or property of the Tohono O’odham Nation or any of its members; or
  2. the nonmember is engaged in conduct which constitutes a criminal offense and poses immediate danger or irreparable damage to any person or property.
- B. The Court shall direct the Nation’s police department to execute the emergency order using as much force as is necessary to effect the removal.
- C. The emergency order shall also contain the notice of charges and hearing provided for in Sections 2.4 and 2.5. The notice shall state that the nonmember may demand that a hearing be held within 24 hours, excluding Saturdays, Sundays and holidays, after he or she receives such notice or at any time up to ten (10) days from the date of notice. Absent such a demand the Court shall schedule the exclusion hearing in its own discretion, but, within a reasonable time.
- D. The emergency order shall notify the nonmember of a specific boundary entry where he or she may re-enter for the purpose of attending the hearing required pursuant to Section 2.5 of this Chapter.
- E. Nothing in this Chapter shall prevent a duly authorized police officer from stopping and detaining, without prior legal process from the Tohono O’odham Judicial Court, any nonmember within the exterior boundaries of the Tohono O’odham Nation when the officer has reasonable cause to believe that the nonmember is committing or has committed any offense in violation of Tohono O’odham, State or federal law, including a traffic offense.
- F. Detention pursuant to subsection E may be accomplished either for the purpose of turning over the nonmember to the officials or courts of the United States or the State of Arizona, or for the purpose of detaining a nonmember in order to seek an emergency removal order from the Tohono O’odham Judicial Court under this section.

### Section 2.7 Emergencies

- A. Nothing in this Chapter shall prevent a member of the Nation, a Tohono O’odham Police Officer, a BIA representative, or the Nation’s Chairman or the Nation’s Prosecutor from applying to the Tohono O’odham Judicial Court for an emergency exclusion order removing a nonmember from all or any part of the Tohono O’odham Nation prior to an exclusion hearing if:
1. There is an immediate danger to life, health or property of the Tohono O’odham Nation or any of its members; or
  2. The nonmember is engaged in conduct which constitutes a criminal offense and poses immediate danger or irreparable damage to any person or property.
- B. The Court shall direct the Nation’s police department to execute the emergency order using as much force as is necessary to effect the removal.
- C. The emergency order shall also contain the notice of charges and hearing provided for in Section 2.4 and 2.5. The notice shall state that the no-member may demand that a

hearing be held within 24 hours, excluding Saturdays, Sundays and holidays, after he or she receives such notice or at any time up to ten (10) days from date of notice. Absent such a demand the Court shall schedule the exclusion hearing in its own discretion, but, within a reasonable time.

- D. The emergency order shall notify the nonmember of a specific boundary entry where he or she may re-enter for the purpose of attending the hearing required pursuant to Section 2.5 of this Chapter.
- E. Nothing in this Chapter shall prevent a duly authorized police officer from stopping and detaining, without prior legal process from the Tohono O’odham Judicial Court, any nonmember within the exterior boundaries of the Tohono O’odham Nation when the officer has reasonable cause to believe that the nonmember is committing or has committed any offense in violation of Tohono O’odham, State or federal law, including a traffic offense.
- F. Detention pursuant to subsection E may be accomplished either for the purpose of turning over the nonmember to the officials or courts of the United States or the State of Arizona, or for the purpose of detaining a nonmember in order to seek an emergency removal order from the Tohono O’odham Judicial Court under this section.

#### Section 2.8 Banishment of Members is Not Prohibited

Nothing in this ordinance shall be construed to prohibit actions to banish tribal members residing within any district of the Tohono O’odham Nation based on the custom and tradition of the district.

#### SECTION 3 Recognition and Enforcement of Judgments in State Courts.

An order of trespass or exclusion and the imposition of civil monetary penalties, removal, civil forfeiture, a temporary or permanent injunction, or other orders issued by the Judicial Court will be recognized and enforceable throughout the State of Arizona pursuant to Rule 5 of the Arizona Rules of Procedure for the Recognition of Tribal Court Civil Judgments.