Native Americans Born in Canada: What are My Rights at the Border and in the U.S.? (The Jay Treaty)

What is the Jay Treaty?
The right of American Indians to freely cross the border and live and work in both the United States and Canada comes from the Jay Treaty, an agreement signed by the U.S. and Great Britain in 1794. Congress later affirmed these rights in section 289 of the 1952 Immigration and Naturalization Act (INA). The INA limited Jay Treaty rights to those American Indians born in Canada with at least 50% Aboriginal (Indian) blood. If you are a Native Canadian with at least 50% Aboriginal blood, you have the LEGAL RIGHT to:

1. cross the U.S.- Canadian border;
2. live and work in the U.S.;
3. register at a college or university in the U.S. as a “domestic student” rather than as a “foreign student,” and get financial aid as an “eligible non-citizen;”
4. not be deported by the U.S. government; and
5. get federal and state public benefits that you qualify for, such as Social Security Retirement, Medicaid (health insurance for low-income and disabled individuals), Medicare (health insurance mainly for those 65 and older), Supplemental Security Income (SSI), Washington Basic Food Program (food stamps), Temporary Assistance for Needy Family (cash assistance), and Social Security Disability Insurance. You must meet the other standard eligibility requirements to get these benefits.

You DO NOT have to:
1. get a work permit;
2. register for the military; or
3. get a green card, also known as an Alien Registration Card or Form I-551. You may choose to apply for one if you wish.

You DO NOT have the legal right to:
1. vote. If you want to vote, you will need to become a U.S. citizen. If you vote before you are a citizen, you could jeopardize your eligibility for citizenship.

You MUST:
1. pay usual U.S. customs duties on things you bring into the U.S.;
2. apply to the U.S. Citizenship and Immigration Services to sponsor your spouse and/or child for them to be able to permanently move to the U.S. with you, if they are not also at least 50% Aboriginal blood; and
3. get a U.S. Social Security card before applying for a job. To get the card, you must prove your age, identity, and immigration status.

What documents do I need to cross the border into the U.S.?
You used to be able to show your tribal enrollment card with a photo attached and your Indian and Northern Affairs Canada card (INAC card or status card) for entry
into the U.S. But now Canadian citizens must present a passport, Enhanced Driver’s License or “Secure” INAC card.¹

The Aboriginal Affairs and Northern Development Canada (AANDC) office is currently accepting applications for updated Secure Certificate of Indian Status in certain regions. Contact AANDC to apply. In the meantime, the U.S. Department of Homeland Security has stated that it will continue to accept the old Indian Status Card for an unspecified transition period. This policy could change. Check with the U.S. Department of Homeland Security if you have questions about their current policy.

If you are a Native American U.S. citizen planning a trip to Canada, upon return you will need to present a passport, an enhanced driver’s license, an enhanced Tribal Card if available,² or a Native American Tribal Photo ID Card.

The requirements are slightly more relaxed for children. U.S. and Canadian citizen children under age 16 arriving by land or sea may present their birth certificate (a copy is fine), a Naturalization Certificate, or a Canadian Citizenship Card.

What other documents might I need in the U.S.?

To be able to work live and work in the U.S. under the Jay Treaty, you must prove you were born in Canada and have at least 50% Aboriginal blood. If you want to apply for a job and exercise other Jay Treaty rights, you will need other documents besides those you need to cross the border. Bring as many of these as possible:

1. a letter of blood quantum from your First Nation stating you have at least 50% aboriginal blood or a letter from an INAC office verifying your Indian ancestry. You need this letter to make sure you get all the benefits described above. If you need to get this letter, call the Canadian Department of Indian Affairs and Northern Development at 1-800-567-9604 (TTY 1-866-553-0554).

2. your long form birth certificate. Contact the Vital Statistics Office in the province where you were born if you do not already have a copy.

3. your Certificate of Indian Status, also known as a Status Card. This by itself is NOT enough to prove you have at least 50% Aboriginal blood.

4. a photo ID, such as a passport, tribal card, or driver’s license. If you are going to apply for or renew a license or a tribal card, and do not have a passport, get an enhanced tribal card or enhanced driver’s license (if available in your province).

I was adopted by a non-Indian family. Do I still have these rights?

Yes, as long as you have the documentation described above. If you think you belong to a Canadian Tribe or Band, but need to establish your Indian status, contact Canada’s Department of Indian Affairs and Northern Development.

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¹ These documents show both identity and Canadian citizenship. They are acceptable for entry into the U.S. by land and sea. Not all provinces currently issue these documents.
² Currently, only a small number of U.S. tribes have developed these IDs.
Do I need different documents depending on whether I travel by land, sea, or air?

If you are traveling by air, you must have a passport. This requirement also applies to children.

I have lived in the United States for over forty years, since I was five years old. Am I a U.S. citizen?

You may not be a citizen if you were born outside of the United States. You have citizenship only if you were born in the United States, became a citizen through the naturalization process, or in some cases, if you were born outside of the United States to a parent who is a U.S. citizen.

If you were born outside the U.S. but one of your parents was a U.S. citizen, you may already be a citizen. It depends on several factors, including:

- Your date of birth
- Whether either of your parents was a citizen at the time of your birth
- Whether they were married when you were born and
- The periods of time that the U.S. citizen parent resided in the U.S. prior to your birth.

Speak with an immigration attorney to find out whether you acquired U.S. citizenship from your parent.

What if I need legal help?

- The Northwest Justice Project’s Native American Unit (NAU) provides free civil (non-criminal) legal services for Native Americans who cannot afford a lawyer in Washington. To reach us, call the toll-free hotline at (888) 201-1014, and then press 5 to leave a message for the NAU. You can leave a message 24 hours a day, 7 days a week. We will return your call within two business days.

- CLEAR: CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems. Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide interpreters as needed at no cost to callers. If you are deaf or hard of hearing, call 1-888-201-1014 using your preferred TTY or Video relay service. You can also apply online with CLEAR*Online - http://nwjustice.org/get-legal-help.

- Persons 60 and Over: Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

Some of this information is based on an excellent resource from the American Indian Law Alliance and Wabanaki Legal News, a publication of Pine Tree Legal Assistance: http://www.ptla.org/wabanaki/jaytreaty.htm

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