



JAY TREATY BORDER ALLIANCE

National Congress of American Indians Executive Council Winter Session

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Washington, DC



JAY TREATY BORDER ALLIANCE LEADERSHIP



Chief
Michael Conners
*Saint Regis Mohawk
Tribe*
United States



Chairwoman
Jennifer Porter
*Kootenai Tribe of
Idaho*
United States



Grand Chief
Abram Benedict
*Mohawk Council of
Akwesasne*
Canada



Grand Chief
Kahsennenhawe
Sky-Deer
*Mohawk Council of
Kahnawake*
Canada





ABOUT THE JTBA

- Formed in 2017, formerly named the Northern Tribal Border Alliance.
- Purpose:
 - To collaborate on our efforts to protect our rights preserved in the Jay Treaty;
 - To create effective working relationships with the U.S. Customs and Border Protection and Canada Border Services Agency; and
 - To address issues that are unique to the U.S.-Canadian border.





WORK OF THE JTBA

General Activity:

- Advocacy to get rid of the Immigration and Nationality Act's 50% blood quantum requirement;
- Advocacy for a Right of Entry in Canada for U.S.-Born Indians;
- Education and Information Sharing (webinars & news bulletins);
- Coalition Building

Events:

- November 2021 - JTBA Virtual Washington D.C. Fly-in
- April 2022 - Ottawa Advocacy
- June 2022 - JTBA 5th Annual Summit
- January 2023 - JTBA Milwaukee Conference
- January - February - 2023 – JTBA Winter Summit
- October 2023 – JTBA Fall Summit – Calgary





JTBA Ottawa Advocacy

April 2022





JTBA 5th Annual Summit

June 27-29, 2022- Windsor, Ontario & Detroit, Michigan





JTBA Conference + Consultation

January 18-19, 2023- Milwaukee, Wisconsin





JTBA Winter Summit

January 31 – February 1, 2023- Vancouver, BC & Lummi Nation





JTBA Fall Summit

October 11-13, 2023- Calgary, Alberta





JTBA WEBSITE

<https://www.jaytreatyborderalliance.com/>

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WORKING TOGETHER TO PROTECT OUR TREATY RIGHTS

EVENTS

The JTBA Hosts Annual Summits, Fly-Ins, Webinars, Advocacy Calls, and More

[Register Today! →](#)

ADVOCATE

Join us in advocating to protect our Jay Treaty rights along the U.S.-Canada border

[Learn More →](#)

JOIN US

Do not miss out on our latest updates! Sign up to receive the updates from the JTBA

[Sign Up Today →](#)

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ADVOCACY

The JTBA is actively working to advocate for the enactment and implementation of several pieces of legislation addressing cross border issues facing JTBA members.

U.S. Tribal Border Crossing Parity Act

Canada's Implementation of Bill C-15 UNDRIP Act

2023 Farm Bill

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JTBA MEMBERSHIP

The JTBA adopted by-laws in July 2023.

Three Tiers of Membership:

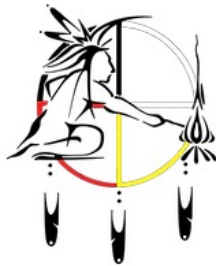
- **Co-Chairs** (two Canada-based & two U.S.-based)
- **Executive Committee** (open to any First Nation or Federally-recognized Tribe)
- **General Membership** (open to any person or stake holder)

Membership Dues:

- Co-Chairs and Executive Committee Members..... \$5,000 USD
- General Members.....\$0 USD



EXECUTIVE COMMITTEE



MEMBERS





HOW TO JOIN

1. **Submit a signed resolution authorizing your Tribal Nation to join the JTBA.**

- A template resolution is available on the JTBA website.
- Resolutions can be submitted on the JTBA website under the “About” section.

2. **Submit Payment to the Kootenai Tribe of Idaho** (JTBA Treasurer)

Checks payable and mailed to:

Kootenai Tribe of Idaho

PO Box 1269

Bonn timers Ferry, Idaho 83805





Tribal Border Crossing Parity Act



- Canadian Indians have significant privileges under American immigration law.
- They do not need an immigration visa to enter the United States. 22 C.F.R. § 42.1(f)
- They are lawful permanent residents simply by residing in the United States. 8 C.F.R. § 289.2
- They cannot be deported for any reason. *Matter of Yellowquill*, 16 I. & N. Dec. 576, 578 (B.I.A. 1978)
- They can work in the United States and can also receive public benefits under certain circumstances.
- **But these privileges apply only to “persons who possess at least 50 per centum of blood of the American Indian race.” 8 U.S.C. § 1359.**



ARTICLE III OF THE JAY TREATY

- The Jay Treaty, signed in 1794 between the United States and Great Britain, recognized the right of Indians to move freely across the U.S.-Canadian border.
- Article III:
 - "[i]t is agreed, that . . . the Indians dwelling on either side of the [U.S.-Canadian border], freely to pass and repass, by land or inland navigation into the respective territories and countries of the two parties on the continent of America."



CODIFICATION OF THE JAY TREATY IN 1928

» Congress first codified the Indians' right of free passage with the Act of April 2, 1928:

[T]he Immigration Act of 1924 shall not be construed to apply to the right of **American Indians born in Canada** to pass the borders of the United States: Provided, That **this right shall not extend to persons whose membership in Indian tribes or families is created by adoption.**



RE-CODIFICATION OF THE JAY TREATY IN 1952

- By 1952, the U.S. limited the free passage right to those possessing **fifty percent or more blood of the “American Indian race”**.
- This change was a part of a larger revamp of immigration law. During this period, Congress was removing racial restrictions to citizenship, but to the contrary, introduced a new requirement that Canadian must have a certain degree of American Indian ancestry, known as blood quantum, to qualify for free passage.



WHY FIFTY PERCENT BLOOD QUANTUM?

- Two years after the INA, the general counsel for the INS stated that he had no idea why the blood quantum requirement was included.
- There are suggestions that:
 - Blood quantum was adopted from the 1934 Indian Reorganization Act, which includes one-half Indian blood as one of three alternative categories of Indians subject to the act.
 - Blood quantum was adopted from the pre-existing half-blood definitions in immigration and naturalization law, where Congress also set the line for naturalization eligibility for other races at one-half.
 - Blood quantum was adopted as part of Termination Era policy. 1950s marks the beginning of Termination where the U.S. sought to terminate Tribes and assimilate Indians.



ISSUES WITH FIFTY PERCENT BLOOD QUANTUM

- » **Federal Law:** *Santa Clara Pueblo v. Martinez* (1978) affirmed that Tribes have the inherent right to determine their membership, not the government. Some Tribes use blood quantum, some do not. In *Morton v. Mancari* (1974) it was determined that being “Indian” is a political status, not racial.
- » **Documentation:** Canada does not record blood quantum for its recognized Indians. This leads to a practical problem: how can U.S. officials determine if a Canadian Indian meets the blood quantum requirement?
- » **Validity of Proof:** The U.S. does not accept Canadian governmental documents as proof. Instead, they require "blood quantum letters" from Indian band officials.
- » **Constitutional Concerns:** The 50% blood quantum rule could be seen as arbitrary and potentially discriminatory. What exactly is the governmental interest being served by this rule? If it's border security, is blood quantum the most effective way to achieve this?



Section 289 of the INA (8 U.S.C. § 1359) – *the current law*

§ 1359. Application to American Indians born in Canada

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.

(June 27, 1952, ch. 477, title II, ch. 9, §289, 66 Stat. 234.)



Tribal Border Crossing Parity Act - *As introduced in the 116th Congress*

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who **are members, or are eligible to be members, of a Federally recognized Indian tribe in the United States or Canada, or** possess at least 50 per centum of blood of the American Indian race.



Tribal Border Crossing Parity Act – *As Introduced in the 117th Congress*

Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada **or the United States** to pass the borders of the United States, but such right shall extend only to persons who **are members, or are eligible to be members, of a Federally recognized Indian tribe in the United States or Canada, ~~or possess at least 50 per centum of blood of the American Indian race.~~**



DEPARTMENT OF HOMELAND SECURITY

- In June 2023, Senator Gillibrand (D-NY) and Representative Kilmer (D-WA) sent a letter to DHS requesting feedback on the Tribal Border Crossing Parity Act.
- DHS expressed support for the purpose of the bill (eliminating blood quantum) but had several policy concerns about the legislative text.
- We have since amended the Tribal Border Crossing Parity Act.





Tribal Border Crossing Parity Act – Prepared for the **118th Congress**

(a) Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons ~~who possess at least 50 per centum of blood of the American Indian race.~~ **who-**

(1) are members, or are eligible to become members, of a federally recognized Indian tribe in the United States; or

(2) (A) Has Indian status in Canada through registration under the Indian Act (R.S.C., 1985, c. 1-5); or

(B) Holds membership in a self-governing First nation in Canada.

(b) An individual who is admitted to the United States pursuant to subsection (a) shall have the status of an alien lawfully admitted for permanent residence.



118th CONGRESS

U.S. of House of Representatives



Derek Kilmer
(D-WA)



Ryan Zinke
(R-MT)



Russ Fulcher
(R-ID)

U.S. Senate



Steve Daines
(R- MT)



Kristen Gillibrand
(D-NY)



Tina Smith
(D-MN)



RESOURCES:

- [Tribal Border Crossing Parity Act Template Support Letter](#)
- [Tribal Border Crossing Parity Act One Pager](#)
- [NCAI Resolution of Support](#)
- [USET Resolution of Support](#)
- [ATNI Resolution of Support](#)



Right-of-Entry into Canada for U.S. Born Indians



BORDER CROSSING INTO CANADA FOR U.S.-BORN INDIANS

- Canada does not recognize the Jay Treaty and thus does not recognize a “right of entry” for U.S.-born Indians.
- However, in 2021, Canada enacted federal legislation to affirm the United Nations Declaration on the Rights of Indigenous Peoples Act (SC 2021, c.14, June 21, 2021) as an international human rights instrument with application in Canadian law.
- Minister Marc Miller has made it a priority to improve Indigenous border crossing.



WHY IS UNDRIP IMPORTANT FOR BORDER CROSSING?

Article 36 is directly relevant to border crossing and trade—

- Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

Article 20 is directly relevant to trade (in addition to Article 36)—

- Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.



CANADIAN ADVOCACY EFFORTS

Right of Entry:

- Pursue Canadian legislation to implement UNDRIP Article 36 that recognizes a right of entry for Indians who are citizens or members of federally-recognized Indian nations or tribes in the United States.

Identification/Credentials: Tribally issued ID cards as acceptable identification along with WHTI-compliant ID cards, and status cards.

Duty-Free Trade and Tariffs: Pursue legislation to implement UNDRIP Articles 20 and 36 to secure Indigenous right to trade freely without duty or tariffs.

Training for federal officials/employees:

- Improved communication and treatment of Indigenous peoples at the border.
- Education on ceremonial and sacred goods.



JTBA AND THE GOVERNMENT OF CANADA

