



# **JAY TREATY BORDER ALLIANCE CONFERENCE**

**January 18, 2023  
Milwaukee, Wisconsin**



# Opening Remarks

Ned Daniels, Jr.

Chairman, Forest County Potawatomi Executive Council



**FOREST COUNTY  
POTAWATOMI**  
*Keeper of the Fire*





# Remarks by JTBA Co-Chair

Jennifer Porter,  
Chairwoman, Kootenai Tribe of Idaho





# Kootenai Tribe of Idaho

?Aq anqmi (Bonners Ferry Band)

\*River People \*Meadow Valley People

\*Canoe People \*Valley People \*



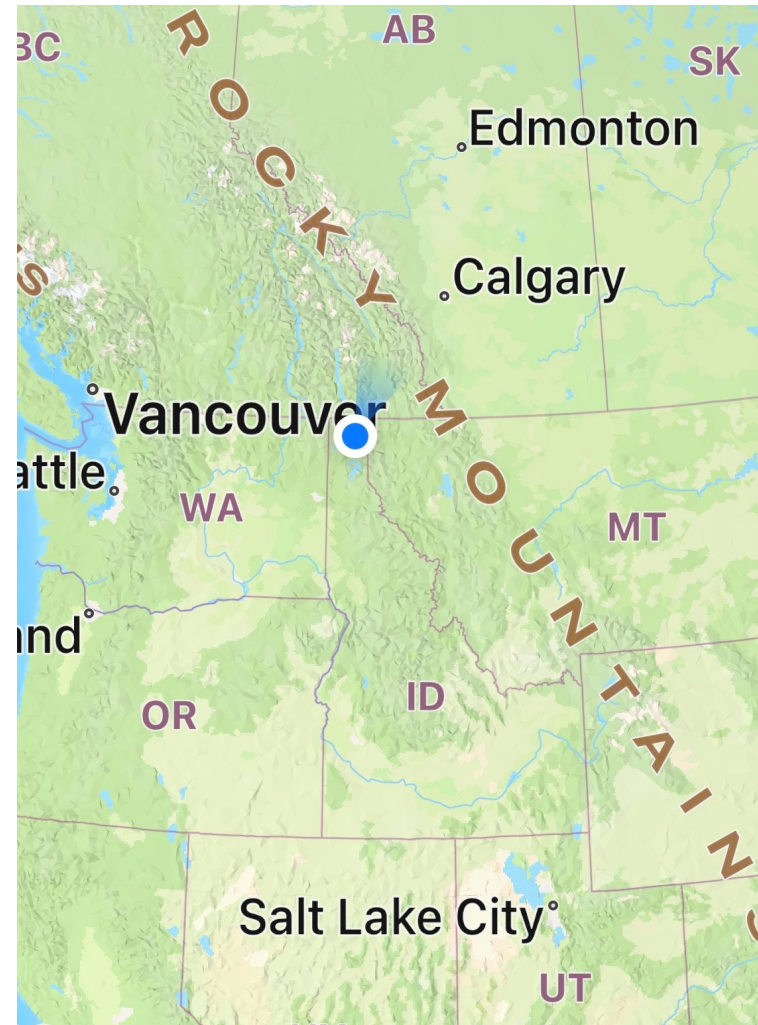




# Kootenai Tribe of Idaho

We are located in the northern tip of the Idaho panhandle.

30 miles south of the Canadian/US Border

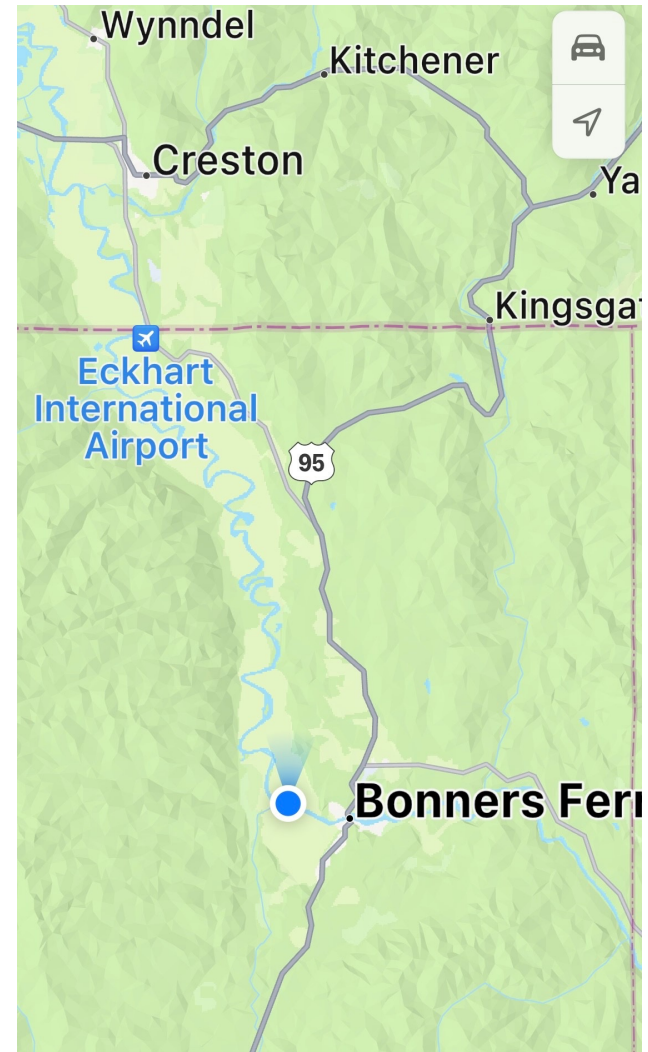






Idaho has two land border crossings along its 45-mile border with British Columbia, Canada

- Porthill/Rykerts : mostly passenger vehicles
- Easport/Kingsgate : more truck traffic





# Kootenai Tribe of Idaho

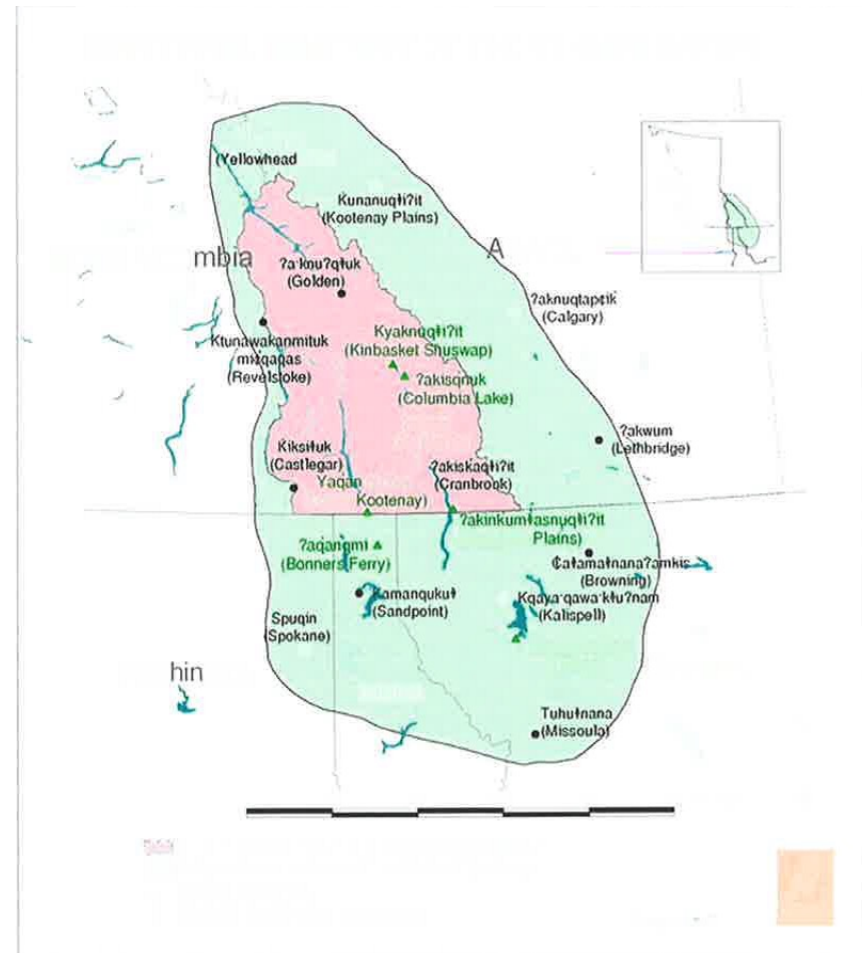
One of Six Bands of the Kootenai Nation.

- 1 in Montana and 4 in Canada.

Our Aboriginal Territory spans over lower British Columbia-Western Montana-North Idaho (approx. 27,000 square miles)

Reservation is 12.5 acres. Overall, the Tribe has purchased a little over 3,000 acres in the Boundary County.

168 Tribal Citizens





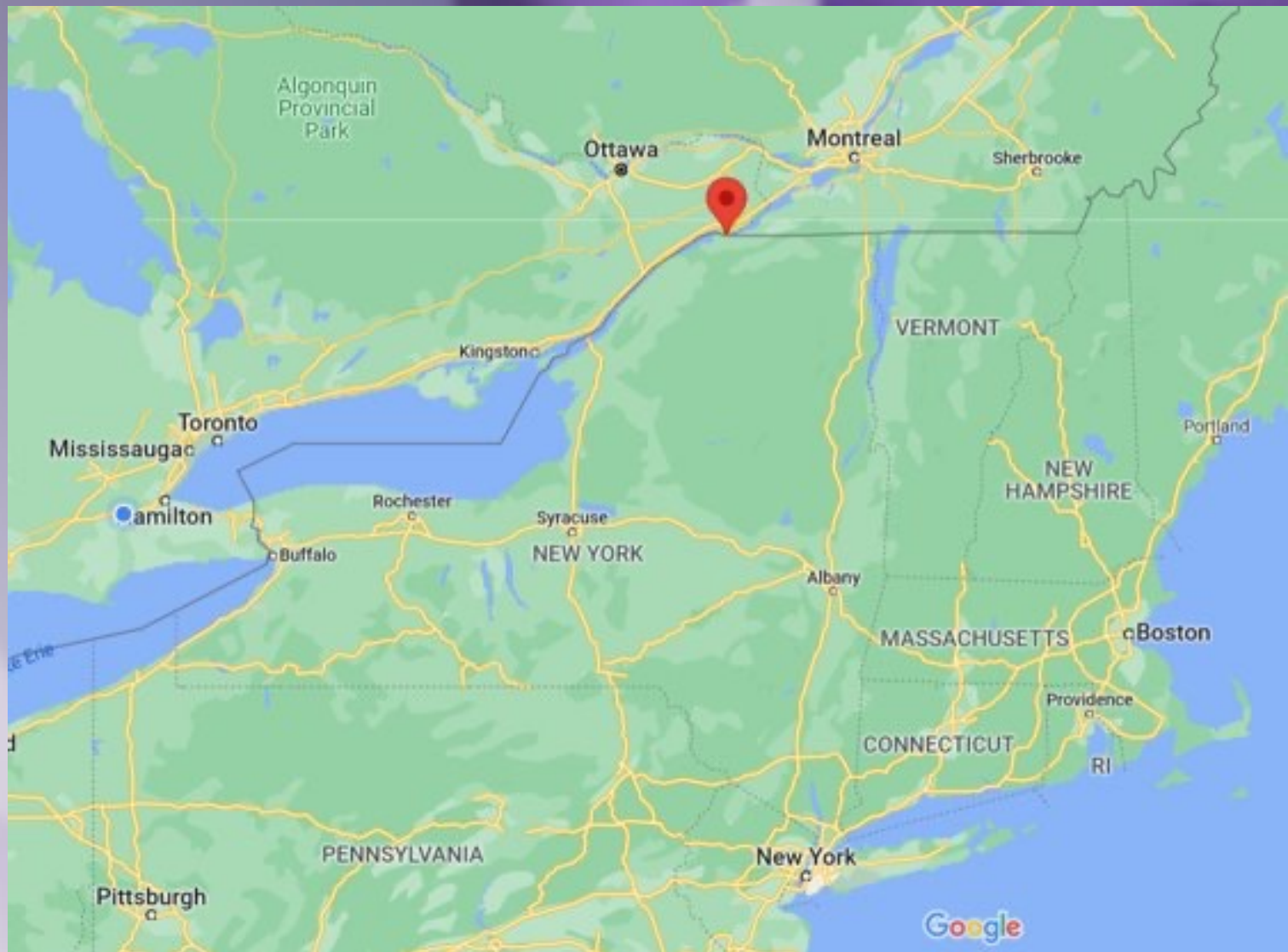


# Remarks by JTBA Co-Chair

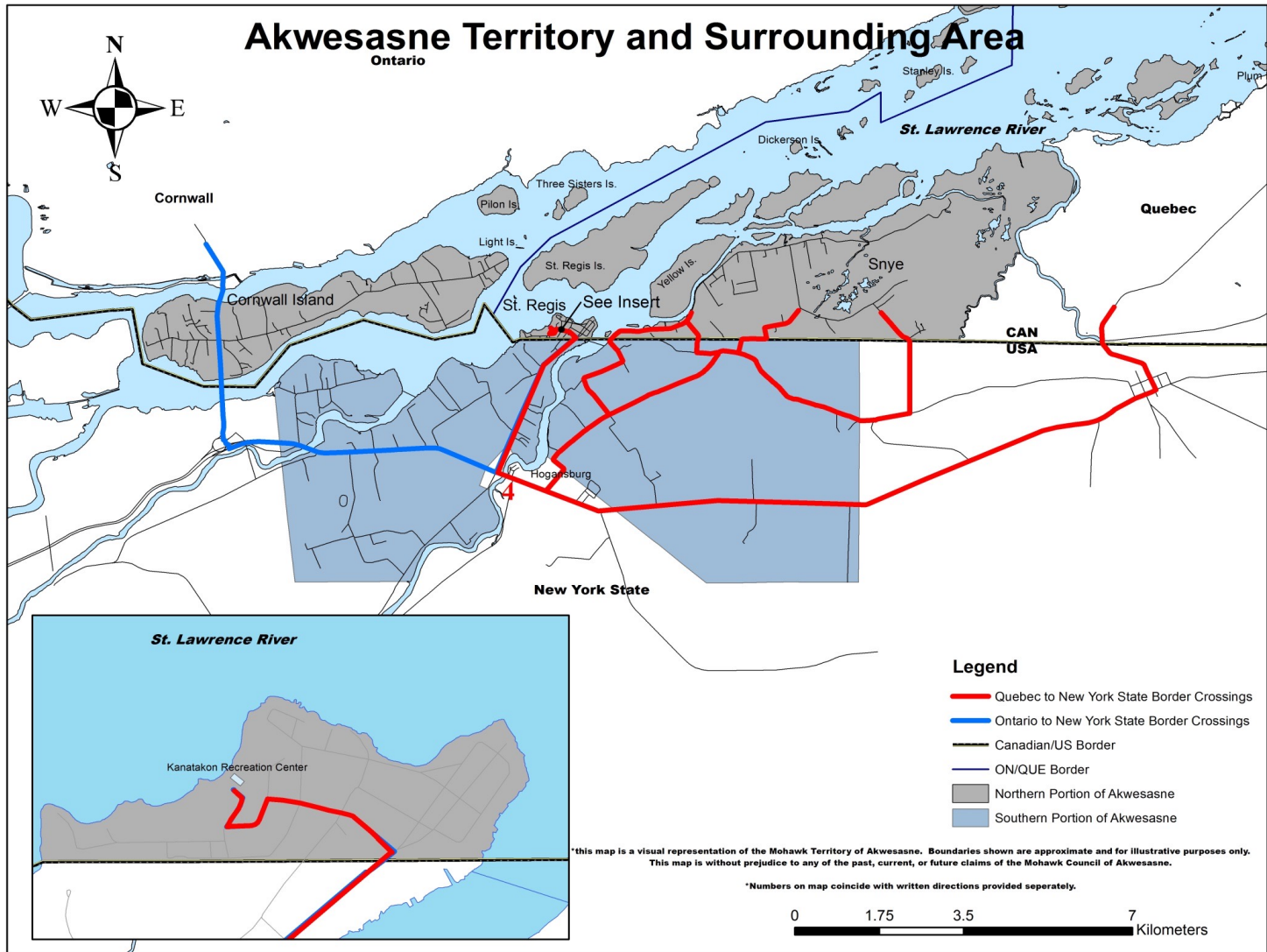
Abram Benedict,  
Grand Chief, Mohawk Council of Akwesasne







# Akwesasne Territory and Surrounding Area





# Border Markers





# Jay Treaty Border Alliance Overview





# ABOUT THE JAY TREATY BORDER ALLIANCE

- Formerly named the Northern Tribal Border Alliance
- Formed in 2017
- 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.



# 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






# JAY TREATY BORDER ALLIANCE WEBSITE

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

**JAY TREATY BORDER ALLIANCE**

HOME ABOUT ISSUES LEGISLATION RESOURCES EVENTS



**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** →

**JAY TREATY BORDER ALLIANCE**

HOME ABOUT ISSUES **LEGISLATION** RESOURCES EVENTS

## 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**



# WORK OF THE JAY TREATY BORDER ALLIANCE

## 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 5<sup>th</sup> Annual Summit





# JTBA 5<sup>th</sup> Annual Summit

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







## **UPCOMING EVENTS: JTBA Summit**

January 31, 2023 - Vancouver, B.C.

February 1, 2023 - Lummi Nation

### **Other Upcoming Events:**

Washington DC Fly-in (TBD: May 2023)

JTBA Fall Summit in Calgary (TBD)





# **Tribal Border Crossing Parity Act**



## THE 1794 TREATY OF AMITY, COMMERCE, AND NAVIGATION (JAY TREATY)

- Representatives of the United States and Great Britain signed the Jay Treaty, which sought to settle outstanding issues between the two countries.
- The Jay Treaty delineated the United States-Canadian border, splitting many tribal communities living along this border in half.





# ARTICLE III OF THE JAY TREATY

- In order to reconcile division caused by the northern border, Article III preserved the right of Native Americans to pass freely...
- 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

- » Congress first codified the Indians' right of free passage across the border with the Act of April 2, 1928 (the Act of 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.**





**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.)



## Why 50% Blood Quantum?

- Two years after the act, the general counsel for Immigration and Naturalization Service stated that he had no idea why the blood quantum requirement was added.
- There are suggestion that it was adapted from the 1934 Indian Reorganization Act, which includes one-half Indian blood as one of three alternative categories of Indians subject to the act.
- It is likely that the definition came from the pre-existing half-blood definition in immigration and naturalization law, where Congress also set the line for naturalization eligibility for other races at one-half.
- As the United States generally has moved beyond direct invocations of race in its immigration law, the free passage provision is truly anomalous





- » Current law authorizes border security agents to ask tribal members to prove they have at least **50 percent Indian blood quantum**.
  - » Current regulations are outdated, inconsistent with federal Indian law, and create unnecessary tension between tribal members and border security agents.
1. *Morton v. Mancari* (1974): a case that affirmed that tribal members are members of a distinct/unique political subgroups, and their special treatments is not racial, its political. This stems from the government-to-government relationship Tribes have with the United States.
  2. *Santa Clara Pueblo v. Martinez* (1978): a case that affirmed that Tribes have the inherent right to determine their membership.



Tribal Border Crossing Parity Act - As introduced in the **116<sup>th</sup>**  
***Congress***

**§ 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 **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 117<sup>th</sup> 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.~~



# **The Biden Administration and the 118<sup>th</sup> Congress**





## 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 incorporate the United Nations Declaration on the Rights of Indigenous Peoples Act (SC 2021, c.14, June 21, 2021).
- The purposes of the UNDRIP Act are to—
  - (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and
  - (b) provide a framework for the Government of Canada’s implementation of the Declaration.



## 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 IMPLEMENTATION

- The Canadian Attorney General is now initiating the process of implementing the UNDRIP Act:
  - <https://www.justice.gc.ca/eng/declaration/engagement/kit-trousse.html>
- In addition to Border Crossing, ALL of the provisions of the UNDRIP Act are subject to section-by-section implementation, which will take many years to implement.



## OTHER EFFORTS

- In addition, the *R v. Desautel* (2021) Canadian Supreme Court case recognizes an aboriginal right to hunt for U.S.-born Natives affiliated with Indigenous Nations that have historical ties in Canada
  - Defining “aboriginal peoples of Canada” under Art. 35 of the Constitution.
  - Although this case avoided addressing the Right of Entry issue, its holding expanded possible grounds for an Indigenous Right of Entry for Tribes that were living or engaging in activities in what is now Canada at the time of European contact/colonization.
  - However, we are requesting that hunting and fishing rights be defined independently of a Right of Entry.





## 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.
- Request establishment of a Canadian Task Force to coordinate and collaborate with the U.S. Northern Border Caucus on border policy.

**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.



# Ottawa Lobby

April 3-7, 2022 - Mohawk Council of Akwesasne and the JTBA held a series of in-person with various Canadian Ministers and Members of Parliament in Ottawa, Canada.

Approximately 35 Tribal and First Nations leaders, attorneys and advisors were in attendance.







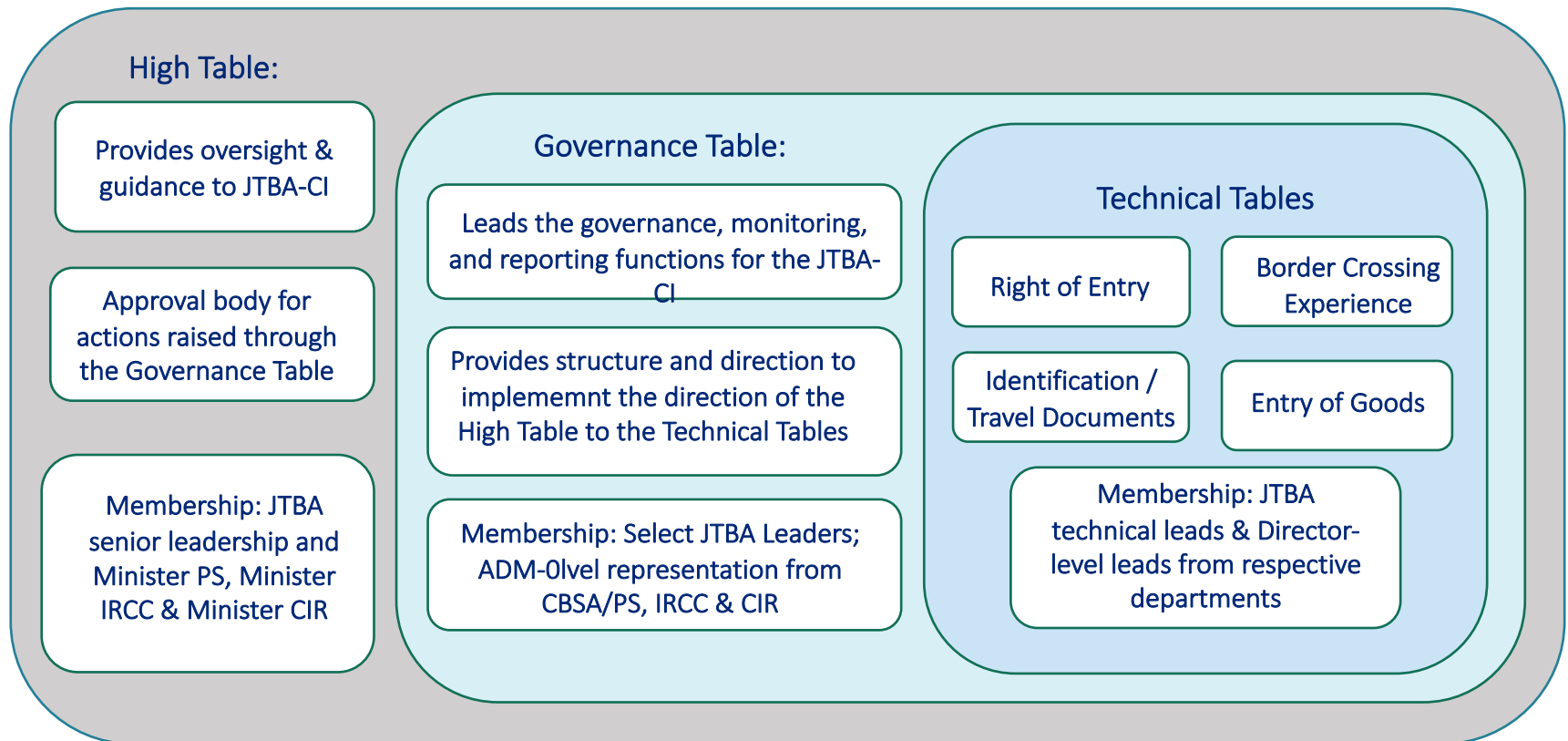
## UNDRIP CONSULTATION

The Mohawk Council of Akwesasne received a grant from Canada to engage in consultation on Indigenous border crossing.

The overall findings of the consultation will be included in a report that will be submitted to Canada in March of 2023.



## JTBA AND THE GOVERNMENT OF CANADA







# **Tribal Leader Discussion**



**LUNCH**





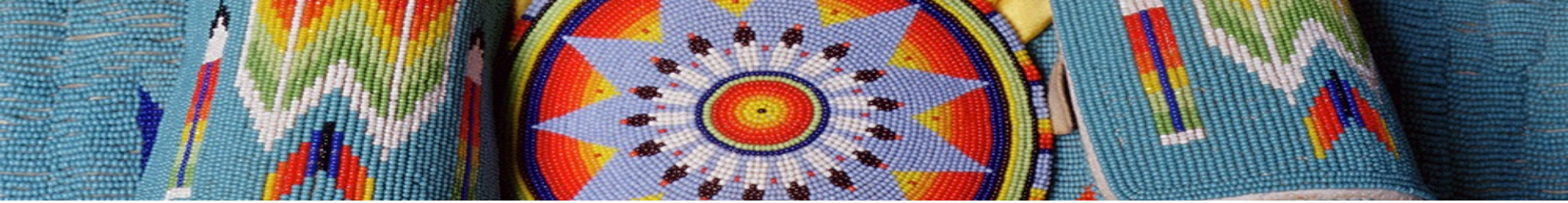
# **U.S. Department of Homeland Security and U.S. Customs and Border Protection**



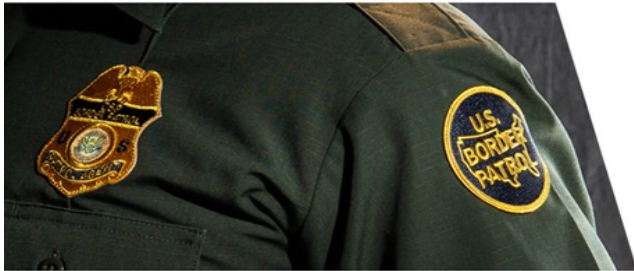




- On March 1, 2003, U.S. Customs and Border Protection became the nation's first comprehensive border security agency with a focus on maintaining the integrity of the nation's boundaries and ports of entry.
- Before CBP, security, compliance and facilitation of international travel and trade were conducted by multiple organizations, such as:
  - United States Customs Services (USCS)
  - Immigration and Naturalization Services (INS)
  - United States Border Patrol (USBP)
  - United States Department of Agriculture (USDA)
- After the merger in 2003, the responsibility of securing the border falls under three agencies within CBP:
  - Office of Field Operations (OFO)
  - Office of Border Patrol, commonly known as United States Border Patrol (USBP)
  - Office of Air and Marine Operations

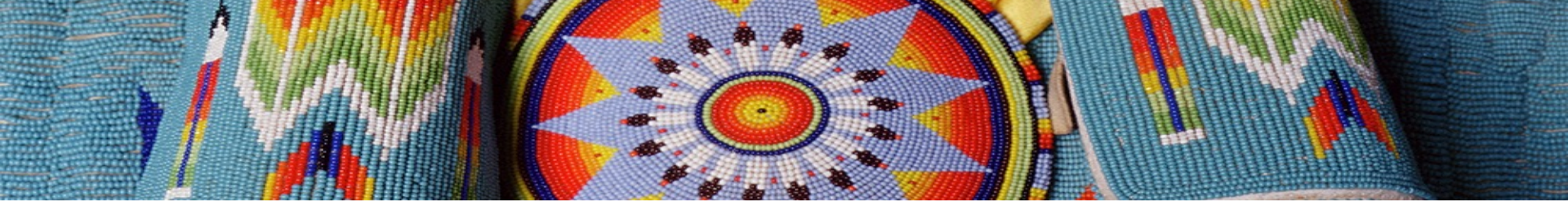


# CBP Components



- United States Border Patrol (USBP) is responsible of securing the border between ports of entry, as well as inland immigration checkpoints.
- CBP Office of Field Operations (OFO) is responsible of securing the border at the ports of entry, such as airport and land border entry point.
- CBP Air and Marine Operations (AMO) provides aerial and marine support for CBP.





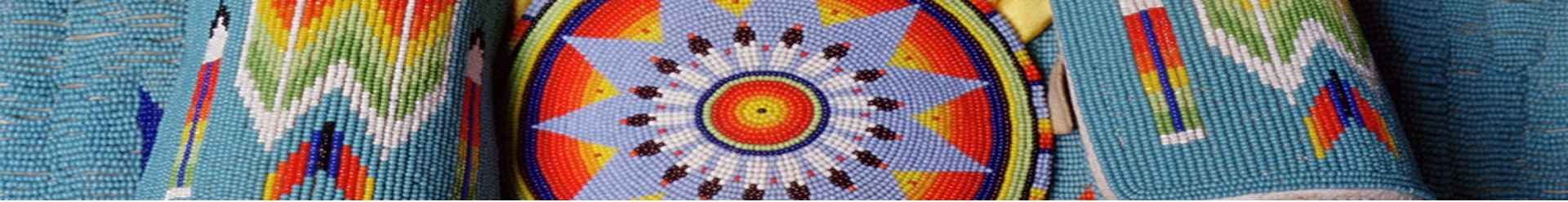
Our Mission: To safeguard America's borders, facilitate legitimate trade and travel by protecting our nation from dangerous people and materials while enhancing the Nation's global economic competitiveness.

#### Border Security

- Stop terrorism
- Prevent unlawful entry
- Stop human smugglers
- Stop drug smugglers
- Prevent bioterrorism and agricultural disease
- Secure national events and help with disaster recovery

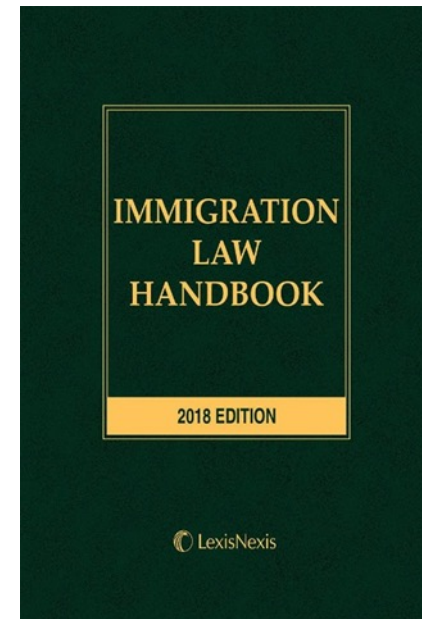
#### Travel and Trade Facilitation

- Collect customs revenue
- Process travelers entering the U.S.
- Stop dangerous imports
- Stop counterfeit products from entering the U.S.
- Stop agricultural disease
- Seize illegal currency

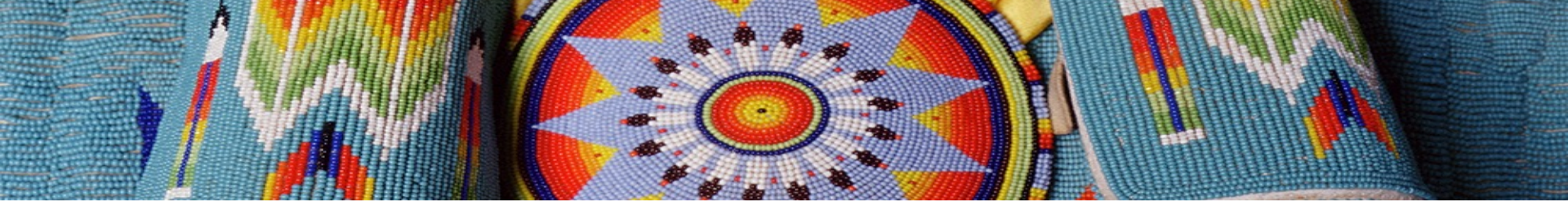


# Admissibility and Inadmissibility

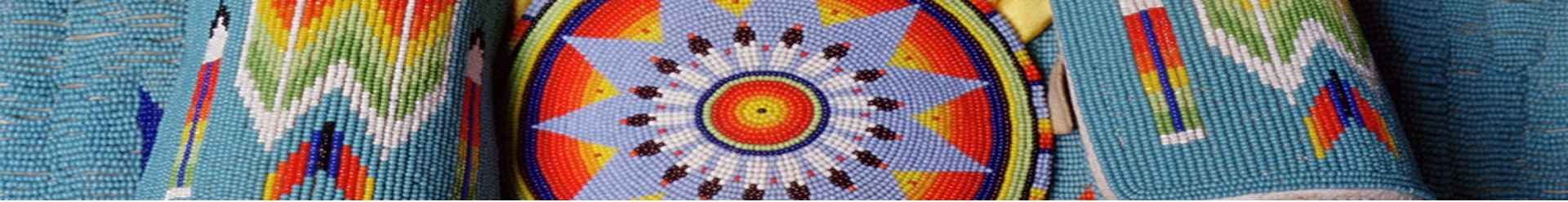
- The Immigration and Nationality Act (INA) sets forth grounds for inadmissibility. Individuals who are inadmissible are not permitted by law to enter or remain in the United States. The general categories of inadmissibility include:
  - Health
  - Criminal activity (including controlled substances offense(s)).
  - National security
  - Public charge
  - Lack of labor certification (if required)
  - Fraud and misrepresentation
  - Prior removals, unlawful presence in the United States, and several miscellaneous categories.



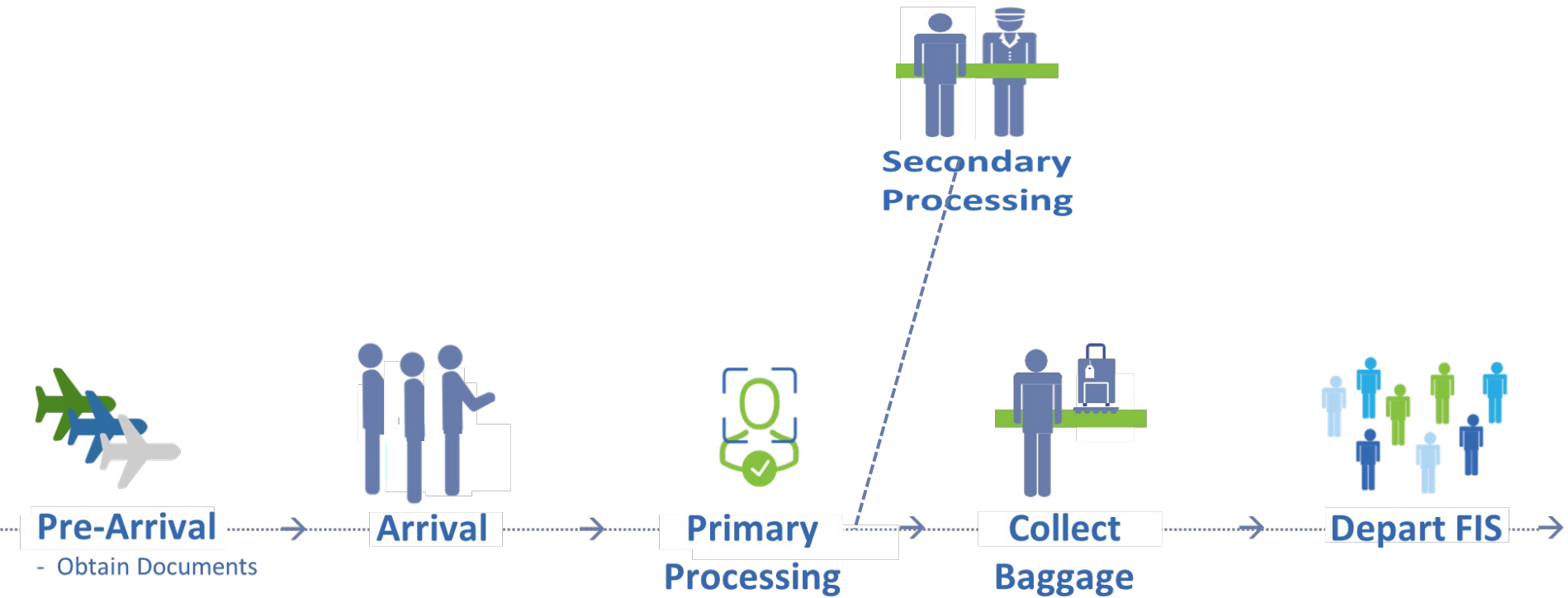




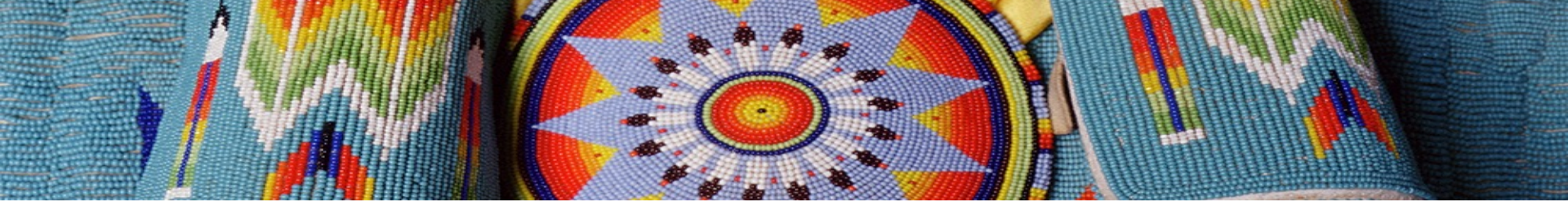
- Port of Entry (POE) is a location designated to process the entry of travelers and/or merchandises into the United States. The common POE environments are airport, seaport and land border.
- Preclearance Facility is where CBP conducts immigration and customs inspection overseas, in accordance to Immigration and Nationality Act section 235(a).
  - Currently, there are 16 CBP Preclearance Facilities located abroad:
    - Canada:
      - Toronto, Vancouver, Victoria, Halifax, Montreal, Winnipeg, Edmonton, Calgary and Ottawa.
    - Bermuda
    - Bahamas:
      - Freeport and Nassau
    - Aruba
    - Republic of Ireland:
      - Dublin and Shannon
    - United Arab Emirates – Abu Dhabi



## Port of Entry Processing





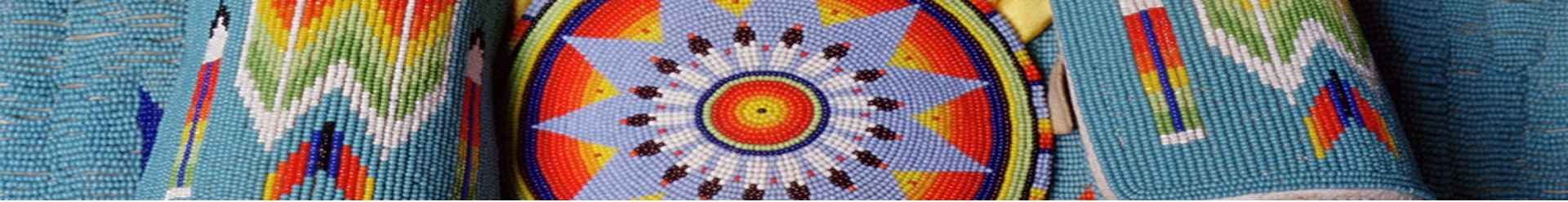


## **Tribal Liaison Program**

The Tribal Liaison position was created in 2014 to enhance CBP's commitment to the partnership that centers on cultural understanding and trust with the community

The liaison is a direct conduit between CBP, community members and tribal leaders. The position provides a centralized, single point of contact to provide services and resolve issues.

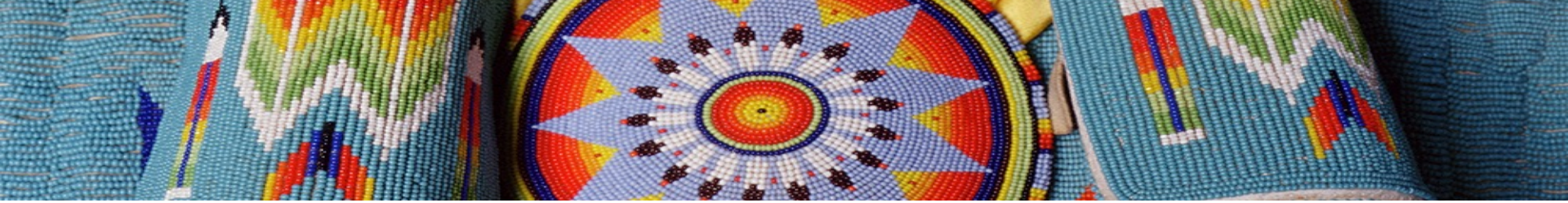
The liaison cultivates and builds on, an already existing relationship with the tribe through attending meetings with tribal leaders and stakeholders. Open communication.



The Tribal Liaison Unit supports the field by maintaining positive working relationships with tribal leadership and their constituents.

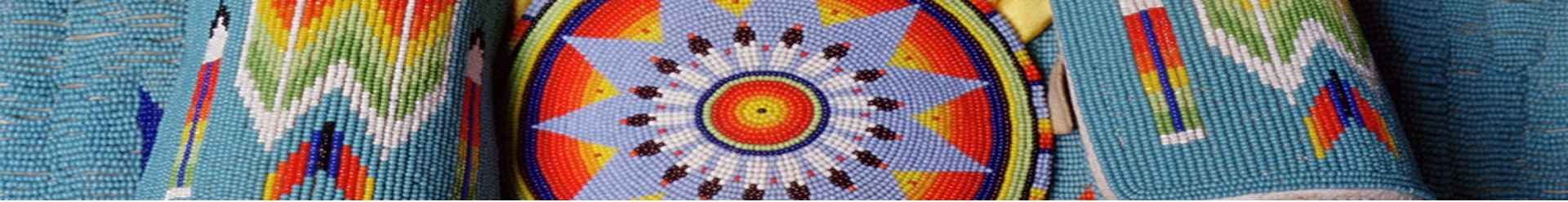
- They serve as subject matter experts on laws, policies, and regulations regarding law enforcement activities and resource deployments on Tribal lands.
- Provides direct contact to the Chairman of the Nation and the Chair of the Legislative Council to our Sector Chief Patrol Agent along with providing quarterly briefings.
- Provides updates to the district councils and communities along with assisting in cultural events and ceremonies





## Best Practices

- Native American Cultural Awareness training.
- Shared trainings with Tribal Law Enforcement
- Attend tabletop exercises that impact Area of Responsibility
- Installed LED signage in primary que with display in the Tribal Nations Language



**U.S. Customs and Border Protection  
Chicago Field Office  
Local Contact**

**Holly M. Smith**

Port Director

Customs & Border Protection

4915 S Howell Ave., #200

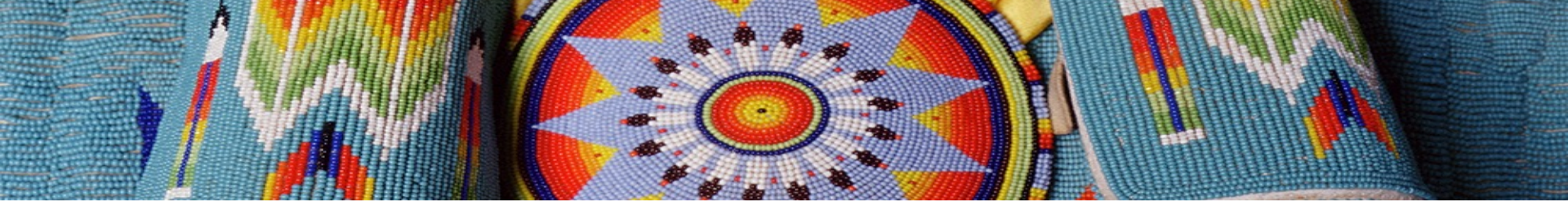
Milwaukee, WI 53207

(O) 414-486-7790 x 2000

(M) 262 289-0326

[Holly.M.Smith@cbp.dhs.gov](mailto:Holly.M.Smith@cbp.dhs.gov)





## For Assistance

### **Intergovernmental Public Liaison**

(202) 325-0775

[CBP-Intergovernmental-Public-Liaison@cbp.dhs.gov](mailto:CBP-Intergovernmental-Public-Liaison@cbp.dhs.gov)

### **Point of Contact:**

Bronia E Ashford

Chief of Tribal and Community Affairs

[bronia.e.ashford@cbp.dhs.gov](mailto:bronia.e.ashford@cbp.dhs.gov)

### **DHS Traveler Redress Inquiry Program (DHS TRIP)**

<https://www.dhs.gov/dhs-trip>

### **CBP Information Center**

(877) CBP-5511 or (202) 325-8000

*Monday – Friday (except holidays), 8:30am – 4:00pm EST*

<https://help.cbp.gov> and <https://helpspanish.cbp.gov>



## **Discussion on Organization and Membership**





**Reception @ 5 p.m.**

**Dinner @ 6 p.m.**

**Thank you to our host and sponsor  
Forest County Potawatomi!**