

# Native Americans Born in Canada: Your rights at the Border and in the U.S.

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## What is the Jay Treaty?

The rights of American Indians to freely cross the border in order to live and work in both the United States and Canada is based on the Jay Treaty, an agreement signed by the U.S. and Great Britain in 1794.

Congress subsequently affirmed these rights in section 289 of the 1952 Immigration and Naturalization Act (INA). While the INA provided some additional rights, it also 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 following rights.

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 receive financial aid as an “eligible non-citizen”;
4. not be deported by the U.S. government; and
5. receive 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 (welfare), and

Social Security Disability Insurance. You must meet the other standard eligibility requirements to get these benefits.

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 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 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. In order to get the card, you must prove your age, identity (preferably with a driver’s license or passport), and immigration status (using your “letter of blood quantum” which confirms that you have at least 50% aboriginal blood) **and** your long form birth certificate, or your green card only, if you have one).

## **What do I need when I cross the border?**

Previously, tribal enrollment cards with a photo affixed to the cards and the Indian and Northern Affairs Canada card (also called an “INAC card” or “status card”) were accepted for entry into the U.S. **As of June 1, 2009, Canadian citizens are required to present a passport or Enhanced Driver’s License.**<sup>1</sup>

INAC is developing a new identification card for Canadian Indians, which, upon designation by the U.S. government, will be acceptable for entry. However, at this time there is no specific date for when the new Secure Certificate of Indian Status card will be available. On May 15, 2009, the U.S. Department of Homeland Security informed the National Congress of American Indians that it will continue to accept photo identification tribal cards and the current Certificate of Indian Status for an undefined “transition period.”

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

## **What other documents should I bring with me?**

To secure the legal right to 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. To apply for a job and exercise other Jay Treaty rights, you will need documents in addition to the documents required to cross the border. Therefore, **bring as many of these documents as possible:**

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<sup>1</sup> These documents denote both identity and Canadian citizenship. They are acceptable documents for entry into the U.S. by land and sea; however, not all provinces currently issue these documents.

1. a letter of blood quantum from your band office stating you have at least 50% aboriginal blood. This letter is **necessary** to make sure you receive 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 you were born if you do not have a copy of the certificate.
3. your Certificate of Indian Status, also known as a Status Card. This card 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, you should 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.

## **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.<sup>2</sup> This requirement applies to all travelers, including children.

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<sup>2</sup> 8 U.S.C. 1182(a)(7)(B)(i)

**Do American Indians born in the U.S. have these same rights in Canada?**

Not necessarily—Canada has its own laws governing the rights of Native Americans entering Canada.

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

Even if you have lived in the U.S. most of your life, 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. The answer will depend 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. In order to find out whether you acquired U.S. citizenship from your parent, speak with an immigration attorney.

**How do I get more information?**

If you are low-income and live in Washington State, you can get legal advice by calling Northwest Justice Project’s Coordinated Legal Education, Advice and Referral (CLEAR) line at 1-888-201-1014 or TTY - 1-888-201-9737, between the hours of 9:15 a.m. and 12:20 p.m., Monday through Friday. **Press 5 to speak with the CLEAR Native American Specialist, Brooke Pinkham.**

*Some of this information is based on an excellent resource from the American Indian Law Alliance: <http://www.ptla.org/wabanaki/jaytreaty.htm>*

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