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RIGHTS OF FIRST NATION MEMBERS IN THE UNITED STATES

What does this guide do?

This guide summarizes the legal rights of First Nations members in the U.S. It does not cover every Jay Treaty-related issue and is not a substitute for legal advice.

If you have questions, you should consult a lawyer or call NAICOB at 617.232.0343

What is the Jay Treaty?

The right of American Indians to freely cross the border and live and work in both the U.S. and Canada comes from the Jay Treaty, an agreement signed by the U.S. and Great Britain in 1794. The Jay Treaty recognized the pre-existing right of indigenous peoples to move freely across their traditional lands, which were separated by the newly created border.

Congress affirmed these rights in Section 289 of the 1952 Immigration and Naturalization Act (INA). The INA limited Jay Treaty rights to American Indians born in Canada with at least 50% Aboriginal (Indian) blood.

Why does the Jay Treaty matter today?

If you were **born in Canada** and can prove to the U.S. government that you have **at least 50% aboriginal blood**, you have the rights to:

1. Freely cross the Canadian-U.S. border
2. LIVE and WORK in the U.S.
3. APPLY FOR PUBLIC BENEFITS in the U.S.
4. Register for college or university as a DOMESTIC student

You do **NOT** need to:

1. Get a green card (but you CAN apply for one)
2. Have a work permit
3. Register for the military

You **MUST**:

1. Get a SOCIAL SECURITY CARD before applying for jobs
2. Pay U.S. customs duties on goods that you bring into the U.S.



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The U.S. government **CANNOT**:

1. DEPORT you
2. EXCLUDE YOU FROM ENTRY to the U.S.
3. DENY SERVICES/BENEFITS to you because you are a First Nations member¹

How do I prove that I am a First Nations member to the U.S. government/U.S. Customs and Immigration Services (USCIS)?

In order to cross the border, work, or apply for public benefits in the U.S., you **MUST** show **ANY- and perhaps ALL-** of the following documents to USCIS, your employer, or the person at the agency that runs the program you are applying for:

1. A letter from your band office or from Indigenous and Northern Affairs Canada stating that you have at least 50% aboriginal blood
2. A Secured Certificate of Indian Status Card (the card has a red stripe on the top)
3. Your LONG FORM birth certificate (this version includes your parents' information)
4. A passport
5. Another photo ID (a driver's license, for example)
6. Additional documents required for certain First Nations:
 - a. If you are Haudenosaunee: a Red I.D. Card
 - b. If you are Inuit: an Inuit enrollment card from one of the regional Inuit land claim agreements

Keep in mind that if you choose not to apply for a green card, you will have to provide this proof **every time** you want to cross the border or apply for a job/program in the U.S.

Where can I get these documents?

To request a letter from your band office or INAC: contact your band office or call Indigenous and Northern Affairs Canada at 1-800-567-9604 (TTY 1-866-553-0554).

To request a copy of your long form birth certificate: contact the Office of Vital Statistics in the province where you were born.

¹ Some programs require participants to be U.S. citizens or permanent residents. Please see the section on public benefits in this guide or call the agency that runs the program you are applying to for more information.



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What if I cannot get a letter from my band office?

There may be other ways to prove that you have 50% or more aboriginal blood. Some ways that have been accepted by the US government are:

1. Showing your PARENTS' birth certificates, if:
 - a. they show that they both had 100% aboriginal blood **OR**
 - b. their COMBINED aboriginal blood adds up to 100%
2. Giving a SIGNED STATEMENT BEFORE A JUDGE that legally swears that you have at least 50% aboriginal blood
3. Getting a LETTER from Indigenous and Northern Affairs Canada (INAC) stating that your PARENTS and ALL FOUR GRANDPARENTS are status Indians

Are there additional requirements for Inuit and Métis members?

If you are Inuit: Canada treats Indians and Inuit peoples differently, but the US does NOT appear to do so. Once you have proved that you have 50% or more aboriginal blood, you are eligible to cross the border, live and work in the U.S., and apply for public benefits.

If you are Métis: According to the USCIS website: "Letters or identification cards issued by Métis associations or other third parties, by themselves, cannot definitively establish your American Indian blood percentage in reference to a specific Canadian Indian Band or US Indian Tribe."² You may have to provide a personal history and other documentation.

What if my spouse or child (under age 21) does not have at least 50% aboriginal blood?

Your spouse or child will not automatically qualify for the same rights as you do.

Once you have proved to customs that you are legally able to enter the US as a First Nation member, you must file another form with USCIS, called a Form I-130 ("Petition for Alien Relative"), to allow your non-U.S. citizen or resident spouse or child to enter the U.S. with you. This form can be filled out from anywhere in the world. If you want your spouse or child to be able to enter the U.S. with you, the I-130 must be filed and approved by USCIS **before** you enter the U.S.

² See <https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-american-indian-born-canada>.



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WHAT DO I NEED TO KNOW ABOUT CROSSING THE BORDER?

What will happen when I am at the border?

When you are at the border and want to enter the US:

1. You will be asked for proof that you are legally able to enter the country. You should show your documents to the USCIS agent.
2. You will have to fill out a form called Form I-181. This form tells the US government that you are a First Nations member.
3. The customs officer will forward a set of your fingerprints to the FBI for a criminal background check. However, you cannot be denied entry to the US based on a criminal record.

You do NOT need to have a green card, but can apply for one. If you decide you want to apply for a green card, you will be asked to fill out another form called Form I-89, Data Collection Card, and submit fingerprints and a photograph. The completed I-89 is forwarded to the USCIS Texas Service Center with a copy of the Form I-181, for issuance of an I-551 Permanent Residence Card (green card).

What documents do I need to show to the person working at customs?

You should be prepared to show ANY- and perhaps ALL- of the following documents:

1. A letter from your band office or from Indigenous and Northern Affairs Canada (INAC) stating that you have at least 50% aboriginal blood
2. A Secure Certificate of Indian Status Card (the card has a red stripe on the top)
3. Your LONG FORM birth certificate (this version includes your parents' information)
4. A passport
5. Another photo ID (a driver's license, for example)
6. Additional documents required for certain First Nations:
 - a. If you are Haudenosaunee: a Red I.D. Card
 - b. If you are Inuit: an Inuit enrollment card from one of the regional Inuit land claim agreements

Remember, if you do not get a green card, you will have to provide this documentation every time you want to cross the border.



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How do I put this information into the Form I-181?

WHAT THE FORM SAYS	WHAT YOU SHOULD WRITE
“Under the following provision of law”	<ol style="list-style-type: none"> 1. Check the box marked “other law (specify)” 2. Write in “INA SEC 289 (S-13)”
“Class of Admission”	Write in “S-13”
“Remarks”	Write in “Canadian-born American Indian admitted for permanent residence”

What do I do if the person working at customs does not know about my right to enter the US without a green card?

Tell the person that as a First Nation member, you have the right to enter the U.S. without a green card. The legal source for this right is Section 289 of the Immigration and Naturalization Act (8 U.S.C. 1359).



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WHAT DO I NEED TO KNOW ABOUT WORKING IN THE US?

Once I am in the US, what do I have to do to be able to work here?

You have the right to work in the U.S. without a green card or a work permit. You **MUST** get a Social Security card before applying for jobs.

How do I get a Social Security card?

You can apply for a card at a Social Security Administration (SSA) office. There are offices throughout the state. To find out the location of the office closest to you, you can call the SSA at 1.800.772.1213 or go online and enter your zip code on the SSA office locator webpage: <https://secure.ssa.gov/ICON/main.jsp>.

What documents will I need to bring with me to the Social Security office?

You will need to bring documents with you that prove your AGE, IDENTITY, and IMMIGRATION STATUS.

ISSUE	WHAT TO BRING
AGE	<ol style="list-style-type: none"> 1. A BIRTH CERTIFICATE is the preferred/easiest form 2. A non-US passport is also okay
IDENTITY	<p>Any of the following:</p> <ol style="list-style-type: none"> 1. Driver's license 2. Adoption record 3. Employer ID card 4. Passport 5. Marriage or divorce record 6. Military record 7. Insurance policy 8. School ID card 9. Other form of ID
IMMIGRATION STATUS	<ol style="list-style-type: none"> 1. A letter from your band office stating that you have at least 50% aboriginal blood, AND 2. Your LONG FORM birth certificate



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What if the person working at the Social Security office does not know that I do not need a green card to get a Social Security card?

Remind them that as a First Nation member you do not need a green card to get a Social Security card. Tell them to look up these regulations:

1. S100502.105: “Exemption from alien provisions for certain non-citizen Indians”
2. RM00203.430: “Evidence for an SSN card for an Alien Lawfully in the US Without DHS Documents.”

Once I have a Social Security card and apply for a job, what will I need to show my employer to prove my legal status?

You do NOT need a green card or a work permit. When you start working, you will be asked to fill out an I-9 Form. This form asks for proof of your identity and immigration status. The U.S. government uses the information that you provide in the I-9 to verify that you are in the country legally and have the right to work here. You will need some- if not all- of the documents that you used to cross the border to prove to your employer that you have the right to work in the U.S.

What if I am asked for a green card and I do not have one?

Tell your employer that as a First Nation member you do not need to have a green card. Your employer might get confused because the I-9 does not list examples of documents that can be used to prove the immigration status of a Canadian-born indigenous person.

If this is an issue for you, please call NAICOB at 617.232.0343.



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What documents do I need to complete the I-9 Form?

There are several categories of documents that are required to prove your identity and work authorization. You can choose **ONE** of the following ways to prove your identity and right to work in the U.S:

1. The **LETTER FROM YOUR BAND OFFICE, AND**
 - a. Your social security card; or
 - b. Canadian or US driver's license; or
 - c. School ID (with a photo); or
 - d. US military card; or
 - e. US Coast Guard Merchant Mariner Card

2. Your **SOCIAL SECURITY CARD, AND**
 - a. Canadian or US driver's license; or
 - b. School ID (with a photo); or
 - c. US military card; or
 - d. US Coast Guard Merchant Mariner Card

3. Your **GREEN CARD** (if you chose to get one)



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WHAT DO I NEED TO KNOW ABOUT PUBLIC BENEFITS?

Am I eligible for public benefits?

Once you have proved to the U.S. government that you meet the blood quantum requirement, you have the right to apply for some public benefits programs. You will also have to prove that you meet other eligibility requirements.

Keep in mind that if you meet the eligibility requirements to apply for a program, this does not guarantee that you will be accepted in the program. If you are interested in a specific program, you should contact the agency that oversees that program for more information about eligibility and the application process.

How do I prove that I meet citizenship/immigration requirements for a program?

When you apply for federal (and some state-based) programs, you will be asked to provide proof that you are a First Nation member living/working in the US. You may need to use any/all of the documents that you provided at the U.S. - Canadian border. These include:

1. A letter from your band office stating that you have at least 50% aboriginal blood
2. A certificate of Indian Status Card (the card has a red stripe on top)
3. Your LONG FORM birth certificate (this version includes your parents' information)
4. A passport
5. An additional photo ID (a driver's license, for example)
6. Additional documents required for certain First Nations:
 - a. If you are Haudenosaunee: a Red I.D. Card
 - b. If you are Inuit: an Inuit enrollment card from one of the regional Inuit land claim agreements

The following is an overview of programs you might qualify for.

Federal programs:

1. **Supplemental Security Income (SSI):** SSI is a needs-based assistance program for children and adults over the age of 65 with disabilities or who are blind. The program is run by the Social Security Administration (SSA).

In addition to proof of blood quantum, you must: live in a U.S. state; be either a child (under 18) **or** an adult over the age of 65; **and** be blind or a person with a disability; **and** meet the program's income/resource requirements.



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2. **Social Security Disability Insurance (SSDI)**: SSDI is an insurance program that pays a check each month to qualified adults. It is NOT needs-based and there is no asset limit. The program is run by the Social Security Administration (SSA).

In addition to proof of blood quantum, you must: live in a U.S. state; **and** be a person with a disability; **and** have worked in the U.S.; **and** earned a certain number of Social Security credits (by paying FICA taxes) close to the time that you became disabled (usually this means 5 of the last 10 years).

3. **Social Security (Retirement Benefits)**: Retirement benefits are paid each month to retired people (generally, over the age of 67) who have worked in the U.S. and paid FICA taxes while they were working. The program is run by the Social Security Administration (SSA).

In addition to proof of blood quantum, you must: be over the age of 67; **and** have worked in the U.S.; **and** have earned at least 40 “credits” from the SSA (by paying FICA taxes while you were working).

4. **Medicare**: Medicare is the U.S.’s health insurance program for people over the age of 65. People who are under 65 but who are living with disabilities or have been diagnosed with permanent kidney failure or amyotrophic lateral sclerosis (ALS or Lou Gherig’s disease) may also qualify for Medicare. The program is run by the SSA.

Medicare has 4 parts (A, B, C, and D). If you qualify for Part A (hospital care), you are eligible for Parts B, C, and D.

To qualify for Part A (hospital care), in addition to proof of blood quantum, you must: be age 65 or older; **and** you or your spouse is eligible for or receiving Social Security Retirement Benefits; **or** you or your spouse is eligible for or receiving railroad retirement benefits; **or** you or your spouse worked long enough in a government job and you paid Medicare taxes; **or** you are the dependent parent of a fully insured deceased child. There is no income requirement.

5. **Student Loans (Title IV)**: Students can receive loans from the Federal government to help pay for college and higher education. You are considered an “eligible non-citizen” if you provide proof of blood quantum.



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6. **Supplemental Nutrition Assistance Program (SNAP):** SNAP provides low-income people with cash assistance for food purchases. Participants use a plastic electronic cash benefits card to pay for food. SNAP used to be known as the food stamp program. It is run by the U.S. Department of Agriculture.

If you meet the program's income requirements, there is **NO** waiting period before you can apply. You are **IMMEDIATELY** eligible for assistance through SNAP. You do **NOT** need to meet an "additional qualification."

State programs:

1. **Medicaid:** Medicaid is a health insurance program for low-income people. It is run by individual state governments, with some funding provided by the federal government.

In addition to proof of blood quantum, you must: be living in a U.S. state **and** meet income qualifications.

However: if you came to the U.S. on or after August 22, 1996, there is a **FIVE YEAR WAITING PERIOD** before you can receive benefits.

There is **NO** waiting period for **pregnant women or children** in Maine, Vermont, Connecticut, or Massachusetts. There is **NO** waiting period for **children** in Rhode Island.

2. **Temporary Assistance for Needy Families (TANF):** TANF is a financial assistance program for low-income families with children and/or for women in the last 3 months of pregnancy. The program provides temporary financial assistance and helps participants to find jobs with the goal of participants eventually being able to support themselves.

In addition to proof of blood quantum, you must: be living in a U.S. state; **and** have a family with children and/or a woman in the last 3 months of pregnancy; **and** meet income requirements.

However: if you came to the U.S. on or after August 22, 1996, there is a **FIVE YEAR WAITING PERIOD** before you are eligible to receive benefits.



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3. **Women, Infants and Children (WIC):** WIC is a program that provides supplemental food, health care referrals, and nutrition education to low-income women who are pregnant, breast feeding and non-breast feeding post partum women, and to infants and children up to the age of 5, who are found to be at nutritional risk. The program is run by individual state governments and supported by grants from the federal government.

You are eligible if: you live in the U.S.; **and** you or your child has a “nutritional need;” **and** you are a pregnant, breastfeeding, or new mother **or** you are a child under five; **and** you meet income requirements for the program.

4. **Public Housing for Families:** This program provides housing to low-income families throughout Massachusetts. The needs of each applicant household are considered. Then, applicant households are selected in chronological order by date of application. Preference is given to local veterans, local residents, and in some cases, minorities. Priority is given to households that become homeless through no fault of their own. The program is run by the Massachusetts Department of Housing and Community Development.

You do **NOT** need to provide proof of blood quantum. You are eligible if you meet the income requirements for the program. However, demand for housing is very high, and eligibility does not guarantee that you will find housing through the program.

5. **Rental Voucher Program:** This program provides vouchers to renters in Massachusetts. There are two kinds of vouchers: mobile (the voucher stays with the tenant) and project-based (the voucher is tied to the location). The Division of Public Housing and Rental Assistance, which is part of the Massachusetts Department of Housing and Community Development, oversees the program.

For mobile vouchers, the money value of the voucher is constant. The amount is determined by: the tenant’s income, household size, and geography. The tenant pays the difference between the amount of the voucher and the amount that the landlord charges for rent.

For project-based vouchers, a participant pays either 35% or 40% of their gross adjusted income, depending on whether or not heat is included in their rent.

You do **NOT** need to provide proof of blood quantum. You are eligible if: you meet income requirements **and** you pass a CORI (criminal background) check.



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6. **Housing for Elderly and People with Disabilities:** This program provides housing to low-income elders and people with disabilities in Massachusetts. It is managed by the Massachusetts Department of Housing and Community Development.

You do **NOT** need to provide proof of blood quantum. You are eligible if: you meet the program's income requirements; **and** you are at least 60 years old **or** are a person with disabilities.

7. **Alternative Voucher Program:** This program provides rental vouchers to applicants in Massachusetts who have disabilities and are not elderly and are eligible for the Housing for Elderly and People with Disabilities program. It is run by the Division of Public Housing and Rental Assistance, which is part of the Massachusetts Department of Housing and Community Development.

You do **NOT** need to provide proof of blood quantum. You are eligible if: you meet the program's income requirements **and** you are a person with disabilities.