

*Handbook on Indigenous Peoples' Border Crossing Rights
Between the United States and Mexico*



Researched and written by

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This manual was funded, in part, by the Seventh Generation Fund for Indigenous Peoples, the RESIST Foundation, and the Tides Foundation, and through the support of the Agnese Nelms Haury Program in Environment and Social Justice at the University of Arizona. Dr. Patrisia Gonzales, associate professor at the University of Arizona, contributed to this manual.

This handbook should be used as a reference for movement across the U.S.-Mexico border for Indigenous social, cultural, and spiritual purposes. It is not, however, a legal document or a complete guide on immigration laws and border policies impacting Indigenous peoples. The appropriate Embassy or Consulate, the tribal liaison for the relevant U.S. Customs and Border Patrol sector and, when needed, an immigration law attorney should be consulted to address questions not fully addressed in this handbook.

Introduction: The U.S.-Mexico Border and Indigenous Peoples

Approximately seven Indigenous peoples and their homelands were divided by the historical establishment of the U.S.-Mexico international border—the Yaqui / Yoeme, the O’odham, the Cocopah / Cucapá, the Kumeyaay / Kumiai, the Pai, the Apaches, and the Kickapoo / Kikapú. The U.S.-Mexico border was established through three international agreements between the United States and Mexico. Through the 1848 Treaty of Guadalupe Hidalgo which ended the Mexican-American War, the United States gained lands in Mexico that currently make up present-day California, Nevada, Utah and portions of Wyoming, Colorado, New Mexico, and Arizona. The treaty also established the Rio Grande River as the southern boundary of Texas as a U.S. state. In 1853, the United States acquired lands south of the Gila River which now make up the southernmost parts of present-day Arizona and New Mexico through the Gadsden Purchase. Finally, the Chamizal Treaty of 1963 ceded to Mexico a tract of land in the El Paso-Ciudad Juárez region that had been claimed by the U.S. as a result of a massive flood that moved the course of the Rio Grande. The Indigenous peoples of the lands impacted by these international agreements were neither consulted nor adequately considered in the negotiations between Mexico and the United States that would ultimately establish the current U.S.-Mexico international boundary.

Today, the Yaqui are represented by the Pascua Yaqui Tribe of Arizona in the United States and traditional pueblos (communities) in Sonora, Mexico located within the Yaqui Zona Indígena (Indigenous Zone), a land reserve recognized as Yaqui territory by the federal government of Mexico. The Tohono O’odham (Desert People), Akimel O’odham (River People) and Hia-Ced O’odham (Sand People) are represented by four distinct tribal nations in the United States: The Tohono O’odham Nation, the Gila River Indian Community, the Salt River-Maricopa Indian Community and the Ak-Chin Indian Community. There are approximately nine Tohono O’odham communities in Sonora, Mexico that are located along the border of the Tohono O’odham reservation, with around 2,000 enrolled members of the Tohono O’odham Nation residing in Mexico. O’odham peoples are also related to a number of Piman communities in Sonora and Chihuahua, Mexico. There are thirteen U.S. Kumeyaay reservations in San Diego County and four Mexico Kumeyaay (Kumiai) communities in Baja California. The Yavapai, Havasupai (Supai) and Hualapai (Walapai) of Arizona and the Pai Pai of Baja California, Mexico are interrelated Yuman groups collectively identified as the Pai (or Pa’a). The Yavapai are represented by three tribal nations in Arizona: The Fort McDowell Yavapai Nation, the Yavapai-Prescott Indian Tribe and the Yavapai-Apache Nation. The Havasupai Tribe and the Hualapai Tribe are also in Arizona. The Cocopah / Cucapá are a Yuman people who have traditionally occupied lands along the lower stretches of the Colorado River and the river’s delta as well as areas of southern California and northern Baja California, Mexico. The Cocopah Indian Tribe’s reservation is located about thirteen miles south of Yuma, Arizona and about fifteen miles north of San Luis, Mexico. The Cucapá of Mexico reside in Baja California. Apache peoples are represented by nine federally-recognized tribal nations in the U.S., with five located in Arizona, and two state-recognized tribes including the Lipan Apache Tribe of Texas. The Kickapoo / Kikapú are represented by the Kickapoo Traditional Tribe of Texas (KTTT), the Kickapoo Tribe of Oklahoma, and the Kickapoo Tribe of Kansas in the U.S., with a community of Kikapú in Coahuila, Mexico and Sonora, Mexico.

Impacts of U.S.-Mexico border enforcement and militarization on Indigenous peoples include ecological destruction of their territories resulting from border barrier / wall construction and Border Patrol operations, threats to Indigenous sacred areas, blocked access to traditional areas of Indigenous spiritual and cultural practice, and impediments to movement across Indigenous territories. Of particular concern to many members of U.S.-Mexico border Indigenous communities is the impact of U.S. and Mexico border enforcement policies on the ability of their communities to maintain social and cultural relationships with community members across the international line. A number of United Nations international legal instruments confirm the rights of Indigenous peoples that are currently violated by U.S.-Mexico border enforcement (see Appendices for selected articles relevant to Indigenous border crossing). Some Indigenous groups have pursued legal action to address violations through the United Nations reporting system. For example, in 2017, as a result of collective submissions by the Lipan Apache Women Defense, the Lipan Apache Band of Texas, the Apache Nde Nnee Working Group, and the International Organization for Self-Determination and Equality, the U.N. Committee on the Elimination of Racial Discrimination (CERD) requested that the U.S. take measures to better ensure the rights of Indigenous peoples on the U.S.-Mexico border. The current U.S. Administration, however, has not fully responded to this request. International human rights law, including rights recently set out in the United Nations Declaration on the Rights of Indigenous Peoples, is not currently recognized as a standard regulatory code for decision-making in U.S. domestic courts of law. The U.S. Department of Homeland Security, however, has established some general policies and practices to facilitate border crossing for Indigenous peoples of the U.S.-Mexico border region. This handbook focuses on these policies and practices and was created by the Alianza Indígena Sin Fronteras / Indigenous Alliance Without Borders to assist Indigenous peoples in their efforts to maintain community across the international divide as well as to maintain traditional cultural knowledge and practices through such contact. Beyond the Western Hemisphere Travel Initiative (WHTI)-compliant identification mandate described below, there are currently no set policies or written procedures specifically regarding Native peoples who cross the U.S.-Mexico border for cultural, social or ceremonial purposes. The Jay Treaty of 1794, which provides certain protections for the border-crossing rights of aboriginal peoples of the U.S.-Canada border region, does not provide protections for Indigenous peoples crossing the U.S.-Mexico border. Although some legal scholars argue that certain Indigenous border-crossing rights should be protected under the American Indian Religious Freedom Act (AIRFA), the U.S. has waived AIRFA along with dozens of additional U.S. laws to facilitate U.S.-Mexico border enforcement and militarization since the passage of the Real I.D. Act of 2005.

Western Hemisphere Travel Initiative (WHTI)

The U.S. Western Hemisphere Travel Initiative (WHTI) is a joint initiative of the Department of State (DOS) and the Department of Homeland Security (DHS), created in response to the U.S. government's 9/11 Commission recommendations and the Intelligence, Reform and Terrorism Prevention Act of 2004 (IRTPA) in effect since June 1, 2009. WHTI requires all individuals entering, or re-entering, the United States to present a passport or another U.S.-approved document that confirms the individual's identity and citizenship to an official at ports of entry. All U.S. citizens entering the United States by air must present a valid U.S. passport or a U.S. Trusted Traveler Program card: NEXUS (for travel between the U.S. and Canada), SENTRI (for travel into U.S. from Mexico) or FAST (for commercial truck drivers transporting shipments into U.S. from either Canada or Mexico). Trusted Traveler Program cards are granted to "low-risk" travelers and require a rigorous application and interview process. U.S. citizens may also present a U.S. military I.D. when traveling on official military orders.

U.S.-authorized permanent residents of the U.S. must present a Permanent Resident Card (Form I-551, or "Green Card") when entering the United States at air, land and sea ports of entry.

At land and sea ports of entry, U.S. citizens may present a U.S. passport, a U.S. passport card (used for entry into U.S. from Canada, Mexico, the Caribbean, and Bermuda; can also be used for domestic air travel), an Enhanced Driver's License (a driver's license with limited passport features only issued in some states), a Trusted Traveler Program card, a U.S. military I.D. when traveling on official orders, a Form I-872 American Indian Card, an Enhanced Tribal I.D. Card, and, for the time being, a standard tribal photo identification card. Enhanced Driver's Licenses (EDLs) and Enhanced Tribal I.D.'s (ETCs) make use of Radio Frequency Identification (RFID) technology. WHTI mandated that tribal identification cards must be enhanced with this technology to qualify as a valid document for entry into the U.S. but is currently permitting standard tribal photo I.D. cards to be used at land and sea ports of entry to provide some transition time for tribes developing an ETC. As of the publication of this manual, an exact date for the end of this transitional period has not been announced.

U.S. permanent residents, U.S. citizens and Mexican citizens can also use a Global Entry Card, another Trusted Traveler Program card, for expedited entrance into the U.S. at land and sea ports of entry. Like ETCs and EDLs, Global Entry Cards have RFID technology. See List of Useful Contacts and Online Resources for web sources with information on how to apply for Trusted Traveler Program cards.

Enhanced Tribal Identification Cards

Enhanced Tribal Identification Cards (ETCs) are similar in form to a U.S. passport card. RFID technology in these cards allows data sharing between Customs and Border Patrol (CBP) and tribal nations to verify the enrollment and U.S. citizenship status of the card holder. WHTI also requires updating of the information available through ETCs as deemed necessary by Homeland Security. In 2010, the Tribal Homeland Security Grant Program was amended to include some funding support for the development of ETCs. The Pascua Yaqui Tribe was the first tribal nation to develop and issue an ETC in 2010. The Kootenai Tribe of Idaho began issuing its ETC in 2011. At least seventeen additional tribes are now in the process of developing their own ETCs.

A Memorandum of Agreement (MOA) between a federally-recognized U.S. tribal nation and the CBP is needed to begin the process of a tribal nation's ETC development. Once negotiations between a tribal nation and CBP are complete and a MOA is signed, information technology (IT) working groups begin development of the ETC. Once the IT working group approves production, a memo is sent to CBP field officers describing the ETC's security features, artwork for the ETC is finalized, and CBP issues a press release on the new ETC.

See *List of Useful Contacts and Online Resources* in this manual for additional information on how to apply for a Tribal Homeland Security Grant to develop an ETC and resources for ETC development. Grant monies for ETC production are annual and tribal nations may reapply. The Pascua Yaqui Tribe currently offers ETC development services to other tribes.

The Kickapoo and I-872 American Indian Card

Although Form I-872's title "American Indian Card" suggests that it can be used by any American Indian, it is a card issued exclusively to Kickapoo community members. Kickapoo peoples have traversed the largest swath of territories, migrating from their original lands as Algonquin peoples, ranging from New York and the Great Lakes region, into Northern and Northwest Mexico. Since the 1700s, Kickapoos, had crossed back and forth between what is now present-day United States and Mexico, after they were granted a landbase in Coahuila, Mexico. Until the 1950s, the Mexican Kickapoo seeking to enter the U.S. were allowed to enter the country by showing a copy of a document of safe-conduct, issued at Fort Dearborn in Illinois to the Kickapoo tribe in 1832. In the early twentieth century, Kickapoo began migrating back and forth across the U.S.-Mexico border near Eagle Pass, Texas for seasonal agricultural work. To support the demand for migrant Kickapoo farm work, the U.S. Immigration and Naturalization Service (INS) began issuing renewable border passage cards to individual Kickapoos crossing the border into Texas during the agricultural season. U.S. Congress established the Texas Band of Kickapoo Act in 1983 to further facilitate this movement. The Act permitted any member of the Kickapoo Band whose name appeared on a tribal roll to apply for U.S. citizenship within five years of the Act's passage and guaranteed that application would be automatically granted upon receipt. The Act further specifies that "all members of the Band," regardless of citizenship, "shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States" (25 U.S.C. § 1300b-11). The Act federally recognized the Kickapoo of Texas as a Native community in the U.S. and further established that Kickapoo in Mexico could use a special border passage card (American Indian Card) created to ensure Kickapoo passage into the U.S. from Mexico. According to WHTI, members of the Kickapoo Traditional Tribe of Texas and the Kickapoo Tribe of Oklahoma, and Kickapoo members in Mexico who held an American Indian Card could use this card when crossing the border. The Kickapoo remain unique in their recognition by the U.S. government as a binational Indigenous community whose members are secured relatively free passage across the U.S.-Mexico border, regardless of residence and citizenship. It should be noted that INS is no longer in existence, having been absorbed into the Department of Homeland Security in 2002 and most of its functions dispersed between U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). In 2018, through an agreement with U.S. Customs and Border Protection (CBP), the KTTT began issuing Enhanced Tribal Cards.

Border Crossing Documents and Procedures for Indigenous Community Members in Mexico

According to WHTI, Mexican citizens are required to present a Mexican passport with a visa, or a Border Crossing Card, commonly known as a “laser visa”. In order to qualify for a renewable laser visa for short stays in the United States, Mexican citizens must first have a Mexican passport. In order to obtain a passport, Mexican citizens must have photo identification and proof of residence with documentation such as utility bills and pay stubs. Mexican citizens must also prove economic solvency—financial capacity for travel and reason to return to one’s country—to qualify for a laser visa. To prove economic solvency, a Mexican citizen must have a minimum of around 2,500 pesos in a bank account. Many Indigenous individuals in Mexico, however, are subsistence farmers or piece together cash incomes through a variety of non-wage earning activities. Many also lack access to public utilities and do not possess photo identification. Indigenous persons in Mexico may, therefore, find it difficult to prove their residence or identities as Mexican citizens according to Consulate requirements. The cost of both the passport and visa is also prohibitive for most Indigenous persons existing in subsistence economies.

Some U.S. tribal governments, and groups like the Alianza Indígena Sin Fronteras and the Kumeyaay Border Task Force, have been able to work with Mexican and U.S. Consular officials to have certain of the requirements waived for Mexican Indigenous relatives applying for laser visas needed to participate in ceremonial and cultural events held in the United States. In 2002, for example, Mexico’s Indigenous affairs agency, Instituto Nacional Indigenista (INI), assisted Kumeyaay cross-border efforts by issuing photo identification cards to Kumeyaay in Mexico. Through informal agreements with the Mexican Consulate in San Diego, Kumeyaay were able to obtain Mexican passports for Kumeyaay in Mexico as well as members of another neighboring Yuman community, the Pai Pai. The Border Task Force then worked with U.S. immigration officials in San Diego to obtain laser visas for these members. The Kumeyaay transported busloads of Mexican Indigenous community members, 50 at a time, to the U.S. Embassy in Mexico to obtain the necessary documents. By 2006, the Border Task Force had acquired laser visas for 680 Mexican Kumeyaay and Pai Pai, and about 1,000 laser visas by 2007. Currently, about 1,900 Kumiai in Mexico hold laser visas. Letters from both appropriate Indigenous community leaders in Mexico and the affiliated U.S. tribal government are typically used to identify specific Indigenous persons and their residence in Mexico. Such letters also state the specific purpose(s) of the person’s visit to the U.S., thus allowing for the waiving of economic solvency requirements.

Indigenous ceremonial or cultural event participants from Mexico may also apply for temporary, non-renewable *border crossing permits* that have shorter validity periods of a few days to several weeks. These permits are granted in a process similar to the processing of U.S. Citizenship and Immigration Services (USCIS) humanitarian parole program permits. This program allows non-U.S. citizens to temporarily enter the U.S. for an “urgent humanitarian reason,” such as to receive emergency medical care or to see a dying relative, or because temporary entry by the individual into the U.S. will provide significant benefit to the public. In addition to the application for the border crossing permit and an affidavit of support with documentation supporting the applicant’s temporary entry into the U.S., parole entries must be approved by a CBP official on a case-by-case

basis at the port of entry. Letters from the appropriate Indigenous community and tribal officials are used in the border crossing permit application process as the individual's proof of identification as well as documentation for the affidavit of support to cross the border. Such letters are typically referred to as *letters of invitation*. The CBP-derived language and documentation requirement seem to draw from the documentation requirement language in place for the J1 Exchange Visa, a visa which allows foreign visitors temporary stays in the U.S. for educational and cultural exchange. However, approval of "paroled" entries into the U.S. for Indigenous cultural reasons remains at the discretion of CBP officials at the time of entry. Letters of invitation to Mexican Indigenous community members applying for a border crossing permit should be written by a tribal official or otherwise certified as coming from a U.S. tribal nation and should:

- establish the member's membership in, or cultural affiliation with a U.S. tribal nation in the U.S.-Mexico border region;
- certify that the individual resides in Mexico, if the applicant cannot produce other evidence of residence;
- confirm that the community member will be provided for in the United States during their visit, if not in possession of sufficient funds for the proposed visit; and
- state the reasons for the applicant's stay in the United States.

When possible, a member of the U.S. host tribal nation should escort or meet a Mexican citizen Indigenous community member at the port of entry. Although there is no official set of guidelines for the border crossing permit application process, it is advisable that both the Mexican citizen Indigenous community member applying for the permit and a U.S. host tribal nation member have a physical copy of the letter(s) of invitation. Border officials may also sometimes request photo identification for the applicant. If the Indigenous community member does not have a photo identification card, it is advisable for the host tribal nation to create some form of photo identification for the individual. The Pascua Yaqui Tribe, for example, creates photo identification cards similar to their tribal identification cards for Mexican citizen Yaqui individuals who frequently visit their communities in the United States. Although a member of the U.S. host tribal nation may be present to escort or greet an Indigenous community member who is applying for a border crossing permit, U.S. host tribal nation members are not allowed to accompany the applicant during the application interview and paperwork process. For this reason, it is also advised that the applicant have details such as physical address of where they will stay and phone contact information in the United States on hand during the application process. When asked for the reasons for their visit to the U.S., Indigenous community members from Mexico applying for a temporary border crossing permit should only list the reasons stated in the letter of invitation. Expressed desire for recreational travel or desire to someday work in the United States, for example, may be misinterpreted by border officials and result in a denial of the permit. If proficiency in Spanish may be an issue for the applicant, the U.S. tribal host nation should consider consulting with port of entry officials to see if it would be possible to have a translator for the applicant's Indigenous language present during the application process. Phone contact information for a tribal official who can be contacted and consulted by a border official during the permit application process is also advisable in case issues arise. To begin a border crossing permit

application process, a U.S. host tribal nation should consult with the Tribal Liaison for their CBP sector and CBP officials at the port of entry where the application process will take place.

Due to the complications that may arise in the process of securing border crossing permits, the option to secure B1/B2 “Border Crossing Card” laser visas for Mexican Indigenous persons who frequently visit Indigenous relatives in the U.S. for social, cultural and ceremonial purposes is useful to Indigenous nations that seek to strengthen cross-border connections. Border Crossing Cards are only issued to residents and citizens of Mexico and allow a limited travel range in the U.S.-Mexico border region (within 25 miles of border in California and Texas, 55 miles of border in New Mexico, and 75 miles of border in Arizona).

Title 8 U.S. Code § 1357 gives CBP officers significant powers to interrogate, search, seize, and arrest individuals without warrant at the U.S.-Mexico border. Although Indigenous border crossings often proceed without complications, both Mexican and U.S. citizen Indigenous individuals have reported experiencing harassment, detainments of up to several hours, and denials of entry when crossing into the United States from Mexico. U.S. citizen Indigenous community members accompanying Mexican Indigenous community members can be accused of and detained for attempted smuggling of unauthorized/undocumented persons into the U.S. The recommendations above should help avoid problems that can arise during a border crossing, but individuals crossing the border should be prepared to contact appropriate tribal officials and others (such as supportive Congressional representatives) who can provide support if problems should arise.

Violations of Border Crossing Rights and Filing Complaints

In the American Indian Law Alliance's handbook *Border Crossing Rights between the United States and Canada for Aboriginal People*, the Law Alliance observes that the amount of documentation needed for an aboriginal person to cross with the rights recognized under the Jay Treaty will depend on the officer processing an entry at the port of entry, and also notes that their research shows that less documentation may be needed if the individual crossing looks "Indian." On the U.S.-Mexico border, however, physical features stereotypically associated with Indigenous peoples such as brown skin and black hair are also stereotypically associated with the general Mexican population. As on the Canada-U.S. border, the officer's handling of an Indigenous person's border crossing will depend on that officer's previous experience in handling Indigenous border crossings, any cultural training that officer may have received for such crossings, and unfortunately, any racial or ethnic prejudices the officer may hold. To further verify that a person crossing the U.S.-Mexico border is Indigenous, officers have sometimes made inappropriate requests such as asking the person to speak their Indigenous language or, if the person is a traditional singer or dancer, asking the person to sing or dance although the officer is not necessarily educated on the individual's Indigenous language or traditions. Given the amount of discretionary power given to CBP officers in border areas, Indigenous individuals refusing such requests may experience delays or denials to cross. However, Indigenous persons are not obligated to answer such questions if they are not comfortable doing so. If a CBP officer asks a question that you find culturally inappropriate, you are advised to calmly answer, "I do not feel comfortable answering that question for cultural reasons," and offer to provide any additional documentation that you may have but have not yet shared with the officer and/or suggest that the officer contact tribal nation officials or others who can further verify your identity and reasons for entering the United States.

There are also no official CBP procedures in place for the search and handling of Indigenous objects such as *ceremonial items*. If crossing the border with items that must be handled according to a specific cultural protocol, it is advisable to communicate with the tribal representative(s) and CBP officials involved with a planned border crossing to help make CBP officers who will process the entry aware of the culturally appropriate ways of interacting with the item(s).

Again, CBP officers have great latitude in what they may ask or do in the interest of U.S. border enforcement. However, CBP has expressed a commitment to making CBP officers aware of and sensitive to Indigenous cultural and religious traditions. CBP also has personnel in the CBP Office of Internal Affairs trained to investigate allegations of misconduct and discrimination. If you have complaints or concerns about an experience with CBP officers at the border, a complaint should be submitted online through <https://help.cbp.gov/app/forms/complaint>

Complaints and concerns should also be reported to appropriate tribal nation officials and the CBP tribal liaison^{[1][2]} and congressional representatives. Tribal nations and CBP tribal liaisons may be able to assist in communicating your concerns to CBP officers and may also take your concerns into account in future cultural training for CBP officers. *Cultural education training for CBP officers* is often initiated and led by tribal nations. Both the Kumeyaay and the Pascua Yaqui

nations, for example, have worked with border officials to ensure this type of cultural education training.

For additional information on legal rights and advice for all when interacting with Border Patrol, see the ACLU Know Your Rights document in List of Useful Contacts and Online Resources.

Possible Avenues for Further Recognition of Indigenous Rights at the Border

While Indigenous peoples transected by the U.S.-Mexico border do not have the support of treaties regarding border crossing rights as do many peoples transected by the Canada-U.S. border with the Jay Treaty, it is nevertheless possible for border peoples on the U.S.-Mexico border to secure border crossing rights through legislation. The Kickapoo serve as a historical example of this possibility for other Indigenous nations divided by the U.S.-Mexico border. Although the Jay Treaty does not directly apply to the Kickapoo rights of mobility on the Southern border, [3] Kickapoos are named in a subsequent affirming document related to the treaty, and they asserted their rights of transborder mobility under the Jay Treaty. Congress drew on the language of section 289 of the Jay Treaty to essentially extend Jay Treaty rights to “freely pass and repass the borders of the United States and to live and work in the United States” to Kickapoo community members, regardless of country of origin. With sufficient public and political support, similar legislation could be passed to secure border crossing rights for other U.S.-Mexico border Indigenous nations.

Despite the large discretionary power that has been given to CBP in heightened efforts to enforce the borders of the United States, including the waiving of AIRFA for border barrier construction, the language of the Real I.D. Act does not sanction the waiving of AIRFA or other laws in the treatment of Native persons or spiritual items when moving across or near the U.S.-Mexico border. U.S. tribal nations whose religious freedoms are impacted by a lack of official procedures for handling Indigenous persons and cultural objects at the border might consider joint legal action to establish procedures that will better ensure these freedoms.

The Alianza Indígena Sin Fronteras has advocated for the development of comprehensive legislation that would address Indigenous border crossing rights at both the Canada-U.S. and U.S.-Mexico borders, and has envisioned summits that would include both tribal government leaders and grassroots community leaders of Indigenous nations on these borders to discuss perspectives on border policy and goals for policy development. The 2019 Tribal Border Summit in Tucson, Arizona organized by the Pascua Yaqui Tribe, the Tohono O’odham Nation, and the National Congress of American Indians appears to build toward this vision. The Indigenous Alliance Without Borders has also advocated for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by U.S. tribal governments on the U.S.-Mexico border to help build a common reference for Indigenous border crossing rights. Although no U.S. court has ever recognized the moral force of international human rights law regarding Indigenous rights, potential still exists for the implementation of language in the UNDRIP and other international rights instruments in the development of new domestic laws and public policies. Courts in Australia and Brazil, and the national legislature of Japan, have drawn from international rights documents in determining certain rights of Indigenous peoples within these nations.

List of Useful Contacts and Online Resources

List of Border Patrol (CBP) Sectors

<https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors>

U.S. Department of Homeland Security Contact for CBP State, Local, Tribal Liaison

(202) 325-0775, phone

CBP-LOCAL-TRIBAL-LIAISON@cbp.dhs.gov

Bonnie Arellano, CBP Tucson Sector Tribal Liaison

U.S. Customs and Border Protection

Assistant Director of Field Operations, Border Security

Tucson Field Office

4760 N. Oracle Rd., #316

Tucson, AZ 85705

(520) 407-2355 phone

(520) 407-2350 fax

bonnie.arellano@dhs.gov

U.S Department of Homeland Security Tribal Resource Guide

www.dhs.gov/xlibrary/assets/iga/dhs-tribal-resource-guide.pdf

CBP Presentation on WHTI and Enhanced Tribal Card Initiative

[atntribes.org/sites/default/files/Enhanced%20Tribal%20Card%20\(ETC\)%20Initiative%20.pdf](http://atntribes.org/sites/default/files/Enhanced%20Tribal%20Card%20(ETC)%20Initiative%20.pdf)

CBP Description of WHTI and Required Documents for Entry into the U.S.

www.cbp.gov/travel/us-citizens/western-hemisphere-travel-initiative

CBP Trusted Traveler Programs Information and Application Website

<https://ttp.cbp.dhs.gov/>

Tribal Homeland Security Grant Program (THSGP) Webpage

www.fema.gov/tribal-homeland-security-grant-program#

FEMA Non-Disaster Preparedness Grants Page, Notices of THSGP Funding Opportunities

<https://www.fema.gov/grants>

Pascua Yaqui Tribe Enhanced Tribal Identification Program

<http://www.pascuayaqui-nsn.gov/index.php/etc>

Pascua Yaqui Tribe Enhanced Tribal Card Consulting Services

<http://www.pascuayaqui-nsn.gov/index.php/enhanced-tribal-card-consulting-services>

CBP Complaint/Concern Submission Page

<https://help.cbp.gov/app/forms/complaint>

American Civil Liberties Union (ACLU) of Arizona

(602) 650-1854 phone

www.acluaz.org/ website

ACLU Know Your Rights with Border Patrol Reference Sheet

English: www.acluaz.org/sites/default/files/field_documents/aclu_border_rights.pdf

Español: www.aclusandiego.org/wp-content/uploads/2014/11/KYR-2-pg-flyer-espanol-11-20-14.pdf

ACLU Border Litigation Project, ACLU of San Diego and Imperial Counties

<https://www.aclusandiego.org/legal/blp/>

Native American Rights Fund

1506 Broadway

Boulder, CO 80302-6296

(303) 447-8760 phone

(303) 443-7776 fax

<https://www.narf.org/> website

APPENDIX A

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Web Access: <http://www.ohchr.org/english/issues/indigenous/declaration.htm>

ARTICLES RELEVANT TO INDIGENOUS BORDER CROSSING RIGHTS

Article 4: Indigenous peoples, in exercising the right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 8: (2) States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11:

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12:

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13:

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 24:

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 33:

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 36:

1. 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.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 38: States in consultation and cooperation with indigenous peoples shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

APPENDIX B

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Web Access: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

ARTICLES RELEVANT TO INDIGENOUS BORDER CROSSING RIGHTS

Article 1: (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.

Article 12: (4) No one shall be arbitrarily deprived of the right to enter his own country.

Article 18: (1) Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, practice, or teaching. . . .

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 23: (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 27: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

APPENDIX C

INTERNATIONAL LABOR ORGANIZATION (ILO) INDIGENOUS AND TRIBAL PEOPLES CONVENTION 169

Web Access:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

ARTICLES RELEVANT TO INDIGENOUS BORDER CROSSING RIGHTS

Article 2: Governments shall have the responsibility for . . . ensuring that members of these [indigenous and tribal] peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

Article 5: (a) The social, cultural, religious, and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; (b) The integrity of the values, practices, and institutions of these peoples shall be respected.

Article 6: (1) Governments shall . . . [c]onsult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly . . . (2) The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

Article 8: (1) In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

Article 14: (1) The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.

Article 16: (1) [T]he peoples concerned shall not be removed from the lands which they occupy. (2) Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. . . .(3) Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

Article 32: Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual, and environmental fields.

APPENDIX D

ASSEMBLY JOINT RESOLUTION NO. 60--RELATIVE TO THE KUMEYAAY NATION

Web Access: http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0051-0100/ajr_60_bill_20020815_introduced.html

BILL NUMBER: AJR 60 CHAPTERED 09/16/02

RESOLUTION CHAPTER **184**
FILED WITH SECRETARY OF STATE SEPTEMBER 16, **2002**
ADOPTED IN SENATE AUGUST 29, **2002**
ADOPTED IN ASSEMBLY AUGUST 27, **2002**

INTRODUCED BY Assembly Member Goldberg

AUGUST 15, **2002**

Assembly Joint Resolution No. 60--Relative to the **Kumeyaay** Nation.

LEGISLATIVE COUNSEL'S DIGEST

AJR 60, Goldberg. **Kumeyaay** Nation.

This measure would memorialize the United States Immigration and Naturalization Service to continue to work with the **Kumeyaay** Nation to allow for the pass and repass of Baja **Kumeyaay** over the international border separating the United States and Mexico.

WHEREAS, The **Kumeyaay** Nation has occupied and traversed the southern California and Baja California region from the Pacific Ocean to the desert approximately 75 miles north and 75 miles south of the international border separating the United States and Mexico for thousands of years; and

WHEREAS, Today, the **Kumeyaay** Nation continues to survive as a recognized sovereign nation within the United States and the State of California; and

WHEREAS, Of the 18 federally recognized bands in San Diego County, 12 are **Kumeyaay**/Diegueno (Barona Band, Campo, Ewiiapaayp, Jamul, La Posta, Manzanita, Mesa Grande, San Pasqual, Santa Ysable, Sycuan, and Viejas); and

WHEREAS, The **Kumeyaay** people located in Baja California maintain their villages and govern their community affairs; and

WHEREAS, The **Kumeyaay** people's lifestyle requires free movement within their aboriginal boundaries, and that includes crossing the international border; and

WHEREAS, When laws were passed by Congress directed at slowing the legal and illegal crossing of the international border by foreign nationals trying to enter the United States, Congress overlooked the impact upon the **Kumeyaay** Nation lifestyle and culture on both sides of the international border; and

WHEREAS, **Kumeyaay** within Baja California, Mexico desire to pass and repass for cultural and social purposes with **Kumeyaay** in the United States in order to preserve **Kumeyaay** culture and heritage; and

WHEREAS, Recently (1998-2001), the United States Immigration and Naturalization Service consulted with the **Kumeyaay** Nation to learn of the negative impacts recent laws have imposed upon the **Kumeyaay** Nation lifestyle and, through this consultation process, established a vehicle to allow for the pass and repass of the **Kumeyaay** people; and

WHEREAS, The **Kumeyaay** Nation is a federally recognized tribal government within the United States; and

WHEREAS, The California State Assembly recognizes the **Kumeyaay** Nation and the aboriginal territory occupied by **Kumeyaay** people for thousands of years that includes areas on both sides of the international border separating the United States and Mexico (Baja California); now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature supports the efforts of the **Kumeyaay** Nation to remedy the pass and repass of Baja **Kumeyaay** and memorializes the United States Immigration and Naturalization Service to continue to work with the **Kumeyaay** Nation to allow for the pass and repass of Baja **Kumeyaay**; and be it further

Resolved, That the Chief Clerk of the Assembly transit copies of this resolution to the Director of the United States Immigration and Naturalization Service and each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

APPENDIX E

THE JAY TREATY

Web Access: http://avalon.law.yale.edu/18th_century/jay.asp

The Jay Treaty. Treaty of Amity, Commerce, and Navigation, signed at London November 19, 1794, with additional article Original in English. Submitted to the Senate June 8, Resolution of advice and consent, on condition, June 24, 1795. Ratified by the United States August 14, 1795. Ratified by Great Britain October 28, 1795. Ratifications exchanged at London October 28, 1795. Proclaimed February 29, 1796.

Treaty of Amity Commerce and Navigation, between His Britannick Majesty; and The United States of America, by Their President, with the advice and consent of Their Senate.

His Britannick Majesty and the United States of America, being desirous by a Treaty of Amity, Commerce and Navigation to terminate their Differences in such a manner, as without reference to the Merits of Their respective Complaints and Pretensions, may be the best calculated to produce mutual satisfaction and good understanding: And also to regulate the Commerce and Navigation between Their respective Countries, Territories and People, in such a manner as to render the same reciprocally beneficial and satisfactory; They have respectively named their Plenipotentiaries, and given them Full powers to treat of, and conclude, the said Treaty, that is to say; His Brittanick Majesty has named for His Plenipotentiary, The Right Honourable William Wyndham Baron Grenville of Wotton, One of His Majesty's Privy Council, and His Majesty's Principal Secretary of State for Foreign Affairs; and The President of the said United States, by and with the advice and Consent of the Senate thereof, hath appointed for Their Plenipotentiary The Honourable John Jay, Chief Justice of the said United States and Their Envoy Extraordinary to His Majesty, who have agreed on, and concluded the following Articles

ARTICLE 1.

There shall be a firm inviolable and universal Peace, and a true and sincere Friendship between His Britannick Majesty, His Heirs and Successors, and the United States of America; and between their respective Countries, Territories, Cities, Towns and People of every Degree, without Exception of Persons or Places.

ARTICLE 2.

His Majesty will withdraw all His Troops and Garrisons from all Posts and Places within the Boundary Lines assigned by the [Treaty of Peace](#) to the United States. This Evacuation shall take place on or before the first Day of June One thousand seven hundred and ninety six, and all the proper Measures shall in the interval be taken by concert between the Government of the United States, and His Majesty's Governor General in America, for settling the previous arrangements which may be necessary respecting the delivery of the said Posts: The United States in the mean Time at Their discretion extending their settlements to any part within the said boundary line, except within the precincts or Jurisdiction of any of the said Posts. All Settlers and Traders, within the Precincts or Jurisdiction of the said Posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their Effects; and it shall also be free to them to sell their Lands, Houses, or Effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said Boundary Lines shall not be compelled to become Citizens of

the United States, or to take any Oath of allegiance to the Government thereof, but they shall be at full liberty so to do, if they think proper, and they shall make and declare their Election within one year after the Evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining Subjects of His Britannick Majesty, shall be considered as having elected to become Citizens of the United States.

ARTICLE 3.

It is agreed that it shall at all Times be free to His Majesty's Subjects, and to the Citizens of the United States, and also to the Indians dwelling on either side of the said Boundary Line 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 (the Country within the Limits of the Hudson's Bay Company only excepted) and to navigate all the Lakes, Rivers, and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this Article does not extend to the admission of Vessels of the United States into the Sea Ports, Harbours, Bays, or Creeks of His Majesty's said Territories; nor into such parts of the Rivers in His Majesty's said Territories as are between the mouth thereof, and the highest Port of Entry from the Sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any Frauds in this respect. Nor to the admission of British vessels from the Sea into the Rivers of the United States, beyond the highest Ports of Entry for Foreign Vessels from the Sea. The River Mississippi, shall however, according to the [Treaty of Peace](#) be entirely open to both Parties; And it is further agreed, That all the ports and places on its Eastern side, to whichsoever of the parties belonging, may freely be resorted to, and used by both parties, in as ample a manner as any of the Atlantic Ports or Places of the United States, or any of the Ports or Places of His Majesty in Great Britain.

All Goods and Merchandize whose Importation into His Majesty's said Territories in America, shall not be entirely prohibited, may freely, for the purposes of Commerce, be carried into the same in the manner aforesaid, by the Citizens of the United States, and such Goods and Merchandize shall be subject to no higher or other Duties than would be payable by His Majesty's Subjects on the Importation of the same from Europe into the said Territories. And in like manner, all Goods and Merchandize whose Importation into the United States shall not be wholly prohibited, may freely, for the purposes of Commerce, be carried into the same, in the manner aforesaid, by His Majesty's Subjects, and such Goods and Merchandize shall be subject to no higher or other Duties than would be payable by the Citizens of the United States on the Importation of the same in American Vessels into the Atlantic Ports of the said States. And all Goods not prohibited to be exported from the said Territories respectively, may in like manner be carried out of the same by the Two Parties respectively, paying Duty as aforesaid

No Duty of Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in Bales, or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians. No higher or other Tolls or Rates of Ferriage than what are, or shall be payable by Natives, shall be demanded on either side; And no Duties shall be payable on any Goods which shall merely be carried over any of the Portages, or carrying Places on either side, for the purpose of being immediately reimparked, and carried to some other Place or Places. But as by this Stipulation it is only meant to secure to each Party a free passage across the Portages on both sides, it is agreed, that this Exemption from Duty shall extend only to such Goods as are carried in the usual and direct Road across the Portage, and are not attempted

to be in any manner sold or exchanged during their passage across the same, and proper Regulations may be established to prevent the possibility of any Frauds in this respect.

As this Article is intended to render in a great Degree the local advantages of each Party common to both, and thereby to promote a disposition favourable to Friendship and good neighbourhood, It is agreed, that the respective Governments will mutually promote this amicable Intercourse, by causing speedy and impartial Justice to be done, and necessary protection to be extended, to all who may be concerned therein.

ARTICLE 4.

Whereas it is uncertain whether the River Mississippi extends so far to the Northward as to be intersected by a Line to be drawn due West from the Lake of the woods in the manner mentioned in the [Treaty of Peace](#) between His Majesty and the United States, it is agreed, that measures shall be taken in Concert between His Majesty's Government in America, and the Government of the United States, for making a joint Survey of the said River, from one Degree of Latitude below the falls of St Anthony to the principal Source or Sources of the said River, and also of the parts adjacent thereto, And that if on the result of such Survey it should appear that the said River would not be intersected by such a Line as is above mentioned; The two Parties will thereupon proceed by amicable negotiation to regulate the Boundary Line in that quarter as well as all other Points to be adjusted between the said Parties, according to Justice and mutual Convenience, and in Conformity, to the Intent of the said Treaty.

ARTICLE 5.

Whereas doubts have arisen what River was truly intended under the name of the River St Croix mentioned in the said [Treaty of Peace](#) and forming a part of the boundary therein described, that question shall be referred to the final Decision of Commissioners to be appointed in the following Manner-Viz-

One Commissioner shall be named by His Majesty, and one by the President of the United States, by and with the advice and Consent of the Senate thereof, and the said two Commissioners shall agree on the choice of a third, or, if they cannot so agree, They shall each propose one Person, and of the two names so proposed one shall be drawn by Lot, in the presence of the two original Commissioners. And the three Commissioners so appointed shall be Sworn impartially to examine and decide the said question according to such Evidence as shall respectively be laid before Them on the part of the British Government and of the United States. The said Commissioners shall meet at Halifax and shall have power to adjourn to such other place or places as they shall think fit. They shall have power to appoint a Secretary, and to employ such Surveyors or other Persons as they shall judge necessary. The said Commissioners shall by a Declaration under their Hands and Seals, decide what River is the River St Croix intended by the Treaty.

The said Declaration shall contain a description of the said River, and shall particularize the Latitude and Longitude of its mouth and of its Source. Duplicates of this Declaration and of the State meets of their Accounts, and of the Journal of their proceedings, shall be delivered by them to the Agent of His Majesty, and to the Agent of the United States, who may be respectively appointed and authorized to manage the business on behalf of the respective Governments. And both parties agree to consider such decision as final and conclusive, so as that the same shall never thereafter be called into question, or made the subject of dispute or difference between them.

ARTICLE 6.

Whereas it is alledged by divers British Merchants and others His Majesty's Subjects, that Debts to a considerable amount which were bona fide contracted before the Peace, still remain owing to them by Citizens or Inhabitants of the United States, and that by the operation of various lawful Impediments since the Peace, not only the full recovery of the said Debts has been delayed, but also the Value and Security thereof, have been in several instances impaired and lessened, so that by the ordinary course of Judicial proceedings the British Creditors, cannot now obtain and actually have and receive full and adequate Compensation for the losses and damages which they have thereby sustained: It is agreed that in all such Cases where full Compensation for such losses and damages cannot, for whatever reason, be actually obtained had and received by the said Creditors in the ordinary course of Justice, The United States will make full and complete Compensation for the same to the said Creditors; But it is distinctly understood, that this provision is to extend to such losses only, as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such Insolvency of the Debtors or other Causes as would equally have operated to produce such loss, if the said impediments had not existed, nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the Claimant.

For the purpose of ascertaining the amount of any such losses and damages, Five Commissioners shall be appointed and authorized to meet and act in manner following-viz- Two of them shall be appointed by His Majesty, Two of them by the President of the United States by and with the advice and consent of the Senate thereof, and the fifth, by the unanimous voice of the other Four; and if they should not agree in such Choice, then the Commissioners named by the two parties shall respectively propose one person, and of the two names so proposed, one shall be drawn by Lot in the presence of the Four Original Commissioners. When the Five Commissioners thus appointed shall first meet, they shall before they proceed to act respectively, take the following Oath or Affirmation in the presence of each other, which Oath or Affirmation, being so taken, and duly attested, shall be entered on the Record of their Proceedings, -viz.- I. A: B: One of the Commissioners appointed in pursuance of the 6th Article of the Treaty of Amity, Commerce and Navigation between His Britannick Majesty and The United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially, and carefully examine, and to the best of my Judgement, according to Justice and Equity decide all such Complaints, as under the said Article shall be preferred to the said Commissioners: and that I will forbear to act as a Commissioner in any Case in which I may be personally interested.

Three of the said Commissioners shall constitute a Board, and shall have power to do any act appertaining to the said Commission, provided that one of the Commissioners named on each side, and the Fifth Commissioner shall be present, and all decisions shall be made by the Majority of the Voices of the Commissioners then present. Eighteen Months from the Day on which the said Commissioners shall form a Board, and be ready to proceed to Business are assigned for receiving Complaints and applications, but they are nevertheless authorized in any particular Cases in which it shall appear to them to be reasonable and just to extend the said Term of Eighteen Months, for any term not exceeding Six Months after the expiration thereof. The said Commissioners shall first meet at Philadelphia, but they shall have power to adjourn from Place to Place as they shall see Cause.

The said Commissioners in examining the Complaints and applications so preferred to them, are empowered and required in pursuance of the true intent and meaning of this article to take into their Consideration all claims whether of principal or interest, or balances of principal and interest, and to determine the same respectively according to the merits of the several Cases,

due regard being had to all the Circumstances thereof, and as Equity and Justice shall appear to them to require. And the said Commissioners shall have power to examine all such Persons as shall come before them on Oath or Affirmation touching the premises; and also to receive in Evidence according as they may think most consistent with Equity and Justice all written positions, or Books or Papers, or Copies or Extracts thereof. Every such Deposition, Book or Paper or Copy or Extract being duly authenticated either according to the legal Forms now respectively existing in the two Countries, or in such other manner as the said Commissioners shall see cause to require or allow.

The award of the said Commissioners or of any three of them as aforesaid shall in all Cases be final and conclusive both as to the Justice of the Claim, and to the amount of the Sum to be paid to the Creditor or Claimant. And the United States undertake to cause the Sum so awarded to be paid in Specie to such Creditor or Claimant without deduction; and at such Time or Times, and at such Place or Places, as shall be awarded by the said Commissioners, and on Condition of such Releases or assignments to be given by the Creditor or Claimant as by the said Commissioners may be directed; Provided always that no such payment shall be fixed by the said Commissioners to take place sooner then twelve months from the Day of the Exchange of the Ratifications of this Treaty.

ARTICLE 7.

Whereas Complaints have been made by divers Merchants and others, Citizens of the United States, that during the course of the War in which His Majesty is now engaged they have sustained considerable losses and damage by reason of irregular or illegal Captures or Condemnations of their vessels and other property under Colour of authority or Commissions from His Majesty, and that from various Circumstances belonging to the said Cases adequate Compensation for the losses and damages so sustained cannot now be actually obtained, had and received by the ordinary Course of Judicial proceedings; It is agreed that in all such Cases where adequate Compensation cannot for whatever reason be now actually obtained, had and received by the said Merchants and others in the ordinary course of Justice, full and Complete Compensation for the same will be made by the British Government to the said Complainants. But it is distinctly understood, that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the Claimant. That for the purpose of ascertaining the amount of any such losses and damages Five Commissioners shall be appointed and authorized to act in London exactly in the manner directed with respect to those mentioned in the preceding Article, and after having taken the same Oath or Affirmation (*mutatis mutandis*). The same term of Eighteen Months is also assigned for the reception of Claims, and they are in like manner authorised to extend the same in particular Cases. They shall receive Testimony, Books, Papers and Evidence in the same latitude, and exercise the like discretion, and powers respecting that subject, and shall decide the Claims in question, according to the merits of the several Cases, and to Justice Equity and the Laws of Nations. The award of the said Commissioners or any such three of them as aforesaid, shall in all Cases be final and conclusive both as to the Justice of the Claim and the amount of the Sum to be paid to the Claimant; and His Britannick Majesty undertakes to cause the same to be paid to such Claimant in Specie, without any Deduction, at such place or places, and at such Time or Times as shall be awarded by the said Commissioners and on Condition of such releases or assignments to be given by the Claimant, as by the said Commissioners may be directed. And whereas certain merchants and others, His Majesty's Subjects, complain that in the course of the war they have sustained Loss and Damage by reason of the Capture of their Vessels and Merchandize taken within the Limits and Jurisdiction

of the States, and brought into the Ports of the same, or taken by Vessels originally armed in Ports of the said States:

It is agreed that in all such cases where Restitution shall not have been made agreeably to the tenor of the letter from [Mr. Jefferson to Mr. Hammond dated at Philadelphia September 5th 1793](#). A Copy of which is annexed to this Treaty, the Complaints of the parties shall be, and hereby are referred to the Commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other Cases committed to them, and the United States undertake to pay to the Complainants or Claimants in specie without deduction the amount of such Sums as shall be awarded to them respectively by the said Commissioners and at the times and places which in such awards shall be specified, and on Condition of such Releases or assignments to be given by the Claimants as in the said awards may be directed: And it is further agreed that not only to be now existing Cases of both descriptions, but also all such as shall exist at the Time, of exchanging the Ratifications of this Treaty shall be considered as being within the provisions intent and meaning of this article.

ARTICLE 8.

It is further agreed that the Commissioners mentioned in this and in the two preceding articles shall be respectively paid in such manner, as shall be agreed between the two parties, such agreement being to be settled at the Time of the exchange of the Ratifications of this Treaty. And all other Expences attending the said Commissions shall be defrayed jointly by the Two Parties, the same being previously ascertained and allowed by the Majority of the Commissioners. And in the case of Death, Sickness or necessary absence, the place of every such Commissioner respectively, shall be supplied in the same manner as such Commissioner was first appointed, and the new Commissioners shall take the same Oath, or Affirmation, and do the same Duties.

ARTICLE 9.

It is agreed, that British Subjects who now hold Lands in the Territories of the United States, and American Citizens who now hold Lands in the Dominions of His Majesty, shall continue to hold them according to the nature and Tenure of their respective Estates and Titles therein, and may grant Sell or Devise the same to whom they please, in like manner as if they were Natives; and that neither they nor their Heirs or assigns shall, so far as may respect the said Lands, be and the legal remedies incident thereto, be regarded as Aliens.

ARTICLE 10.

Neither the Debts due from Individuals of the one Nation, to Individuals of the other, nor shares nor monies, which they may have in the public Funds, or in the public or private Banks shall ever, in any Event of war, or national differences, be sequestered, or confiscated, it being unjust and impolitick that Debts and Engagements contracted and made by Individuals having confidence in each other, and in their respective Governments, should ever be destroyed or impaired by national authority, on account of national Differences and Discontents.

ARTICLE 11.

It is agreed between His Majesty and the United States of America, that there shall be a reciprocal and entirely perfect Liberty of Navigation and Commerce, between their respective People, in the manner, under the Limitations, and on the Conditions specified in the following Articles.

ARTICLE 12.

His Majesty Consents that it shall and may be lawful, during the time hereinafter Limited, for the Citizens of the United States, to carry to any of His Majesty's Islands and Ports in the West Indies from the United States in their own Vessels, not being above the burthen of Seventy Tons, any Goods or Merchandizes, being of the Growth, Manufacture, or Produce of the said States, which it is, or may be lawful to carry to the said Islands or Ports from the said States in British Vessels, and that the said American Vessels shall be subject there to no other or higher Tonnage Duties or Charges, than shall be payable by British Vessels, in the Ports of the United States; and that the Cargoes of the said American Vessels, shall be subject there to no other or higher Duties or Charges, than shall be payable on the like Articles, if imported there from the said States in British vessels. And His Majesty also consents that it shall be lawful for the said American Citizens to purchase, load and carry away, in their said vessels to the United States from the said Islands and Ports, all such articles being of the Growth, Manufacture or Produce of the said Islands, as may now by Law be carried from thence to the said States in British Vessels, and subject only to the same Duties and Charges on Exportation to which British Vessels and their Cargoes are or shall be subject in similar circumstances.

Provided always that the said American vessels do carry and land their Cargoes in the United States only, it being expressly agreed and declared that during the Continuance of this article, the United States will prohibit and restrain the carrying any Melasses, Sugar, Coffee, Cocoa or Cotton in American vessels, either from His Majesty's Islands or from the United States, to any part of the World, except the United States, reasonable Sea Stores excepted. Provided also, that it shall and may be lawful during the same period for British vessels to import from the said Islands into the United States, and to export from the United States to the said Islands, all Articles whatever being of the Growth, Produce or Manufacture of the said Islands, or of the United States respectively, which now may, by the Laws of the said States, be so imported and exported. And that the Cargoes of the said British vessels, shall be subject to no other or higher Duties or Charges, than shall be payable on the same articles if so imported or exported in American Vessels.

It is agreed that this Article, and every Matter and Thing therein contained, shall continue to be in Force, during the Continuance of the war in which His Majesty is now engaged; and also for Two years from and after the Day of the signature of the Preliminary or other Articles of Peace by which the same may be terminated

And it is further agreed that at the expiration of the said Term, the Two Contracting Parties will endeavour further to regulate their Commerce in this respect, according to the situation in which His Majesty may then find Himself with respect to the West Indies, and with a view to such Arrangements, as may best conduce to the mutual advantage and extension of Commerce. And the said Parties will then also renew their discussions, and endeavour to agree, whether in any and what cases Neutral Vessels shall protect Enemy's property; and in what cases provisions and other articles not generally Contraband may become such. But in the mean time their Conduct towards each other in these respects, shall be regulated by the articles hereinafter inserted on those subjects.

ARTICLE 13.

His Majesty consents that the Vessels belonging to the Citizens of the United States of America, shall be admitted and Hospitably received in all the Sea Ports and Harbours of the British Territories in the East Indies: and that the Citizens of the said United States, may freely carry on a Trade between the said Territories and the said United States, in all articles of which the Importation or Exportation respectively to or from the said Territories, shall not be entirely prohibited; Provided only, that it shall not be lawful for them in any time of War between the

British Government, and any other Power or State whatever, to export from the said Territories without the special Permission of the British Government there, any Military Stores, or Naval Stores, or Rice. The Citizens of the United States shall pay for their Vessels when admitted into the said Ports, no other or higher Tonnage Duty than shall be payable on British Vessels when admitted into the Ports of the United States. And they shall pay no other or higher Duties or Charges on the importation or exportation of the Cargoes of the said Vessels, than shall be payable on the same articles when imported or exported in British Vessels. But it is expressly agreed, that the Vessels of the United States shall not carry any of the articles exported by them from the said British Territories to any Port or Place, except to some Port or Place in America, where the same shall be unladen, and such Regulations shall be adopted by both Parties, as shall from time to time be found necessary to enforce the due and faithful observance of this Stipulation: It is also understood that the permission granted by this article is not to extend to allow the Vessels of the United States to carry on any part of the Coasting Trade of the said British Territories, but Vessels going with their original Cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the Coasting Trade. Neither is this Article to be construed to allow the Citizens of the said States to settle or reside within the said Territories, or to go into the interior parts thereof, without the permission of the British Government established there; and if any transgression should be attempted against the Regulations of the British Government in this respect, the observance of the same shall and may be enforced against the Citizens of America in the same manner as against British Subjects, or others transgressing the same rule. And the Citizens of the United States, whenever they arrive in any Port or Harbour in the said Territories, or if they should be permitted in manner aforesaid, to go to any other place therein, shall always be subject to the Laws, Government and Jurisdiction, of what nature, established in such Harbour, Port or Place according as the same may be: The Citizens of the United States, may also touch for refreshment, at the Island of st Helena, but subject in all respects to such regulations, as the British Government may from time to time establish there.

ARTICLE 14.

There shall be between all the Dominions of His Majesty in Europe, and the Territories of the United States, a reciprocal and perfect liberty of Commerce and Navigation. The people and Inhabitants of the Two Countries respectively, shall have liberty, freely and securely, and without hindrance and molestation, to come with their Ships and Cargoes to the Lands, Countries, Cities, Ports Places and Rivers within the Dominions and Territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of Time: also to hire and possess, Houses and ware houses for the purposes of their Commerce; and generally the Merchants and Traders on each side, shall enjoy the most complete protection and Security for their Commerce; but subject always, as to what respects this article, to the Laws and Statutes of the Two Countries respectively.

ARTICLE 15.

It is agreed, that no other or higher Duties shall be paid by the Ships or Merchandize of the one Party in the Ports of the other, than such as are paid by the like vessels or Merchandize of all other Nations. Nor shall any other or higher Duty be imposed in one Country on the importation of any articles, the growth, produce, or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce or manufacture of any other Foreign Country. Nor shall any prohibition be imposed, on the exportation or importation of any

articles to or from the Territories of the Two Parties respectively which shall not equally extend to all other Nations.

But the British Government reserves to itself the right of imposing on American Vessels entering into the British Ports in Europe a Tonnage Duty, equal to that which shall be payable by British Vessels in the Ports of America: And also such Duty as may be adequate to countervail the difference of Duty now payable on the importation of European and Asiatic Goods when imported into the United States in British or in American Vessels.

The Two Parties agree to treat for the more exact equalization of the Duties on the respective Navigation of their Subjects and People in such manner as may be most beneficial to the two Countries. The arrangements for this purpose shall be made at the same time with those mentioned at the Conclusion of the [12th Article of this Treaty](#), and are to be considered as a part thereof. In the interval it is agreed, that the United States will not impose any new or additional Tonnage Duties on British Vessels, nor increase the now subsisting difference between the Duties payable on the importation of any articles in British or in American Vessels.

ARTICLE 16.

It shall be free for the Two Contracting Parties respectively, to appoint Consuls for the protection of Trade, to reside in the Dominions and Territories aforesaid; and the said Consuls shall enjoy those Liberties and Rights which belong to them by reason of their Function. But before any Consul shall act as such, he shall be in the usual forms approved and admitted by the party to whom he is sent, and it is hereby declared to be lawful and proper, that in case of illegal or improper Conduct towards the Laws or Government, a Consul may either be punished according to Law, if the Laws will reach the Case, or be dismissed or even sent back, the offended Government assigning to the other, Their reasons for the same.

Either of the Parties may except from the residence of Consuls such particular Places, as such party shall judge proper to be so excepted.

ARTICLE 17.

It is agreed that, in all Cases where Vessels shall be captured or detained on just suspicion of having on board Enemy's property or of carrying to the Enemy, any of the articles which are Contraband of war; The said Vessel shall be brought to the nearest or most convenient Port, and if any property of an Enemy, should be found on board such Vessel, that part only which belongs to the Enemy shall be made prize, and the Vessel shall be at liberty to proceed with the remainder without any Impediment. And it is agreed that all proper measures shall be taken to prevent delay, in deciding the Cases of Ships or Cargoes so brought in for adjudication, and in the payment or recovery of any Indemnification adjudged or agreed to be paid to the masters or owners of such Ships.

ARTICLE 18.

In order to regulate what is in future to be esteemed Contraband of war, it is agreed that under the said Denomination shall be comprized all Arms and Implements serving for the purposes of war by Land or Sea; such as Cannon, Muskets, Mortars, Petards, Bombs, Grenades Carcasses, Saucisses, Carriages for Cannon, Musket rests, Bandoliers, Gunpowder, Match, Saltpetre, Ball, Pikes, Swords, Headpieces Cuirasses Halberts Lances Javelins, Horsefurniture, Holsters, Belts and, generally all other Implements of war, as also Timber for Ship building, Tar or Rosin, Copper in Sheets, Sails, Hemp, and Cordage, and generally whatever may serve directly to the equipment

of Vessels, unwrought Iron and Fir planks only excepted, and all the above articles are hereby declared to be just objects of Confiscation, whenever they are attempted to be carried to an Enemy.

And Whereas the difficulty of agreeing on the precise Cases in which alone Provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming Contraband according to the existing Laws of Nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the Captors, or in their default the Government under whose authority they act, shall pay to the Masters or Owners of such Vessels the full value of all such Articles, with a reasonable mercantile Profit thereon, together with the Freight, and also the Demurrage incident to such Detension.

And Whereas it frequently happens that vessels sail for a Port or Place belonging to an Enemy, without knowing that the same is either besieged, blockaded or invested; It is agreed, that every Vessel so circumstanced may be turned away from such Port or Place, but she shall not be detained, nor her Cargo, if not Contraband, be confiscated; unless after notice she shall again attempt to enter; but She shall be permitted to go to any other Port or Place She may think proper: Nor shall any vessel or Goods of either party, that may have entered into such Port or Place before the same was besieged, blockaded or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the Owners or proprietors thereof.

ARTICLE 19.

And that more abundant Care may be taken for the security of the respective Subjects and Citizens of the Contracting Parties, and to prevent their suffering Injuries by the Men of war, or Privateers of either Party, all Commanders of Ships of war and Privateers and all others the said Subjects and Citizens shall forbear doing any Damage to those of the other party, or committing any Outrage against them, and if they act to the contrary, they shall be punished, and shall also be bound in their Persons and Estates to make satisfaction and reparation for all Damages, and the interest thereof, of whatever nature the said Damages may be.

For this cause all Commanders of Privateers before they receive their Commissions shall hereafter be obliged to give before a Competent Judge, sufficient security by at least Two responsible Sureties, who have no interest in the said Privateer, each of whom, together with the said Commander, shall be jointly and severally bound in the Sum of Fifteen hundred pounds Sterling, or if such Ships be provided with above One hundred and fifty Seamen or Soldiers, in the Sum of Three thousand pounds sterling, to satisfy all Damages and Injuries, which the said Privateer or her Officers or Men, or any of them may do or commit during their Cruize contrary to the tenor of this Treaty, or to the Laws and Instructions for regulating their Conduct; and further that in all Cases of Aggressions the said Commissions shall be revoked and annulled.

It is also agreed that whenever a Judge of a Court of Admiralty of either of the Parties, shall pronounce sentence against any Vessel or Goods or Property belonging to the Subjects or Citizens of the other Party a formal and duly authenticated Copy of all the proceedings in the Cause, and of the said Sentence, shall if required be delivered to the Commander of the said Vessel, without the smallest delay, he paying all legal Fees and Demands for the same.

ARTICLE 20.

It is further agreed that both the said Contracting Parties, shall not only refuse to receive any Pirates into any of their Ports, Havens, or Towns, or permit any of their Inhabitants to receive,

protect, harbour conceal or assist them in any manner, but will bring to condign punishment all such Inhabitants as shall be guilty of such Acts or offences.

And all their Ships with the Goods or Merchandizes taken by them and brought into the port of either of the said Parties, shall be seized, as far as they can be discovered and shall be restored to the owners or their Factors or Agents duly deputed and authorized in writing by them (proper Evidence being first given in the Court of Admiralty for proving the property,) even in case such effects should have passed into other hands by Sale, if it be proved that the Buyers knew or had good reason to believe, or suspect that they had been piratically taken.

ARTICLE 21.

It is likewise agreed that the Subjects and Citizens of the Two Nations, shall not do any acts of Hostility or Violence against each other, nor accept Commissions or Instructions so to act from any Foreign Prince or State, Enemies to the other party, nor shall the Enemies of one of the parties be permitted to invite or endeavour to enlist in their military service any of the Subjects or Citizens of the other party; and the Laws against all such Offences and Aggressions shall be punctually executed. And if any Subject or Citizen of the said Parties respectively shall accept any Foreign Commission or Letters of Marque for Arming any Vessel to act as a Privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party to treat and punish the said Subject or Citizen, having such Commission or Letters of Marque as a Pirate.

ARTICLE 22.

It is expressly stipulated that neither of the said Contracting Parties will order or Authorize any Acts of Reprisal against the other on Complaints of Injuries or Damages until the said party shall first have presented to the other a Statement thereof, verified by competent proof and Evidence, and demanded Justice and Satisfaction, and the same shall either have been refused or unreasonably delayed.

ARTICLE 23.

The Ships of war of each of the Contracting Parties, shall at all times be hospitably received in the Ports of the other, their Officers and Crews paying due respect to the Laws and Government of the Country. The officers shall be treated with that respect, which is due to the Commissions which they bear. And if any Insult should be offered to them by any of the Inhabitants, all offenders in this respect shall be punished as Disturbers of the Peace and Amity between the Two Countries.

And His Majesty consents, that in case an American Vessel should by stress of weather, Danger from Enemies, or other misfortune be reduced to the necessity of seeking Shelter in any of His Majesty's Ports, into which such Vessel could not in ordinary cases claim to be admitted; She shall on manifesting that necessity to the satisfaction of the Government of the place, be hospitably received, and be permitted to refit, and to purchase at the market price, such necessaries as she may stand in need of, conformably to such Orders and regulations as the Government of the place, having respect to the circumstances of each case shall prescribe. She shall not be allowed to break bulk or unload her Cargo, unless the same shall be bona fide necessary to her being refitted. Nor shall be permitted to sell any part of her Cargo, unless so much only as may be necessary to defray her expences, and then not without the express permission of the Government of the place. Nor shall she be obliged to pay any Duties whatever, except only on such Articles, as she may be permitted to sell for the purpose aforesaid.

ARTICLE 24.

It shall not be lawful for any Foreign Privateers (not being Subjects or Citizens of either of the said Parties) who have Commissions from any other Prince or State in Enmity with either Nation, to arm their Ships in the Ports of either of the said Parties, nor to sell what they have taken, nor in any other manner to exchange the same, nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest Port of that Prince or State from whom they obtained their Commissions.

ARTICLE 25.

It shall be lawful for the Ships of war and Privateers belonging to the said Parties respectively to carry whithersoever they please the Ships and Goods taken from their Enemies without being obliged to pay any Fee to the Officers of the Admiralty, or to any Judges what ever; nor shall the said Prizes when they arrive at, and enter the Ports of the said Parties be detained or seized, neither shall the Searchers or other Officers of those Places visit such Prizes (except for the purpose of preventing the Carrying of any part of the Cargo thereof on Shore in any manner contrary to the established Laws of Revenue, Navigation or Commerce) nor shall such Officers take Cognizance of the Validity of such Prizes; but they shall be at liberty to hoist Sail, and depart as speedily as may be, and carry their said Prizes to the place mentioned in their Commissions or Patents, which the Commanders of the said Ships of war or Privateers shall be obliged to shew. No Shelter or Refuge shall be given in their Ports to such as have made a Prize upon the Subjects or Citizens of either of the said Parties; but if forced by stress of weather or the Dangers of the Sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this Treaty contained shall however be construed or operate contrary to former and existing Public Treaties with other Sovereigns or States. But the Two parties agree, that while they continue in amity neither of them will in future make any Treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the Ships or Goods belonging to the Subjects or Citizens of the other to be taken within Cannon Shot of the Coast, nor in any of the Bays, Ports or Rivers of their Territories by Ships of war, or others having Commission from any Prince, Republic or State whatever. But in case it should so happen, the party whose Territorial Rights shall thus have been violated, shall use his utmost endeavours to obtain from the offending Party, full and ample satisfaction for the Vessel or Vessels so taken, whether the same be Vessels of war or Merchant Vessels.

ARTICLE 26.

If at any Time a Rupture should take place (which God forbid) between His Majesty and the United States, the Merchants and others of each of the Two Nations, residing in the Dominions of the other, shall have the privilege of remaining and continuing their Trade so long as they behave peaceably and commit no offence against the Laws, and in case their Conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of Twelve Months from the publication of the order shall be allowed them for that purpose to remove with their Families, Effects and Property, but this Favor shall not be extended to those who shall act contrary to the established Laws, and for greater certainty it is declared that such Rupture shall not be deemed to exist while negotiations for accommodating Differences shall be depending nor until the respective Ambassadors or Ministers, if such there shall be, shall be recalled, or sent home on account of such differences, and not on account of personal misconduct according to the nature and degrees of which both parties retain their Rights, either to request the recall or

immediately to send home the Ambassador or Minister of the other; and that without prejudice to their mutual Friendship and good understanding.

ARTICLE 27.

It is further agreed that His Majesty and the United States on mutual Requisitions by them respectively or by their respective Ministers or Officers authorized to make the same will deliver up to Justice, all Persons who being charged with Murder or Forgery committed within the Jurisdiction of either, shall seek an Asylum within any of the Countries of the other, Provided that this shall only be done on such Evidence of Criminality as according to the Laws of the Place, where the Fugitive or Person so charged shall be found, would justify his apprehension and commitment for Tryal, if the offence had there been committed. The Expence of such apprehension and Delivery shall be borne and defrayed by those who make the Requisition and receive the Fugitive.

ARTICLE 28.

It is agreed that the first Ten Articles of this Treaty shall be permanent and that the subsequent Articles except the Twelfth shall be limited in their duration to Twelve years to be computed from the Day on which the Ratifications of this Treaty shall be exchanged, but subject to this Condition that whereas the said Twelfth Article will expire by the Limitation therein contained at the End of two years from the signing of the Preliminary or other Articles of Peace, which shall terminate the present War, in which His Majesty is engaged; It is agreed that proper Measures shall by Concert be taken for bringing the subject of that article into amicable Treaty and Discussion so early before the Expiration of the said Term, as that new Arrangements on that head may by that Time be perfected and ready to take place. But if it should unfortunately happen that His Majesty and the United States should not be able to agree on such new Arrangements, in that case, all the Articles of this Treaty except the first Ten shall then cease and expire together.

Lastly. This Treaty when the same shall have been ratified by His Majesty, and by The President of the United States, by and with the advice and Consent of Their Senate, and the respective Ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States, and shall be by Them respectively executed and observed with punctuality, and the most sincere regard to good Faith. And Whereas it will be expedient in order the better to facilitate Intercourse and obviate Difficulties that other Articles be proposed and added to this Treaty, which Articles from want of time and other circumstances cannot now be perfected; It is agreed that the said Parties will from Time to Time readily treat of and concerning such Articles, and will sincerely endeavour so to form them, as that they may conduce to mutual convenience, and tend to promote mutual Satisfaction and Friendship; and that the said Articles after having been duly ratified, shall be added to, and make a part of this Treaty.

In Faith whereof We the Undersigned, Ministers Plenipotentiary of His Majesty The King of Great Britain; and the United States of America, have signed this present Treaty, and have caused to be affixed thereto, the Seal of Our Arms.

Done at London, this Nineteenth Day of November, One thousand seven hundred and ninety Four.

GRENVILLE [Seal] JOHN JAY [Seal]

APPENDIX F

25 U.S.C. §1300b TEXAS BAND OF KICKAPOO INDIANS

Web Access: <https://www.govinfo.gov/content/pkg/USCODE-2011-title25/html/USCODE-2011-title25-chap14-subchapLXXIII-A.htm>

25 U.S.C.

United States Code, 2011 Edition

Title 25 – INDIANS

CHAPTER 14 – MISCELLANEOUS

SUBCHAPTER LXXIII-A - TEXAS BAND OF KICKAPOO INDIANS

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SUBCHAPTER LXXIII-A – TEXAS BAND OF KICKAPOO INDIANS

§1300B–11. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

(a) Findings

Congress finds that the Texas Band of Kickapoo Indians is a subgroup of the Kickapoo Tribe of Oklahoma; that many years ago, the Band was forced to migrate from its ancestral lands to what is now the State of Texas and the nation of Mexico; that, although many members of the band ¹ meet the requirements for United States citizenship, some of them cannot prove that they are United States citizens; that, although the Band resides in the State of Texas, it owns no land there; that, because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized tribes because of their status as Indians except when the members of the Band are on or near the reservation of the Kickapoo Tribe of Oklahoma; that members of the Band live under conditions that pose serious threats to their health; and that, because their culture is derived from three different cultures, they have unique needs including, especially, educational needs.

(b) Declarations

Congress therefore declares that the Band should be recognized by the United States; that the right of the members of the Band to pass and repass the borders of the United States should be clarified; that services which the United States provides to Indians because of their status as Indians should be provided to members of the Band in Maverick County, Texas; and, that land in the State of Texas should be taken in trust by the United States for the benefit of the Band.
(Pub. L. 97–429, §2, Jan. 8, 1983, 96 Stat. 2269.)

Short Title

Section 1 of Pub. L. 97–429 provided: “That this Act [enacting this subchapter] may be cited as the ‘Texas Band of Kickapoo Act’.”

§1300B–12. DEFINITIONS

For purposes of this subchapter—

(a) “Band” means the Texas Band of Kickapoo Indians, a subgroup of the Kickapoo Tribe of Oklahoma;

(b) “Tribe” means the Kickapoo Tribe of Oklahoma; and

(c) “Secretary” means the Secretary of the Interior.
(Pub. L. 97–429, §3, Jan. 8, 1983, 96 Stat. 2269.)

§1300B–13. BAND ROLL

(a) Establishment; publication in Federal Register

Within one year of January 8, 1983, the Secretary shall, after consultation with the Tribe, compile a roll of those members of the Tribe who possess Kickapoo blood and who are also members of the Band. When said roll is complete, the Secretary shall immediately publish notice in the Federal Register stating that the roll has been completed. The Secretary shall ensure that the roll, once completed, is maintained and that it is current.

(b) Report to Congress

If the Secretary does not compile the roll within the period prescribed in subsection (a) of this section, he shall submit a report to Congress setting forth the reasons he did not do so.

(c) Citizenship for applicants

For a period of five years after the publication of the Federal Register notice required under subsection (a) of this section, any member of the Band whose name appears on the roll compiled by the Secretary, may, at his option, apply for United States citizenship. Such application shall be made to the Immigration and Naturalization Service and, upon receipt of the application, citizenship shall promptly be granted to the applicant.

(d) Border crossing, living and working rights

Notwithstanding the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], all members of the Band shall be entitled to freely pass and re-pass the borders of the United States and to live and work in the United States.

(Pub. L. 97–429, §4, Jan. 8, 1983, 96 Stat. 2269.)

References in Text

The Immigration and Nationality Act, referred to in subsec. (d), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§1300B–14. LAND ACQUISITION

(a) Statutory provisions applicable

The Act of June 18, 1934 (48 Stat. 984) [25 U.S.C. 461 et seq.], is hereby made applicable to the Band: Provided, however, That the Secretary is only authorized to exercise his authority under section 5 of that Act [25 U.S.C. 465] with respect to lands located in Maverick County, Texas.

(b) Authority of Secretary

The Secretary is authorized and directed to accept no more than one hundred acres of land in Maverick County, Texas which shall be offered for the benefit of the Band with the approval of the Tribe. Nothing in this subsection shall be construed as limiting the authority of the Secretary under section 5 of the Act of June 18, 1934 (48 Stat. 985) [25 U.S.C. 465]. (Pub. L. 97–429, §5, Jan. 8, 1983, 96 Stat. 2270.)

References in Text

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§1300B–15. JURISDICTION

The State of Texas shall exercise jurisdiction over civil causes of action and criminal offenses arising on the Band's trust lands in accordance with section 1360 of title 28 and section 1162 of title 18 as if it had assumed jurisdiction pursuant to sections 1321 and 1322 of this title. The provisions of section 1323 of this title, shall be applicable and available to the State of Texas.

(Pub. L. 97–429, §6, Jan. 8, 1983, 96 Stat. 2270.)

§1300B–16. PROVISION OF FEDERAL INDIAN SERVICES

(a) Eligibility for Federal Indian services

Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, the Band and its members in Maverick County, Texas shall be eligible for such programs and services without regard to the existence of a reservation, the residence of members of the Band on or near a reservation, or the compilation of the roll pursuant to section 1300b–13(a) of this title.

(b) Cooperation with Mexican Government and joint funding agreements for meeting special agricultural needs of the Band

In providing services pursuant to subsection (a) of this section, the Secretary and the head of each department and agency shall consult and cooperate with appropriate officials or agencies of the Mexican Government to the greatest extent possible to ensure that such services meet the special tricultural needs of the Band and its members. Such consultation and cooperation may include, whenever practicable, joint funding agreements between such agency or department of the United States and the appropriate agencies and officials of the Mexican Government.

(Pub. L. 97–429, §7, Jan. 8, 1983, 96 Stat. 2270.)