

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



Researched and written by

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*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 Nneeé 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 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, 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](mailto: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](mailto:bonnie.arellano@dhs.gov)

### U.S. Department of Homeland Security Tribal Resource Guide

[www.dhs.gov/xlibrary/assets/iga/dhs-tribal-resource-guide.pdf](http://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](http://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#](http://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/](http://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](http://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](http://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](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.