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HERE BEFORE THE US

UNDERSTANDING THE INDIAN CITIZENSHIP ACT



by
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A CENTURY AGO, ON JUNE 2, 1924, A SIGNIFICANT MILESTONE WAS REACHED when the US government, in a powerful act of recognition, granted citizenship to the Original Peoples born within its territorial limits under the Indian Citizenship Act (ICA):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Prior to the ICA, Native Americans could receive US citizenship in several ways, but nearly all required them to give up their tribal citizenship. The ICA not only extended US citizenship to all Native Americans and Alaska Natives, it acknowledged that Native Americans could be US citizens and tribal citizens at the same time.

In 1983, Congress enacted another significant piece of citizenship legislation, the Texas Band of Kickapoo Act. This act continued the efforts to rectify the historical injustices faced by Native American communities. In the 1800s, the Kickapoo ancestors lived in isolation on the central plains along the Texas-Mexico border area. For over one hundred years, the Kickapoo and their descendants, in a testament to their resilience, traveled between the US and Mexico with no citizenship status in either country. The act established federal recognition and provided for acquiring a small reservation near Eagle Pass, Texas. It also authorized tribal members, including those born in Mexico, to apply for US citizenship within five years of the act, marking a significant page in history. The Kickapoos' journey to citizenship is a story of perseverance and determination that we can all admire.

The Tohono O'odham are among several southwestern tribes whose territories overlap the present-day US-Mexico border. The border passes through seventy miles of their lands. Tribal members are sometimes picked up and harassed by immigration authorities while returning home from family visits.

The Kumeyaay people also live on both sides of the border. The Kumeyaay reservations on the US side are Barona, Campo, Capitan Grande, Cuyapaipe,

Inaja, Jamul, La Posta, Manzanita, Mesa Grande, San Pasqual, Santa Ysabel, Sycuan, and Viejas. Additionally, Laguna is a non-federally recognized community in San Diego County. Kumeyaay communities in Baja California include La Huerta, Juntas de Nejí, San Antonio Necua, and San José de la Zorra. Under the Trump administration, the La Posta Band of Diegueño Mission Indians filed a federal lawsuit against the construction of the border wall that began on sacred burial grounds.

For six centuries, Kumeyaay people used a system of trails to travel across the border between Mexico and the US to visit extended families. Today, the border patrol and a wall have replaced cattle guards. What was once an informal walk now requires permission and a passport. "Indigenous people on both sides share native languages and traditions, as well as family trees," Christina Leza, author of *Divided Peoples: Policy, Activism, and Indigenous Identities*, stated in a 2020 interview with *The American Prospect*. "Until recently, they identified themselves as a member of a tribe before identifying as American or Mexican. But that is changing: as the border becomes more militarized, people are increasingly identifying with one country or the other."

Historically, in the late 1700s and early 1800s, federal law required US

citizens traveling in Indian Country to have passports. The passport issue may be different now, but it is no less important. A few traditional Natives regard themselves as citizens only of their tribes, retaining views consistent with pre-1924 law. In her book *American Indian Tribal Governments*, Sharon O'Brien states that traditional Hopi Nation and Iroquois Confederacy (Haudenosaunee) leaders have traveled to international meetings using only passports issued by tribal governments.

Haudenosaunee tribal members have carried their tribal passports for years. The Six Nations of the Iroquois invented the game of lacrosse, which is now played all over the world. They participate in world championships, and although some countries accept and honor their passports, the US, Canada, and the UK do not.

The Jay Treaty, signed in 1794 between the UK and the US, provides that American Indians may travel freely across the borders of Canada. According to the US Embassy website, under the treaty and corresponding legislation, Native people born in Canada are entitled to freely enter the US for employment, study, retirement, investing, and immigration. Rather than presenting an American or Canadian passport at the border, Native people must instead present other evidence of tribal citizenship.

Aside from the provisions of the Jay Treaty, re-entry into the US requires an official US passport, even if a tribal passport was accepted in another country. The State Department specifically states:

Travel documents issued by Native American tribes or nations are not issued under the authority of the United States. They are not passports under U.S. law (see 8

U.S.C. 1101(a)(30) (INA 101(a)(30)), which defines a passport as a travel document issued by competent authority that is valid for the bearer's entry into a foreign country). Pursuant to 22 U.S.C. 211a, only the U.S. Secretary of State is authorized to issue U.S. passports.

Native Americans hold a unique status, akin to global travelers with dual passports (as in a tribal passport and US passport). This dual citizenship status allows them to be recognized as citizens by both the US and their respective tribes. This status enables them to vote in federal, state, and local elections, serve in tribal government, and hold public office at all levels of government, whether elected or appointed, which is a unique and valuable aspect of their citizenship. It is a testament to the unique political rights and representation that Natives have, distinct from most US citizens.

Today, Native Americans have made significant strides in political representation. They hold municipal, county, state, and national offices across the US, demonstrating their growing influence and participation in governance.

Assemblymember James Ramos (Serrano/Cahuilla) is the first California Native American state lawmaker and, as former chairman of the San Manuel Band of Mission Indians, is committed to preserving California Native culture. As a public servant, he is the first California Native to hold positions on the California State Board of Education, the San Bernardino Community College Board of Trustees, and the San Bernardino County Board of Supervisors. From 2015 to 2017, as chair of the Board of Supervisors, Assemblymember Ramos oversaw more than forty departments and agencies staffed by more than twenty-five thousand public service professionals, which serves a community of nearly 2.2 million residents. His most recent bill fol-

lows up on the AB 1703 California Indian Education Act and would require K-12 education to accurately reflect the historical mistreatment of California Natives.

The California Indian Law Association (CILA) was formally established in 2003 under the Hoopa Non-profit Corporations Code. At their annual conference on October 3 and 4, 2024, CILA will honor Denise Turner Walsh, Attorney General of the Rincon Band of Luiseño Indians and the first tribal member to hold that position, with an award for Outstanding Accomplishment in California Indian Law. CILA will also honor Gabriela Magee (Cahuilla Band of Indians), a specialist in Indian law and policy who is also active in her tribe, with an award for Outstanding Young Attorney. CILA offers mentorship and Pathways to Law scholarships to all tribal nations.

Deb Haaland (Laguna Pueblo) is the 54th Secretary of the Interior. Within sixty days of swearing in, she addressed the crisis of Missing and Murdered Indigenous Peoples, which now includes working with a trilateral group on an international level. Under her leadership, the department established the Not Invisible Act Commission, which makes recommendations for implementing the Not Invisible Act, which she led passage of during her time in Congress.

Secretary Haaland, Assemblymember Ramos, many tribal leaders, and tribal individuals who exercise their citizenship rights under the ICA, including the right to vote, are reasons for optimism, showing that Native Americans are increasingly shaping this country's political landscape.