



USET

SOVEREIGNTY PROTECTION FUND

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July 9, 2024

Fayrouz Saad
Assistant Secretary
Office of Partnership and Engagement
Department of Homeland Security
301 7th Street, SW
Washington, DC 20407

Dear Assistant Secretary Saad,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultations held by the Department of Homeland Security (DHS) throughout May 2024 on a legislative proposal to amend Sec. 289 of the Immigration and Nationality Act (INA Sec. 289). DHS's legislative proposal seeks to remove the "50 per centum of blood of the American Indian race" requirement for "American Indians" born in Canada to cross the U.S.-Canada border. The proposal also includes an amendment to INA Sec. 289 that would establish procedures and policies for "Canadian Indian Entrants" to obtain Lawful Permanent Resident (LPR) status in the United States. USET SPF supports the removal of the 50 percent "Indian blood" quantum requirement from INA Sec. 289. However, we do not support the expanded draft legislative language proposed by DHS to codify procedures for Canadian Indian Entrants to obtain LPR status in the United States. USET SPF firmly asserts that this language would create unnecessary administrative burdens and an additional layer of bureaucracy and oversight to be applied to Tribal citizens for a process that is already addressed under current law.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Several USET SPF member Tribal Nations have long contended with the restrictive “blood quantum” requirement of the INA Sec. 289, and interpretation of this language by U.S. Border Patrol agents has led to the unnecessary questioning of Tribal citizens regarding “blood quantum” documentation and the denial of crossing the U.S.-Canada border. In response, USET SPF adopted [USET SPF Resolution No. 2017 SPF:001](#), “Urging an Amendment to the Immigration and Nationality Act to Recognize Tribal Citizenship Rather than Blood Quantum for the Purposes of the Jay Treaty”, which calls for removal of the “blood quantum” requirement from the INA Sec. 289. Further, USET SPF Resolution No. 2017 SPF:001 calls upon Congress to enact a technical amendment to the INA that recognizes Tribal Nation authority to determine our own citizenship requirements and the use of federally recognized Tribal Nation citizenship identification cards for purposes of fulfilling Article 3 of the 1794 Jay Treaty to freely cross the U.S.-Canada border.

The INA Sec. 289 “Blood Quantum” Requirement Does Not Uphold the United States’ Trust and Treaty Obligations to Tribal Nations

The language of the INA Sec. 289 has been a longstanding issue since it was enacted by Congress in 1952; during the “Termination Era” of federal Indian law and policy, where the United States government sought to formally abrogate its trust and treaty obligations to Tribal Nations and further its assimilation efforts of Tribal Nations and our citizens. While the INA Sec. 289 language noted that nothing in the INA should be construed to affect the right of, “American Indians born in Canada to pass the borders of the United States”, it limits the free passage of Tribal citizens to cross the U.S.-Canada border to those individuals with 50 percent or more blood quantum of the “American Indian race.” This language is in direct violation of the legally binding agreements established under Article 3 of the 1794 Treaty of Amity, Commerce, and Navigation (the Jay Treaty), which preserved the right of Native Americans to cross the U.S.-Canada border freely by land or water.

USET SPF asserts that the current INA Sec. 289 statutory language does not uphold the trust and treaty obligations of the United States to Tribal Nations and our citizens. The current statutory language is reminiscent of the antiquated and paternalistic “Termination Era” of federal Indian law and policy in the United States. Since enactment of the Indian Self-Determination and Education Assistance Act of 1974, which brought an end to the disastrous policy of “Termination”, the U.S. has progressed in shifting its federal Indian law and policy stance to one that supports our inherent sovereignty and decision-making authorities. This has led to efforts by Tribal Nations to engage in constitutional reform projects for our governments established under the Indian Reorganization Act of 1934, which has included the revision of Tribal citizenship requirements in our Nations. Many have moved away from the colonial, race-based ideology of “blood quantum” to determine citizenship in our Nations and have returned to traditional lineage or other parameters for determining Tribal citizenship in a federally recognized Tribal Nation.

Tribal Nations have established our own documentation proving citizenship (also identified as ‘enrollment’) in our Nations. The modern use of Tribally issued identification cards (Tribal IDs) and other forms of documentation acknowledging and confirming citizenship in a federally recognized U.S. Tribal Nation and Canadian Tribal citizens must be accepted by DHS when our citizens attempt to cross the U.S.-Canada border. USET SPF recommends the “50 Per Centum Blood of the American Indian Race” requirement should be replaced with eligibility language that is based on citizenship in a U.S. federally recognized Tribal Nation, citizenship/membership in a self-governing First Nation in Canada, and “Indian status” as recognized by the Canadian government. If DHS decides to move forward with submitting its legislative proposal to amend Sec. 289, then it should be limited to a simple technical amendment that removes the 50 percent blood quantum requirement. Tribal Nations pre-date the establishment of the United States and Canada and, therefore, our inherent, exclusive sovereign rights and authorities to establish our own Tribal citizenship requirements—instead of reliance on antiquated, paternalistic blood quantum requirements—

must be recognized by DHS to ensure the free movement of U.S. and Canadian federally recognized Tribal citizens to cross the border. The reliance on blood quantum for re-entry of Tribal citizens into the United States has led to citizens of federally recognized Tribal Nations being unjustly denied entry if they cannot prove their blood quantum at a border crossing.

USET SPF Concerns with the Current DHS Legislative Proposal to Amend the INA Sec. 289

In addition, USET SPF is concerned about Sec. 2(c)(1) of DHS's legislative proposal, which states that, if enacted, individuals who are currently in the U.S. pursuant to the INA Sec. 289 have one year upon date of enactment to apply for nonimmigrant status as a Canadian Indian Entrant pursuant to Sec. 2(c)(2). We are concerned that DHS will not be able to adequately notify these individuals of the change in law and required action on their part. Specifically, it has come to our attention that DHS and the Canadian government tracks who and how many individuals utilize the INA Sec. 289 for entry into the United States. Instead, both the U.S. and Canada governments have requested some USET SPF member Tribal Nations—and other Tribal Nations split by the U.S.-Canada border—to report on how many Tribal citizens utilize this right. Therefore, we know that the education of Tribal citizens who are not aware of the enactment of this legislative proposal will fall upon Tribal governments, not DHS, and notably without the necessary and appropriate federal resources to do so.

Further Sec. (b)(3) of DHS's legislative proposal adds a new subparagraph defining rights under the INA Sec. 289. Specifically, (W)(ii) states that anyone born in Canada and "is a member of a federally recognized Indian tribe located in the United States *or an Alaska Native entity located in the United States*" (emphasis added). This language is troubling for two reasons. First, we are concerned that DHS is incorrectly referring to Alaska Native Tribal governments as "Alaska Native entities." Alaska Native Tribal governments are currently included in the definition of a "federally recognized Indian Tribe" pursuant to the Federally Recognized Indian Tribe List Act and its required list that is published in the Federal Register on an annual basis. Second, including "members of an Alaska Native entity" expands upon the current definition of who is eligible to utilize the INA Sec. 289 beyond members of U.S. federally recognized Tribal Nations to include shareholders of Alaska Native Corporations. Alaska Native entities and Alaska Native Tribal governments are not the same. Additionally, the proposed Sec. (IV) provides that, "a member of another *indigenous* people of Canada recognized by the Secretary of Homeland Security, ... [is] eligible for the benefit of this subparagraph" (emphasis added). The term "indigenous" has no meaning in U.S. federal law and USET SPF is concerned that DHS is unnecessarily expanding who the INA Sec. 289 right applies to.

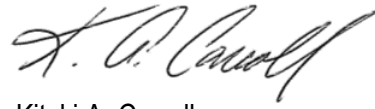
Conclusion

The current statutory "blood quantum" requirement, is not only archaic, paternalistic, and burdensome, but also inconsistent with the current principles of U.S. federal Indian law and policy and Canadian legal standards for recognizing "Indian" identity and Tribal Nation citizenship. Blood quantum is an outdated colonial construct originally imposed to eradicate Native people through registration and forced assimilation. USET SPF appreciates DHS hosting Tribal consultations and seeking Tribal input on this important issue. However, the only change necessary to INA § 289, and the only legislative proposal that DHS should be pursuing, is to remove the reference to the 50 percent blood quantum requirement. USET SPF recommends that instead of DHS putting forth its own proposal, it should support [H.R. 7805, the Tribal Border Crossing Parity Act](#), introduced on March 22, 2024. H.R. 7805 accomplishes the goals of a technical amendment to remove the blood quantum requirement from the INA Sec. 289. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal stroke extending to the right.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read "K. A. Carroll", written in a cursive style.

Kitcki A. Carroll
Executive Director