

**Family Court Bench Card on
Immigrant Crime Victim’s and Immigrant Children’s
Access to Public Benefits and Services¹**

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For What Public Benefits Do Undocumented Domestic Violence Victims Qualify?

In 1996, Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act or PRWORA)² and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA)³ severely limited access to “federal public benefits” and “federal means-tested public benefits” for many immigrants. This legislation also guaranteed as a matter of federal law and orders issued by the U.S. Attorney General that undocumented immigrants be provided access to programs and services necessary to “protect life and safety.”⁴

Programs that meet the following criteria are required by federal law to provide services to all persons without regard to immigration status:⁵

- offer in-kind services (services such as food, shelter, and other commodities);
- provide services at the community level;
- provide services regardless of the individual’s income or resources; and
- are necessary to protect life or safety

Housing⁶

- Short-term shelter (defined as emergency shelter and transitional housing) for up to two years for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children⁷

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² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2267 (1996) [hereinafter PRWORA].

³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996) [hereinafter IIRAIRA].

⁴ IIRAIRA § 508, 8 U.S.C. § 1642(d) (2011).

⁵ 8 U.S.C. § 1611(b)(1)(E) (2011). *See also Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation*, 66 Fed. Reg. 3613, at 3616 (Jan. 16, 2001).

⁶ *See* Letter from Andrew Cuomo, Sec’y, U.S. Dep’t of Hous. and Urban Dev., to HUD Funds Recipients (Jan. 19, 2001), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view> (last visited Mar. 27, 2013); 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification*, *supra* note 4. Federal preemption precludes states from restricting access to services and programs necessary to protect life and safety. *See* Rocio Molina, Leslye Orloff and Benish Anver, *Federal Preemption of State Laws That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (January 11, 2013), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/federal-preemption/State%20Services%20and%20Federal%20Preemption%201-11-13%20%20FINAL.pdf/view> (last visited Apr. 11, 2013).

⁷ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification*, *supra* note 4.

- In-kind emergency disaster relief⁸

Nutrition Assistance⁹

- Soup kitchens¹⁰
- Community food banks¹¹
- Senior nutrition programs and other nutritional programs for persons requiring special assistance
- Assistance under the National School Lunch Act, the Child Nutrition Act of 1966, or SNAP for children under 18¹²
- Special Supplemental Nutrition Program for Women, Infants and Children (WIC)¹³

Legal Services

- Organizations may use any source of funding including Legal Services Corporation funds to provide free legal services to victims (or immigrants whose child has been a victim) of domestic violence, child abuse, elder abuse, sexual assault, human trafficking and victims of U Visa crimes¹⁴ without regard to the victim's immigration status.¹⁵

Health Care

- Emergency Medicaid¹⁶
- To protect life or safety, health services such as the following are required by law for all immigrants, regardless of status:¹⁷
 - Mental health, crisis counseling, and intervention programs
 - Medical and public health services (including treatment and prevention of diseases and injuries, such as immunizations)
 - Substance abuse assistance
- Health Resources and Services Administration Programs (HRSA) funded community, migrant and primary healthcare programs¹⁸
- Public health assistance for immunization, testing and treatment of communicable diseases and school vaccinations¹⁹

⁸ Exempt from immigrant access restrictions. PRWORA § 401(b)(2), 8 U.S.C. § 1611(b)(2).

⁹ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹⁰ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹¹ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹² PRWORA, 8 U.S.C § 1612(a)(2)(J), 1615(a) (2011).

¹³ 7 C.F.R. § 246.7(c)(3)

¹⁴ U Visa crimes include: rape; torture; trafficking; incest; domestic violence; sexual assault; stalking; prostitution; female genital mutilation; involuntary servitude; slave trade; being held hostage; kidnapping, abduction; peonage, false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury, attempt, solicitation, or conspiracy to commit any of these or similar crimes. 8 U.S.C. 1101(a)(15)(U). 8 C.F.R. § 214.14(a)(9) (2008).

¹⁵ *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 103-322 (2006); Letter from Helaine M. Barnett, President, Legal Servs. Corp., to All LSC Program Directors (Feb. 12, 2006), *available at* <http://niwaplibrary.wcl.american.edu/cultural-competency/access-to-legal-services>.

¹⁶ Emergency Medicaid is exempt from immigrant restrictions under PRWORA § 401(b)(1), 8 U.S.C. § 1611(b)(1).

¹⁷ 8 U.S.C. § 1611(b)(1)(D) (2011). *See also Final Specification, supra* note 4.

¹⁸ For the location of HHS funded health care programs open to all persons without regard to immigration status, see *Find a Health Center*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. HEALTH RES. AND SERVICES ADMIN., http://findahealthcenter.hrsa.gov/Search_HCC.aspx (last visited Mar. 27, 2013).

¹⁹ Immunization and treatment of communicable diseases is exempt from immigrant restrictions. PRWORA § 401(b)(3), 8 U.S.C. § 1611(b)(1)(C) (2011). This includes diseases such as tuberculosis, HIV, leprosy, and other sexually transmitted diseases.

Education

- Public elementary and secondary education²⁰
- Child Care and Development Fund (CCDF)²¹

Safety Services Required

- Those relating to child protection, adult protective services, violence and abuse prevention, and protections for victims of domestic violence²²
- Victims of Crime (VOCA) Victim Compensation Funds²³

For What Additional Public Benefits Do Domestic Violence Victims Who are Lawfully Present Qualify?²⁴

There are four different categories of immigrants who qualify to receive federal and/or state public benefits.

- Persons Residing Under Cover of Law (PRUCOL)
 - Can access certain state funded benefits in some states
- Immigrants who are lawfully present
 - For health care access purposes of the Patient Protection and Affordable Care Act of 2009 including access to health care for children and pregnant women²⁵
- “Qualified immigrants”²⁶ who entered the country before August 22, 1996 can access
 - Federal public benefits,²⁷

See Immunizations, CTRS. FOR MEDICAID AND MEDICARE SVCS. (Jun. 15, 2012), available at

<http://www.cms.gov/Medicare/Prevention/Immunizations/index.html?redirect=/immunizations/> (last visited Mar. 27, 2013).

²⁰ See *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

²¹ If undocumented parents have children who are U.S. citizens, lawful permanent residents or qualified immigrants, Child Care Development Fund child care is available to such children without regard to the immigrant parent’s immigration status. See U.S. DEP’T OF HEALTH AND HUMAN SERVS. ADMIN. FOR CHILDREN AND FAMILIES; CHILD CARE BUREAU, *Clarification of Interpretation of “Federal Public Benefit” Regarding CCDF Services Program Instruction (ACYF-PI-CC-98-08)* (Nov. 25, 1998), available at <http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/Clarification%20of%20Interpretation%20of%20Federal%20Public%20Benefits%20Regarding%20Child%20Care%20and%20Development%20Fund%20Services.pdf/view> (last visited April 11, 2013).

²² 8 U.S.C. § 1611(b)(1)(D) (2011). See also *Final Specification*, *supra* note 4.

²³ Only two states place immigrant restrictions on access to VOCA victim assistance (Alabama and Nevada), in both states trafficking victims with ORR certification or eligibility letters or T-visas should be able to receive VOCA victim assistance to the same extent as refugees. For state by state details on access to VOCA assistance for immigrant survivors, see *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence*, NIWAP, LEGAL MOMENTUM, & MORGAN LEWIS LLC (Sep. 17, 2007), available at http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Chart_PostAssaultHealthCare-MANUAL-ES.doc (last visited Apr. 10, 2013).

²⁴ This Bench Card summarizes benefits open to abused immigrants. For a detailed analysis, by immigration status, of whether an immigrant can be considered lawfully present or a qualified immigrant See *Immigration Status: Work Authorization, Public Benefits and Ability to Sponsor Children* available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/Immigration%20Status-%20Work%20Authorization-%20Public%20Benefits%20and%20the%20Ability%20to%20Sponsor%20Children%204.17.13.xlsx/view>

²⁵ Patient Protection and Affordable Care Act of 2009, Pub. L. 111-148, 124 Stat. 119-1025 (2009).

²⁶ A qualified immigrant is defined by 8 U.S.C. 1641 to include: lawful permanent residents, asylees, refugees, persons paroled for more than one year (generally most available to Cuban immigrants); persons granted withholding of removal or conditional entry, Cuban and Haitian Entrants, VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, battered immigrants with prima facie determinations or approved family based visa petitions, and T-visa applicants).

²⁷ 8 U.S.C. § 1611(c)(1) (2011) defines federal public benefit as Any grant, contract, loan, professional or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare,

- State public benefits, and
- Federal means-tested public benefits
- “Qualified immigrants” who entered the country on or after August 22, 1996 can access
 - Federal public benefits,
 - Must wait until 5 years after receipt of “qualified immigrant” status to receive federal means-tested public benefits, and
 - May qualify for state public benefits

VAWA immigration relief applicants²⁸ with a *prima facie* determinations or approval and their children are “qualified immigrants” and may also qualify for health care or state benefits as lawfully present and PRUCOL. The following is a partial list of benefits available for “qualified immigrants”:

Income Maintenance²⁹

- TANF - *limited to qualified immigrants who entered before 8/22/1996³⁰ and others who have been qualified immigrants for more than 5 years³¹*
- SSI for those who were lawful permanent residents and were receiving SSI on August 22, 1996 or if the immigrant, her spouse, or a parent had, individually or collectively, worked for 40 quarters³²

Housing³³

- Housing Choice Voucher Program (Section 8)
- Public Housing
- Heating assistance (LIHEAP)³⁴

Nutrition Assistance³⁵

- SNAP (Food Stamps) - *limited to qualified immigrants who entered before 8/22/1996³⁶ and others who have been qualified immigrants for more than 5 years*

health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by the United States or by funds of the United States.

²⁸ Includes child and spouse abuse victim VAWA self-petitioners (victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent) INA §§ 204(a)(1)(A)(iii) and (B)(ii), 8 U.S.C. §§ 1154(a)(1)(A)(iii) and (B)(ii); and VAWA cancellation of removal or VAWA suspension of deportation applicants who are victims of spouse or child abuse perpetrated by a U.S. citizen or lawful permanent resident spouse, former spouse, parent or step-parent or immigrant parents of children abused by the child’s other parent who is a citizen or lawful permanent resident. INA § 240A(b)(2); 8 U.S.C. § 1229b(b)(2) and INA Section 244(a)(3) (as in effect prior to March 31, 1997).

²⁹ See DEP’T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³⁰ 8 U.S.C. § 1612 (a)(2)(D) (2011).

³¹ 8 U.S.C. §§ 1612(A)(2)(L), 1613 (2011).

³² 8 U.S.C. § 1612(a)(2)(D)(i) (2011).

³³ 8 U.S.C. § 1641(c) (2011).

³⁴ See DEP’T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA “Federal Public Benefit”*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³⁵ 8 U.S.C. §§ 1612(A)(2)(L), 1613 (2011).

³⁶ 8 U.S.C. § 1612 (a)(2)(D) (2011).

Health³⁷

- SCHIP and Medicaid for lawfully present pregnant women and children³⁸
- Medicaid - *limited to qualified immigrants who entered before 8/22/1996*³⁹ and others who have been qualified immigrants for more than 5 years⁴⁰

Education and Children

- Post-secondary grants and loans and programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965⁴¹
- States are free to offer any postsecondary education benefit on the basis of residence within that state⁴²
- Child Care and Development Fund (CCDF)⁴³
- TANF Funded Child Care – *requires TANF eligibility so affected by TANF 5 year bar*⁴⁴
- Adoption assistance⁴⁵
- Foster care⁴⁶

³⁷ For a full list of HHS federal public benefits, see DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA "Federal Public Benefit"*, 63 Fed. Reg. 41,658 (Aug. 4, 1998); *HHS Funded Programs Open to all Immigrants*, NIWAP AND LEGAL MOMENTUM (Aug. 4, 2011), available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/unrestricted-benefits/PB_16_APPENDIX_HHSFundedProgsOpenAllImms-MANUAL-ES.pdf/view?searchterm=HHS%20Funded%20Programs%20Open%20to%20all%20Immigrants (last visited Apr. 10, 2013).

³⁸ See CTR. FOR MEDICAID, CHIP, AND SURVEY & CERTIFICATION, *Re: Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women* (Jul. 1, 2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/health-care/CMS%20Lawfully%20Residing%20Medicaid%20and%20CHIP%207.1.10.pdf/view?searchterm=Re:%20Medicaid%20and%20CHIP%20Coverage%20of%20E2%80%9CLawfully%20%20Residing%20E2%80%9D%20Children%20and%20Pregnant%20Women> (last visited Apr. 11, 2013); DEP'T OF HEALTH AND HUMAN SVCS, *State Children's Health Insurance Program; Eligibility for Prenatal Care and Other Health Services for Unborn Children*, 67 Fed. Reg. 61956-01 (October 2, 2002).

³⁹ 8 U.S.C. § 1612 (a)(2)(D) (2011).

⁴⁰ 8 U.S.C. §§ 1612(a)(2)(L), 1613 (2011).

⁴¹ 8 U.S.C. § 1613(c)(2)(H) (2011). See also *Student Aid Eligibility - Eligibility for Title IV Aid for "Battered Immigrants- Qualified Aliens"* as provided for in the *Violence Against Women Act*, DEP'T OF EDUC. (June 4, 2010), available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/6%20IFAP%20-%20Dear%20Colleague%20Letters.pdf/view?searchterm=Student%20Aid%20Eligibility%20-%20Eligibility%20for%20Title%20IV%20Aid%20for%20E2%80%9CBattered%20Immigrants- Qualified%20Aliens%20as%20provided%20for%20in%20the%20Violence%20Against%20Women%20Act>, (last visited Apr. 11, 2013).

⁴² 8 U.S.C.A. § 1623 (2011).

⁴³ See U.S. DEP'T OF HEALTH AND HUMAN SVCS. ADMIN. FOR CHILDREN AND FAMILIES, *Program Instruction CCDF-ACF-PI-2008-01—Verification of Citizenship and Immigration Status by Non-Profit Organizations and Head Start Grantees* (May 2, 2008), available at <http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/Verification%20of%20Citizenship%20and%20Immigration%20Status%20by%20Non-Profit%20Organizations%20and%20Head%20Grantees.pdf/view> (last visited Apr. 11, 2013). Available to qualified immigrant children based on the child's immigration status.

⁴⁴ Available to qualified immigrants based on TANF eligibility of either the child or parent. For a state by state analysis of state funded access to access to TANF funded child care., see Benish Anver and Leslye E. Orloff, *Immigrant Crime Victim Child Care Access* available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/access-to-benefits-and-sevices-by-immigration-relief-for-immigrant-crime-victims/CHILDCAREChart-FINAL%204.17.13.docx/view>

⁴⁵ See DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA "Federal Public Benefit"*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

⁴⁶ See DEP'T OF HEALTH AND HUMAN SVCS., *Health and Human Service Interpretation of PRWORA "Federal Public Benefit"*, 63 Fed. Reg. 41,658 (Aug. 4, 1998).

State-Funded Benefits

While access to federal means-tested public benefits may be restricted based immigration status and/or other limitations, states may enact state laws that extend or limit access to state funded public benefits to various categories of immigrants. Many states (39) offer some form of state funded public benefits to immigrants that provide access to state publicly funded assistance that provides assistance that goes beyond what immigrants are eligible for under federal public benefits programs. The state funded benefits most commonly extended to immigrants are access to state funded prenatal care, health care for children through CHIP and/or access to state funded medical assistance. A smaller number of states extend access to state funded TANF to some groups of immigrants. Conversely, some states (8) have passed laws that limit the ability of immigrants to access federally funded public benefits for immigrants living in those states.

As a result, which state or federally funded public benefits an immigrant qualifies for varies by state, by public benefits program, by when the immigrant first entered the United States, by what form of immigration relief, if any, and the immigrant may have or may have filed for. Additionally, with regard to some public benefits programs immigrant crime victims will have more access to state or federally funded public benefits than other immigrants in their state.

NIWAP has created an on-line public benefits map that can be used to identify which immigrants qualify for which benefits programs in each state.

The benefits map details eligibility information based on the benefit sought, immigration status, and state in which the immigrant who may need benefits lives. The on-line public benefits map is organized by type of benefit and by state. Users can look up whether and which types of state or federally funded benefits or services the immigrant they are working with qualifies for in their states. If the on-line benefits map will state for each benefits program which categories of immigrants are eligible, eligible with conditions or are not eligible for that benefits program in the state.

When the on line map indicates that an immigrant may be eligible or eligible with conditions for a state or federally funded benefit or service in a state, the on-line map provides a link to a full public benefits chart for the state. The public benefits chart will connect users to more detailed information about benefits access for immigrants in the state and contains endnotes that cite and provide links to the controlling state and federal statutes, regulations, policies and websites that govern the public benefits in each state. The charts serve as an extensive and detailed resource, for practitioners, advocates and survivors to make determinations as to what benefits are available to them.

To view the public benefits map, please view: <http://map.niwap.org/>. To view detailed charts on the state benefits, view: <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>. For an explanation on how to best utilize the map, view this guide: <http://niwaplibrary.wcl.american.edu/guide-to-public-benefits-map/>