

**Public Benefits and Services  
Legally Available to Immigrant  
Children and Victims –  
What Courts Need to Know?**

**Webinar  
April 18, 2019**

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**Faculty**



**Judge Lora Livingston**  
Administrative Judge,  
District Court, Travis  
County, Austin, TX



**Adjunct Professor,  
Leslye E. Orloff, American  
University, Washington College  
of Law**

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**Learning Objectives**

By the end of this workshop you will be better able to:

- Know which publicly funded benefits and services are open to which crime victims and children without regard to their immigration status
- Use NIWAP's Public Benefits Map and State-by-State Charts to look up state and/or federally funded benefits or services for which children, crime victims, and parents qualify
- Issue orders that reflect the programs and services immigrant litigants and their children are eligible to receive

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### Who Has Joined Us on This Webinar?

Answer on the left



- A. Judge
- B. Judicial Education Staff
- C. Court Staff
- D. Law Clerk
- E. Other

Other write in chat box



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Judge Livingston: Why is information about which immigrants qualify for which public benefits important for judges to know?

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Raise Your Hand If You as a Judge or Judges You Work With Order Parties to Seek Public Benefits?

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### Access for All

Both documented and undocumented immigrant survivors can access:

- Widely Available Public Services including:
  - Police
  - Courts
    - Protection orders
    - Custody
    - Child Support
    - Criminal Prosecutions
  - Fire
  - Ambulance
  - Sanitation
- Legal Services for income eligible victims
  - Domestic violence
  - Child abuse
  - Sexual assault
  - Stalking
  - Human trafficking
  - All other U visa criminal activities
- Abuse related matters

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### Access for All

Both documented and undocumented immigrant survivors can access:

- Language Access
- Crime Victim Assistance
- Shelter
- Transitional Housing
- Obtain Public Benefits for Their Children
- Receive Emergency Medical Care
- Health care from community and migrant health centers

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### Health Care Open to All Immigrants

- Community and migrant health clinics
  - [www.nachc.com](http://www.nachc.com)
  - [www.hrsa.gov](http://www.hrsa.gov)
  - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



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### Federally Qualified Health Centers

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Mental health treatment
- Substance abuse services

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### Resources: Healthcare for Immigrant Victims

- State by state charts
  - Post assault health care
  - Emergency Medicare
  - Forensic Exams
  - Prenatal Care

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### Attorney General's List of Required Services

Former Attorney  
General Janet Reno



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety

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**Benefits Available to All Immigrants**

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance



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**Federal Benefits Available to ALL Immigrants**



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

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**When children qualify and their parents do not:**

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status or social security number of the child's parent
  - if the parent is not applying for additional benefits for themselves

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Judge Livingston: How is knowing these publically funded serves are open to all persons helpful to judges?  
Can you provide an example?

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## Legal Rights to Access Federal and State Funded Benefits – Immigrant Children and Immigrant Crime Victims

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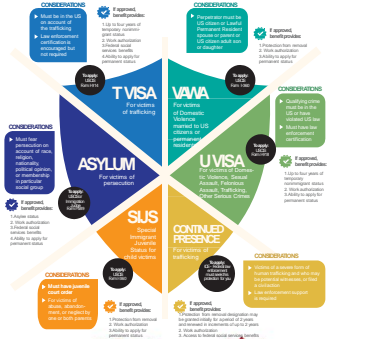
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### VICTIM PROTECTIONS INCREASE BENEFITS ACCESS



**T VISA**  
For victims of trafficking

**VAWA**  
For victims of Domestic Violence, Stalking, or Child Abuse

**U VISA**  
For victims of Criminal Activity, Trafficking, or Child Abuse

**ASYLUM**  
For victims of persecution

**SIS**  
Special Immigrant Status

**CONTINUED PRESENCE**  
For victims of trafficking

DISADVANTAGED-CAMPAIN

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### Qualified Immigrant Children and Crime Victims -Examples

- **Qualified Immigrants**
  - Lawful permanent residents
    - Includes U visas and SIJS
  - Refugees/Asylees
  - VAWA self-petitioners
  - Trafficking victim with
    - Continued presence or
    - Bona fide determination in T visa case
- **Not Qualified Immigrants**
  - Asylum applicants
  - DACA recipients
  - U visa applicants & recipients
  - Work/Student visa holders
  - Undocumented

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### Becoming a Qualified Immigrant Expands Access to Federal & State Public Benefits

- All qualified immigrants can access some federal/state public benefits
  - Which benefits they can access depends on:
    - Immigration status
    - When they entered the United States
    - Whether they meet heightened program requirements for some programs
    - What benefits are offered by the state

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### Immigration Relief Expands Benefits Access

<p><b><u>VAWA self-petition</u></b></p> <ul style="list-style-type: none"> <li>- Prima facie = Qualified Immigrant</li> <li>- Self-petitioner and children</li> </ul> <p><b><u>Battered spouse waiver</u></b></p> <ul style="list-style-type: none"> <li>- Qualified Immigrant</li> <li>- Can avoid deeming</li> </ul> <p><b><u>Continued Presence</u></b></p> <ul style="list-style-type: none"> <li>- Benefits access like refugees</li> <li>- Need HHS certification</li> </ul> <p><b><u>T visa</u></b></p> <ul style="list-style-type: none"> <li>- Benefits access like refugees generally with HHS certification</li> <li>- Qualified Immigrant with bona fide determination</li> </ul>	<p><b><u>U visa</u></b></p> <ul style="list-style-type: none"> <li>- Lawfully present upon wait-list approval</li> </ul> <p><b><u>Family Based Visa Petition Approved + Battering or Extreme Cruelty</u></b></p> <ul style="list-style-type: none"> <li>- Public and Assisted Housing</li> <li>- Not required to file for VAWA</li> </ul> <p><b><u>Special Immigrant Juvenile</u></b></p> <ul style="list-style-type: none"> <li>- Health care due to lawful presence upon filing</li> <li>- Qualified Immigrant upon approval and receipt of lawful permanent residency</li> </ul>
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### Immigrant Benefits Classifications Used in State and Federal Benefits Laws

- Citizens
- “Qualified Immigrants”
  - Entering U.S. before Aug. 22, 1996
  - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
  - Can access federal public benefits that are not means tested (e.g. public and assisted housing, FAFSA student grants/loans)
- Lawfully Present
  - Health care access is provided and states can opt to offer certain federal or state funded benefits to lawfully residing immigrants (most often prenatal and child health care)
- PRUCOL (Permanently Residing Under Color of Law)
- Undocumented Immigrants

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### Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- **Public and assisted housing**
- **Post-secondary educational grants & loans**
- **Driver’s Licenses**
- **Access to most subsidized child care** (Not TANF)
- **Adoption assistance**
- **Foster care**
- **Low income and residential energy assistance programs**
- **Disability benefits**
- **Assistance to developmentally disabled**
- **Job opportunities for low income individuals**

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### Which of the following is NOT eligible for public and/or assisted housing?

Answer on the left



- A. Lawful permanent resident SIJS children
- B. Bona fide T visa applicants
- C. U visa holders
- D. VAWA self-petitioners
- E. Asylum recipients/Refugees

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### Education

- DHS does not require universities to ask about immigration status of applicant or enrolling students
- Immigrants eligible for student federal student grants and loans (FAFSA)
  - VAWA self-petitioners and their children
  - Lawful permanent residents including SIJS/Us
  - Trafficking victims
  - Refugees/asylees
  - SIJS recipients of lawful permanent residency

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### Post -Secondary State Funded Education

- In-state tuition for immigrants who are not citizens or lawful permanent residents
  - States with
    - Tuition equity laws/policies = 8
    - Plus scholarships = 3
    - Plus some state financial aid = 11

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### Federal Means-Tested Public Programs Have Most Limited Immigrant Access - (State Option):

- **TANF**
  - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
  - Lawful permanent residents only if 40 quarters or work credit + "qualified immigrant" status and 5 year bar if entered the U.S. after August 22, 1996
  - Refugee
  - Trafficking victim
  - Veteran and "qualified immigrant" spouses, children
- **Food Stamps**
  - "Qualified Immigrants" 5 year bar post August 22, 1996 and children
- **Medicaid and Child Health Insurance Program Subsidies**
  - Exchange purchase access = "lawfully present" immigrants
  - Subsidies federal 5 yr. post Aug., 22, 1996 entrants to U.S.

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### The Five Year Bar

- Immigrants entering the United States after August 22, 1996 are ineligible for TANF, TANF Child Care, Medicaid, CHIP, Food Stamps (SNAP) and SSI for the first five years of they have qualified immigrant status.
- Certain immigrants are not subject to the five year bar including:
  - Refugees,
  - Asylees
  - Amerasian immigrants
  - Cuban/Haitian entrants,
  - Immigrants granted withholding of deportation
  - Victims of severe forms of human trafficking

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### State Option

- Federal benefits laws allow states to choose whether and which immigrants get which benefits in each state
- States can
  - Provide state funded benefits to specific groups of immigrants
    - Varies by state, by benefit, by immigration status
  - Provide less than the standard level of federally funded benefits

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Judge Livingston: What state or federally funded benefits or programs are courts most likely to order that families before the court seek?

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### TANF and TANF Child Care – State Funded Benefits During 5 Year Bar

- T – Visa Bona Fide or Continued Presence
  - All states
- Qualified immigrants = 18 states
  - VAWA Self-Petitioners (2-3 months)
  - SIJS lawful permanent resident (1 year)
  - U visa lawful permanent residents (18+ years)
- U Visa Wait list approval (3 years) = 8 states
- SIJS applicants = 7 states
- U visa applicants = 5 states

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### Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

#### Child Care Development Fund

- Only the citizenship/immigration status of the child considered
- Qualified immigrants, trafficking victims and their children
- CCDF child care open to all without immigration restrictions if
  - Subject to public educational or Head Start standards, or
  - Eligibility determined by a non-profit organization
- State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

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### Immigrants and Health Care

- Naturalized citizens same as U.S. Born Citizens
- Legal Immigrants
  - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants (VAWA, U visa wait list, SIJS applicants, trafficking victims with HHS certification)
  - May purchase from state insurance exchanges (no wait)
  - Eligible for tax credits & cost-sharing reductions (no wait)
  - Eligible for state's temporary high risk pools and basic health plans
  - 5 year bar to Medicaid for qualified immigrants
    - State option

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### Health Care Subsidies – State Funded Benefits For Immigrants Including During the 5 Year Bar

- T – Visa Bona Fide or Continued Presence
  - All states
- Qualified immigrants = 30 states
  - VAWA Self-Petitioners (2-3 months)
  - SIJS lawful permanent resident (1-3 years)
  - U visa lawful permanent residents (18+ years)
- U Visa Wait list approval (4-6 years) = 29 states
- SIJS applicants = 29 states
- U visa applicants = 6 states

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### Federal SNAP (Food Stamps)

- Qualified immigrant children under 18 regardless of date of entry
  - Children included in VAWA self-petitions
  - T visa bona fide
  - SIJS children with lawful permanent residency
- Qualified immigrants who receive a disability benefit, regardless of date of entry
- Qualified immigrants after the 5 year bar
- Trafficking victims adults and children
  - With HHS certification
  - T bona fide and Continued Presence

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### State Funded SNAP

- VAWA self-petitioners
  - CA, CT, ME, MN (50+), WA
- U visa applicants
  - CA, IL, ME, MN (50+), WA
- T visa applicants
  - All states

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### SSI

- Federal
  - Persons already receiving SSI before 8/22/96 or whose SSI apps were pending
  - Persons who are blind or have disabilities who were lawfully residing in the U.S. on 8/22/96 and are now “qualified”
  - LPRs with 40 quarters of work
  - LPRs who entered after 8/22/96 have the additional burden of being “qualified” for 5 years
- State
  - VAWA self-petitioners = 5 states
  - U visa applicants = 5 states
  - T visa bona fide = all states

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### Drivers' Licenses

- Upon receipt of work authorization federally recognized license or ID
  - VAWA approved cases with deferred action
  - U wait list approvals
  - T vis bona fide
  - Continued presence
  - DACA
  - SIJS when granted lawful permanent residence
- State issued drivers' licenses and IDs =  
14 states

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### LIHEAP and DOE Weatherization

- LIHEAP – Heating, Cooling & Crisis Assistance and Single Family LIHEAP DOE Weatherization
  - VAWA self-petitioners
  - T Visa bona fide
  - Continued Presence
  - SIJS upon receipt of lawful permanent residence
- LIHEAP & DOE Weatherization Assistance
  - Multi-Unit Dwellings – no immigration restrictions

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### Disaster Relief and Immigrants

- FEMA Individual Family Grant Program and Disaster Unemployment Assistance – 1 family member is a --
  - Citizen, or
  - Qualified immigrant
    - Prima facie/approved VAWAs
    - T bona fide/
    - Lawful permanent residents
    - Refugees/asylees
- Emergency Food Stamps
  - Continued presence and T bona fide
  - Otherwise very limited

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### NIWAP's Public Benefits Map and Public Benefits Charts

- Public benefits map
  - <http://map.niwap.org/>
- Public benefits charts
  - <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>

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### Interactive Public Benefits Map

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## Upcoming Webinars

- Special Immigrant Juvenile Status – Best Practices of Drafting Findings
  - Tuesday, May 14 1 pm ET
- Legal Protections When Child Victims are Immigrants: The Judge’s Role
  - Thursday, June 20 1:00 pm ET
- Detained Immigrant Children and Parents: What Courts Want to Know? What Role Can Court’s Play?
  - Tuesday, July 9, 1:00 pm ET

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## Technical Assistance and Materials

- Power Point presentations and materials for this conference at
  - <http://niwaplibrary.wcl.american.edu/public-benefits-courts-webinar-4-18-19/>
- Judicial Training Manual at
  - <http://niwaplibrary.wcl.american.edu/sji-materials/>
  - **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

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