

**NIWAP**



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

**Multi-State Training**

**New Orleans, Louisiana**

**April 6, 2019**

# Faculty



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



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

# 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

# Who Has Joined Us on This Webinar?

Answer on  
the left



Feedback

A

B

C

D

No Answer

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

Other write  
in chat box



Chat

Public Private

Type here to send a message



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

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



# In What Kinds of Court Cases Do You Order a Party to Apply for Public Benefits?

Answer on  
the left



Feedback

A

B

C

D

No Answer

- A. Custody
- B. Child Abuse/Neglect
- C. Divorce
- D. Delinquency
- E. All of the Cases Above

Other write  
in chat box



Chat

Public Private

Type here to send a message



Judge Livingston: How  
have you seen this come up  
before you in cases  
involving --  
Children?  
Crime Victims?



# Programs Open to All Immigrants Without Regard to Immigration Status - Brochure

NIWAP



## PROGRAMS OPEN TO IMMIGRANT VICTIMS AND ALL IMMIGRANTS WITHOUT REGARD TO IMMIGRATION STATUS<sup>1</sup>

By Catherine Longville and Leslye E. Orloff  
May 22, 2014

In passing the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) that generally restricted immigrant access to public benefits,<sup>2</sup> Congress explicitly exempted certain programs from PRWORA's immigrant access restrictions in order to ensure that programs that protected life, safety and public health remained open to all individuals without regard to their immigration status.<sup>3</sup> As a matter of federal law, all of the programs listed in this brochure are open to all persons, including undocumented immigrants, and access to these programs cannot be restricted by service providers or by state or local governments.<sup>4</sup>

### Widely Available Public Services

The Department of Justice (DOJ) has confirmed that the following programs are widely available public services that are open to all persons without any immigration status based restrictions.<sup>5</sup> These programs include *but are not limited to*:

- Police

- Fire
- Ambulance
- Transportation
- Sanitation, and
- Other regular widely available services (e.g. access to courts)

### Programs Necessary to Protect Life and Safety

In addition to exempting the above programs, PRWORA also granted the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, regardless of whether the programs offering these services are state, locally, privately or federally funded.<sup>6</sup> PRWORA requires that any program that meets the following criteria is to be open to all persons without regard to immigration status.<sup>7</sup> The program must:

- 1) Deliver in-kind services<sup>8</sup> at the community level;
- 2) Not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
- 3) Be necessary for the protection of life or safety.

In PRWORA, Congress delegated to the Attorney General of the United States the exclusive and complete authority to define the types of services that are necessary to protect

life and safety.<sup>9</sup> The DOJ regulations describe federal preemption on these issues<sup>10</sup> as follows:

"(2) The Attorney General has fully exercised the power delegated to her under §§ 401(b)(1)(D) and 411(b)(4) of the Welfare Reform Act (codified at 8 U.S.C. 1611(b)(1)(D) and 1621(b)(4)).

(3) Neither states nor other service providers may use [PRWORA] as a basis for prohibiting access of aliens to any programs, services, or assistance covered by this Order. Unless an alien fails to meet eligibility requirements provided by applicable law other than [PRWORA], benefit providers may not restrict the access of any alien to the services covered by this Order, including, but not limited to, emergency shelters.

(4) Thus ... benefits providers who satisfy the requirement of this Order are not required to verify citizenship, nationality, or immigration status of applicants seeking benefits."

The following is a list of the types of programs that the Attorney General deems to be necessary to protect life and safety. Those programs include *but are not limited to*:<sup>11</sup>

- **Crisis counseling and intervention programs.** Includes domestic violence, rape crisis, mental health counseling and treatment for domestic abuse and sexual assault survivors and child and elder abuse survivors.
- **Services and assistance relating to child protection.** Includes services to child abuse, incest and sexual assault victims.
- **Adult protective services.** Includes services to elder abuse victims, elder victims of human trafficking, and elder victims of crime. Elder abuse victims include

<sup>1</sup> Copyright © The National Immigrant Women's Advocacy Project, American University, Washington College of Law 2014. This project was supported by Grant No. 2013-TA-AX-K009 awarded by the Office of Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office of Violence Against Women. This document was developed under grant number SI-13-EG-199 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

<sup>2</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub.L. 104-193, 110 Stat. 2105 (codified at 8 U.S.C.A. § 1611).

<sup>3</sup> PRWORA, Pub.L. 104-193, 110 Stat. 2105, Title IV, Sec. 411(b) (codified at 8 U.S.C.A. § 1621(b)).

<sup>4</sup> Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, 3615.

(Hereinafter "Life and Safety Regulation")

<sup>5</sup> *Id.* at 3616.

<sup>6</sup> *Id.*

<sup>7</sup> PRWORA, Pub.L. 104-193, 110 Stat. 2105, Title IV, Sec. 411(b)(4) (codified at 8 U.S.C.A. § 1621(b)(4)).

<sup>8</sup> "In-kind" services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, protection orders and victim services.

<sup>9</sup> Life and Safety Regulations at 3615.

<sup>10</sup> For additional information on the issue of preemption regarding life and safety related programs, see Rocío Molina, Leslye Orloff and Benish Anvet *Federal Preemption of State Law That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety*, (February 15, 2013) available at <http://www.asip.org/wp-content/uploads/2013/02/american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Federal-Preemption-Life-and-Safety.pdf>

<sup>11</sup> Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613.

# 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

# 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

# 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



# 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

# Resources:

## Healthcare for Immigrant Victims

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

# 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

# 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





# Federal Benefits Available to ALL Immigrants



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

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

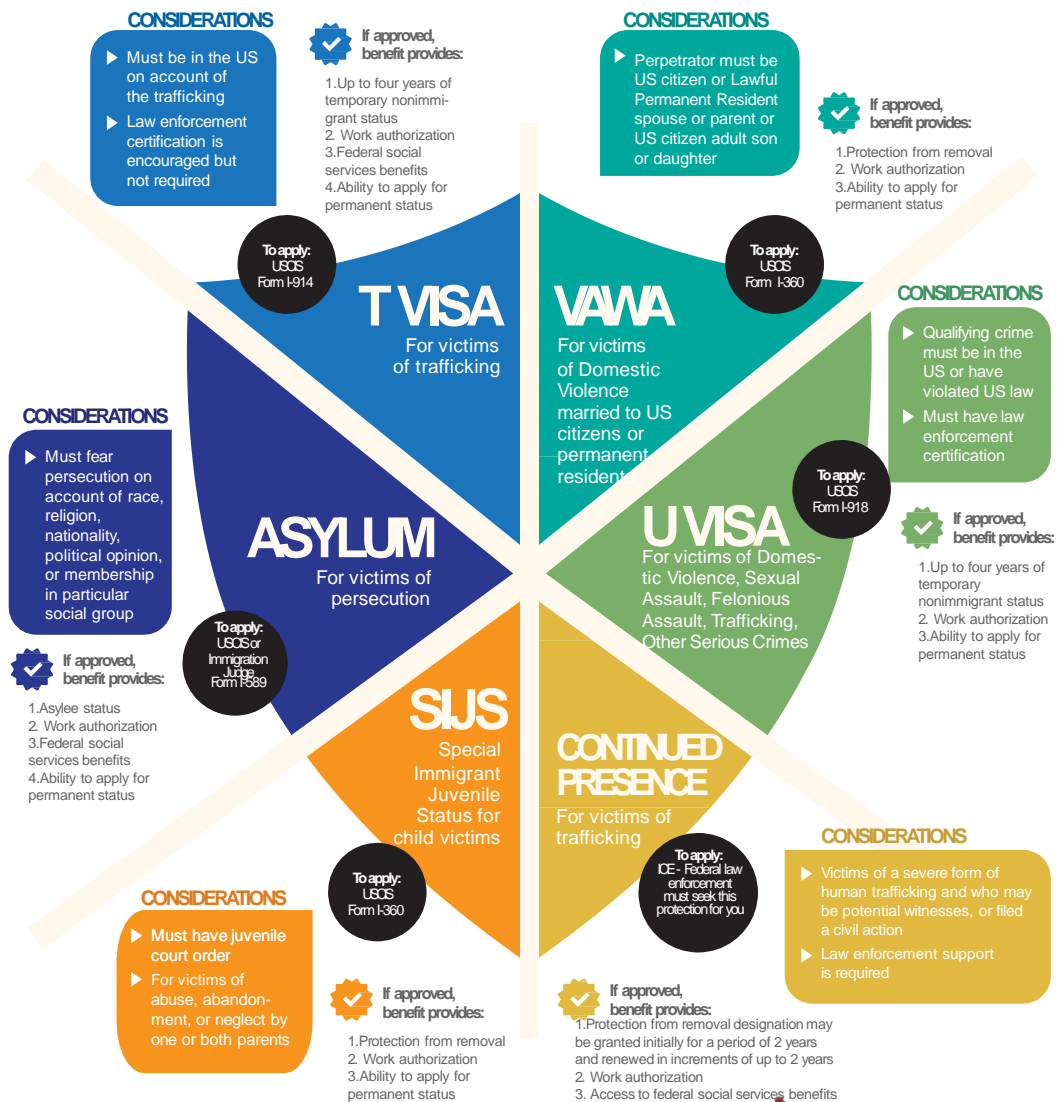
- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status or social security number of the child's parent
  - if the parent is not applying for additional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



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

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

# VICTIM PROTECTIONS INCREASE BENEFITS ACCESS



DHS.GOV/BLUE-CAMPAIGN

# 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

# 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

# Immigration Relief Expands Benefits Access

## VAWA self-petition

- Prima facie = Qualified Immigrant
- Self-petitioner and children

## Battered spouse waiver

- Qualified Immigrant
- Can avoid deeming

## Continued Presence

- Benefits access like refugees
- Need HHS certification

## T visa

- Benefits access like refugees generally with HHS certification
- Qualified Immigrant with bona fide determination

## U visa

- Lawfully present upon wait-list approval

## Family Based Visa Petition

## Approved + Battering or Extreme Cruelty

- Public and Assisted Housing
- Not required to file for VAWA

## Special Immigrant Juvenile

- Health care due to lawful presence upon filing
- Qualified Immigrant upon approval and receipt of lawful permanent residency



# Immigrant Benefits Classifications

## Used in State and Federal Benefits Laws

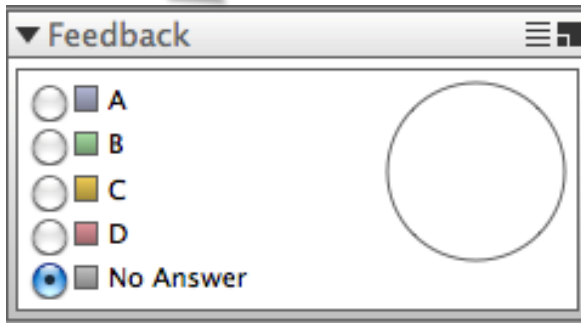
- Citizens
- “Qualified Immigrants”
  - Entering U.S. before Aug. 22, 1996
  - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
  - Can access federal public benefits that are not means tested (e.g. 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

# **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**

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

Answer on  
the left



▼ Feedback

A

B

C

D

No Answer

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

# 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

# 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

# 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.

# 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

# 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





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

# 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

# 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)

# 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

# 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

# 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

# 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

# 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



# 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

# LIHEAP and DOE Weatherization

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

# 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

# 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/>

# Interactive Public Benefits Map

# Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- State Education Benefits
- Supplemental Security Income
- Weatherization & Energy Assistance
- WIC











Judge Livingston: How  
might these tools be most  
useful to courts?

# Web Page Materials

- Public Benefits Open to Immigrant Victims
  - Bench Cards
    - Public Benefits and Immigrant Victims
    - T Visa eligibility, U Visa eligibility, VAWA eligibility
  - Benefits Open to all Immigrants -Brochure
  - State Benefits Charts
  - Brochure: Immigrant crime victims and public charge
  - Chart: Privacy protections for immigrants applying for public benefits
  - Chapter: Access to Legal Services for immigrant survivors
  - And more...

# 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

# 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)
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