

# ARTICLES

## UNACCOMPANIED AND EXCLUDED FROM FOOD SECURITY: A CALL FOR THE INCLUSION OF IMMIGRANT YOUTH TWENTY YEARS AFTER WELFARE REFORM\*

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*The young public interest attorney and her client, an immigrant teenager, sat side by side in a dimly light conference room in a community-based organization in Harlem. In front of them, on the table, sat a loose-leaf sheet of paper with four columns and a big black line in between the second and third columns. Above the first and second columns, the young attorney had carefully printed “Special Immigrant Juvenile Status,” and then “pros” and “cons.” Above the third and fourth columns, the young attorney had written “asylum” and also “pros” and “cons.” Each of the columns had entries. The young attorney had laid out the positive and negative ramifications of Special Immigrant Juvenile Status and asylum, two methods for her teenage client to secure immigration status, end deportation proceedings, and remain lawfully*

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\* An earlier version of this Article appeared at 31 GEO. IMMIG. L.J. 53. The Article did not include essential charts, graphs, and author edits. We regret any inconvenience this may have caused the authors and our readers. We request that all citations be made to the version printed here.

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*in the United States. The two discussed the teenager's ability to obtain a "green card" through each method, the estimated time frame of achieving each, the possibility of petitioning for family members, the number of court appearances, the type of evidence needed, and the amount of detail the teenager would have to delve into about her traumatic past. Ultimately, the choice was the teenager's to make. Her attorney was there to provide support and guidance, but one item was missing from the attorney's counsel for her teenage client: access to public benefits. The teenager's eligibility for public benefits would be very different depending on which form of immigration relief she obtained—a decision that turned out to have long-lasting ramifications for the teenager as she tried to build a future in New York City.*

## I. INTRODUCTION

Enacted by Congress twenty years ago, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996<sup>1</sup> sought to reduce recipient dependence upon the Public Assistance, Supplemental Nutrition Assistance Program (SNAP, formerly known as Food Stamps)<sup>2</sup> and Medicaid programs by creating employment requirements to increase workforce access. In the same year, Congress significantly changed immigration policy with the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).<sup>3</sup> For immigrants and their families, Title IV of the PRWORA created a "qualified alien" category that divided non-citizens based on their immigration status. Such divisions created categories that delay or otherwise restrict immigrant access to public benefits and made such access more dependent upon acquiring U.S. citizenship. As a result, under PRWORA, a non-disabled adult in a "qualified alien" category must wait a minimum of five years from the date of his or her approved status to receive SNAP benefits.<sup>4</sup>

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1. Pub. L. No. 104-193, 110 Stat. 2105 (enacted Aug. 22, 1996).

2. SNAP is federally funded in its entirety by the United States Department of Agriculture (USDA), with administrative costs split evenly between the federal government and New York State. Introduced as a pilot program during the Great Depression, Food Stamps as a means of permanent relief began with the passage of the Food Stamp Act of 1964 to improve nutrition and purchasing power among low- and no-income households. While monumental in establishing a permanent form of food relief, the 1964 Act required individuals to purchase vouchers which in turn would translate into coupons of a higher value than their cash contribution. Seeking to make the program more assessable to vulnerable households, Congress passed the Food Stamp Reform Act of 1977, and eliminated the requirement that households contribute income to purchase food stamps. In 2008, the Food Stamp Program was renamed SNAP and the Food Stamp Act of 1977 to Food was renamed the Nutrition Act of 2008. Following Congress, the New York State Legislature changed the name of its Food Stamp program to SNAP in August 2012. See United States Department of Agriculture, *A Short History of SNAP* (Nov. 20, 2014), <http://www.fns.usda.gov/snap/short-history-snap>; see also Community Service Society, *Overview of the Supplemental Nutrition Assistance Program*, <http://benefitsplus.cssny.org/pbm/food-programs/food-stamps/201097> (last visited June 29, 2015).

3. Pub. L. No. 104-208, 110 Stat. 3009-546 (enacted Sept. 30, 1996).

4. While subsequent laws restored pre-PRWORA SNAP eligibility to all minor immigrant children, disabled immigrants, and elderly immigrants who resided in the United States prior to the effective date of PRWORA, August, 22, 1996, and who are otherwise in a "qualified alien" category, current SNAP eligibility still depends upon the immigrant's date of entry into the United States and,

That same decade, Congress amended the Immigration and Nationality Act (INA) to create a form of immigration relief called Special Immigrant Juvenile Status (SIJS) to protect young people whom a juvenile court had found to be abused, abandoned, or neglected, and who were either in the child welfare system or were found to be eligible for long-term foster care.<sup>5</sup> These young people had fallen through the cracks of existing family-sponsored immigration benefits and typically reached adulthood and exited the foster-care system before becoming aware of their lack of immigration status.<sup>6</sup> Following amendments to the INA in 2008, young immigrants whose “reunification with one or both of parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law”<sup>7</sup> were now eligible for SIJS. This change meant children outside of the foster care system, including those who were living with one biological parent, could qualify for SIJS.

Since the days of Ellis Island, young people have traveled alone to the United States.<sup>8</sup> The number of unaccompanied immigrant children migrating to the United States has been steadily increasing since the mid-2000s, peaking with the arrival and apprehension of over 60,000 young people during the fiscal year 2014.<sup>9</sup> Over 5,000 of these young people, many of who are seeking immigration relief through asylum, protection as a victim of human trafficking, or aid through SIJS, have resettled in New York City and Long Island.<sup>10</sup>

While these forms of immigration relief will allow the young person to lawfully remain in the United States and apply to adjust status to lawful permanent resident (LPR) after a period of time, access to SNAP and other

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more importantly, upon what type of humanitarian relief the applicant applied for at the time of entry or shortly thereafter. Professional Responsibility and Work Opportunity Reconciliation Act, H.R. 3734, 104th Cong. §§ 401-403 (1996); Audrey Singer, *Welfare Reform and Immigrants: A Policy Review*, [http://www.brookings.edu/media/research/files/reports/2004/5/demographics%20singer/200405\\_singer.pdf](http://www.brookings.edu/media/research/files/reports/2004/5/demographics%20singer/200405_singer.pdf) (last visited June 29, 2015).

5. Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. J. 48 (Winter 2012); see also Deborah Lee, *Overview of Special Immigrant Juvenile Status in New York*, N.Y. COUNTY BAR TRAINING MATERIALS 9-11, <http://www.mynacc.org/NYCLA-%20SIJS%20MANAL.pdf> (Mar. 25, 2015); see also Pub. L. No. 105-119, §113 (1997).

6. Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. J. 48 (Winter 2012).

7. *Id.*

8. Lenni B. Benson and Claire R. Thomas, *Bridging the Gap for Immigrant Children: Understanding Immigration Relief for Child Migrants*, pg. 17, Practicing Law Institute, *Bridge-the-Gap II for Newly Admitted New York Attorneys* 2014.

9. The number of young people migrating to the United States alone has been steadily increasing since the mid-2000s, culminating with the arrival of over sixty thousand unaccompanied children during the 2014 fiscal year. For more information, see <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014> (last visited May 24, 2015).

10. See OFFICE OF REFUGEE RESETTLEMENT, UNACCOMPANIED CHILDREN RELEASED TO SPONSORS BY COUNTY FY2014, <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-children-released-to-sponsors-by-county-fy14> (last visited June 29, 2015). Approximately 2,000 children were released to sponsors in the counties of New York City during the 2014 fiscal year, and over 3,000 children were released to sponsors on Long Island.

public benefits will vary depending not only on the type of immigration relief secured, but also on the step in the application process. For example, an individual who applies for asylum will not be eligible for SNAP benefits until granted asylum either at the Asylum Office or in U.S. Immigration Court. However, due to backlogs throughout the immigration system, asylum applicants in New York State may be forced to wait years to have their asylum applications adjudicated, delaying eligibility for SNAP benefits. In contrast, applicants who have survived severe forms of human trafficking and are applying for T non-immigrant status (“T-Visa”), will gain access to SNAP benefits upon having their application simply filed and acknowledged by the United States Citizenship and Immigration Services (USCIS), assuming that all other SNAP eligibility criteria are met. Additionally, under current law<sup>11</sup> young people who secure immigration status through a SIJS petition, despite their vulnerability, cannot receive SNAP benefits until after their application for adjustment to LPR status is approved by the USCIS. Thereafter, they must wait an additional five years if they are neither under eighteen years of age nor disabled.

Therefore, the type of immigration relief determines access not only to SNAP benefits but also access to other federal and state public benefits. This lack of uniformity within the public benefits system creates confusion and encourages the dissemination of misinformation within the immigrant community. It further complicates the complex topic of immigrant eligibility for public benefits and requires that attorneys and social service providers fully comprehend this dense topic to properly counsel young people, who may have multiple forms of immigration relief, about their benefits eligibility. Thus, in its current iteration, SNAP divides immigrant and non-immigrant populations, and subsequently creates a system of food insecurity for vulnerable populations like “SIJS kids.”<sup>12</sup> While prior changes to the PRWORA and the Food and Nutrition Act<sup>13</sup> have led to financial relief among the states, as well as SNAP access for other legal immigrant categories such as refugees, current SNAP restrictions for asylum seekers, SIJS kids, and other categories places the burden upon states and not the federal government to provide food access to an already vulnerable population. Allowing individualized SNAP access would not only clarify and alleviate the disparity of food access among immigrant and non-immigrant populations, but would also shift funding, and concurrently the financial responsibility, from the state government to federal government through alternative federal funding sources.

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11. This paper focuses on New York state-specific issues surrounding immigrant access to public benefits.

12. For purposes of this paper, “SIJS kids” refers to young people whose I-360 Petitions for Special Immigrant Juvenile Status are pending with or have been approved by USCIS.

13. *See generally* The Food and Nutrition Act of 2008, 7 U.S.C. § 2011 et seq. (2006).

While the increase in unaccompanied immigrant children in the fiscal year 2014 has led to a debate between the protection of vulnerable populations seeking safety in the United States and overall border security enforcement, this increase provides an opportunity to reexamine the immigrant eligibility categories within the PRWORA, specifically within SNAP, and especially for the abovementioned SIJS kids who could immediately benefit from receiving access to federal food programs.<sup>14</sup>

The purpose of this paper is to advocate for immediate access to SNAP benefits for SIJS kids in both New York State and at the federal level through the historical background of exclusionary immigration policies, an examination of PRWORA, and the application of a case study. First, this paper will briefly discuss the historical background of U.S. immigration policy as exclusionary of certain groups of immigrants, particularly those thought to become a public charge, and the correlation between anti-immigrant sentiment and the passage of laws restricting access to public benefits. Next, this paper will examine the SNAP sections of the PRWORA in great depth, after almost twenty years since its passage and enactment, through the review of pre-PRWORA immigrant eligibility rules and the expansion of post-PRWORA categories since 1996.

Through the application of a case study of a young woman eligible for multiple forms of immigration relief, this paper will compare and contrast the “humanitarian” categories of “qualified aliens” created by PRWORA and argue that SIJS kids should be treated as falling within this category for public benefits eligibility. Further, in the absence of change to PRWORA at the federal level, this paper will acknowledge the discretionary power of states in creating certain aspects of immigration policy and call upon New York State to redefine the “qualified alien” category to include SIJS kids. We will also explore other federally-funded and state-administered food programs such as the Women, Infant, and Children (WIC) program, which already provides food and nutrition access to pregnant women and children under the age of five regardless of the immigration status of the mother or child, as well as the Emergency Food Assistance Program (TEFAP) and the New York State Breakfast and Lunch Program to argue for categorical immigrant eligibility expansion.

## II. EXCLUSION IN U.S. IMMIGRATION LAW

Engraved on the pedestal of the Statute of Liberty in New York Harbor rest the famous words of Emma Lazarus’s “New Colossus” poem, which reads “Give me your tired, your poor, Your huddled masses yearning to breathe

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14. The increase in young non-citizens has led to an increase in petitions for various humanitarian immigration relief, including asylum, Special Immigrant Juvenile Status (SIJS), as well as T and U-Non-Immigrant Status. See US Citizen and Immigration Services, Immigration and Citizenship Data, USCIS (Dec. 23, 2016), <http://www.uscis.gov/tools/reports-studies/immigration-forms-data>.

free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door.”<sup>15</sup> While the words of this poem have noble intent, U.S. immigration law has historically prevented those deemed to be “undesirable” from immigrating to the United States. In this section, we will briefly consider the historical background of U.S. immigration policy as exclusionary against those thought likely to become a “public charge”<sup>16</sup> in order to lay the framework for the correlation between anti-immigrant sentiment and the passage of laws restricting access to public benefits.

Prior to the late 1800s, immigration to the United States remained effectively unrestricted.<sup>17</sup> In 1875, laws were passed to prevent those immigrants considered “undesirable,” including criminals, prostitutes, and those with contagious diseases.<sup>18</sup> In 1882, Congress began to bar individuals of certain ethnicities—in this case, the Chinese—from immigrating to the United States and from becoming U.S. Citizens.<sup>19</sup> In the same year, Congress expanded U.S. immigration law to specifically exclude “lunatics” and immigrants who were likely to become a “public charge”<sup>20</sup> as those individuals who should be denied admission to the United States as immigrants. Defined by case law as a person who “by reason of poverty, insanity, disease or disability would become a charge upon the public,”<sup>21</sup> inadmissibility as a “public charge” remains as one of the most widely used grounds for denial of

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15. EMMA LAZARUS, *The New Colossus*, in EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE 40, 41 (Morris U. Schappes ed., 1944) (poem written for Bartholdi Pedestal Fund in 1883, now inscribed on a plaque on the Statue of Liberty).

16. An individual seeking admission to the United States or seeking to adjust status is inadmissible if the individual, “at the time of application for admission or adjustment of status, is likely at any time to become a public charge.” Immigration and Nationality Act (INA) 8 U.S.C. § 1182(a)(4). USCIS further clarifies that “For purposes of determining inadmissibility, “public charge” means an individual who is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” US Citizen and Immigration Services, Public Charge, USCIS (Sept. 3, 2009), <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

17. Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 L. & CONTEMP. PROBS. 1, 5 (Fall 2009).

18. “[T]he following classes of aliens shall be excluded from admission into the United States . . . All idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists . . . .” Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1521 (1995) (citing the Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084, 1084 (emphasis added)); see, e.g., *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892) (upholding exclusion of Japanese woman as a public charge); see also *Gegiow v. Uhl*, 239 U.S. 3 (1915) (holding that noncitizen could not be excluded as a public charge on ground that local labor market was “overstocked”). The Chinese Exclusion Act barred the emigration of Chinese workers, prevented Chinese immigrants in the United States from becoming U.S. citizens, and ordered the deportation of those Chinese nationals unlawfully in the United States.

19. This Act was extended in 1892 and again in 1902. See Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGRATION POLICY CENTER (Jan. 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/opportunity\\_exclusion\\_011312.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf).

20. *Id.*

21. *Gegiow v. Uhl*, 239 U.S. 3 (1915).



immigrant visas by consular officials.<sup>22</sup>

In the early 1900s, Congress expanded exclusionary immigration laws to prevent other “undesirable” individuals from immigrating to the United States. Racial bias against Chinese individuals continued, and the law was extended to preclude immigration of Japanese workers in 1907. That same year, “imbeciles” and “children not accompanied by their parents” were expressly prohibited from immigrating to the United States. At this time in history, children traveling alone were referred to as “unaccompanied deviant children”<sup>23</sup> and deemed to be inadmissible as a “public charge.”

Quotas favoring immigrants from northwestern Europe came into U.S. immigration law in the 1920s, while at the same time restrictions, if not outright bans, were placed on African, Arab, and Asian immigrants.<sup>24</sup> During the Second World War and early Cold War, scholars noted that immigration law became contradictory as it “expanded political grounds for exclusion and surging anti-Japanese sentiments on one hand, but the loosening of restrictions against other Asian immigrants and the rise of humanitarian refugee policies on the other hand.”<sup>25</sup> In 1952, the INA combined the various immigration-related laws into a single statute. While this act finally eliminated race-based exclusion from the law, the national-origins quota system, which was viewed as discriminatory based on race, ancestry, or national origin, was not removed until the Immigration Act of 1965.<sup>26</sup>

By 1975, the refugee crisis created by the Vietnam War pushed the United States to create a resettlement program. In 1980, the Refugee Act amended the INA to create a system for the formal admission of refugees to the United States and to provide for their resettlement and integration.<sup>27</sup>

Beginning in the 1980s, U.S. immigration law began to further limit the rights of immigrants. The 1986 Immigration Reform and Control Act (IRCA) allowed for the legalization of large numbers of non-citizens living in the United States, but also created employer sanctions and additional support for border security.<sup>28</sup> In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act<sup>29</sup> (IIRIRA) fundamentally changed immigration law by expanding the definition of “aggravated felony,” implementing new grounds

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22. See INA 212(a)(4); see also Bureau of Consular Affairs, *Visa Denials*, U.S. VISAS, <http://travel.state.gov/content/visas/english/general/denials.html> (last visited Sept. 1, 2015).

23. Lenni B. Benson & Claire R. Thomas, *Bridging the Gap for Immigrant Children: Understanding Immigration Relief for Child Migrants*, in BRIDGE-THE-GAP II FOR NEWLY ADMITTED NEW YORK ATTORNEYS 2014, 17 (2014).

24. Immigration Act of 1924, Pub. L. No. 68-139, 34 Stat. 153 (repealed 1952).

25. Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL'Y CTR. (Jan. 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/opportunity\\_exclusion\\_011312.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf).

26. *Id.*

27. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

28. Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL'Y CTR. (Jan. 2012), [https://www.americanimmigrationcouncil.org/sites/default/files/research/opportunity\\_exclusion\\_011312.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/opportunity_exclusion_011312.pdf).

29. Ill. Imm. Ref. and Imm. Resp. Act, Pub. L. No. 104-208, 110 Stat. 3009-546.

of inadmissibility, and further increasing border enforcement.<sup>30</sup> The PRWORA, also passed in 1996, similarly had a fundamentally chilling effect on immigrants being admitted to the United States.

### III. PRE-PRWORA AND POST-PRWORA IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS

The legislative purpose of PRWORA was to reduce recipient dependence upon public benefits, including SNAP, in order to eliminate federal spending on public benefits to non-citizens; to divide immigrant groups into eligible and non-eligible recipients; to shift part of the financial burden of implementing such programs to state and local governments; and to create employment requirements to increase workforce access.

Political interest in conserving federal dollars by restricting non-citizen access to benefits developed during the early 1990s among Republican policymakers and gained bipartisan support by the mid-1990s. By the fall of 1994, Republicans were financially motivated by the savings windfall that would result by excluding non-citizens from participation in all federal means-tested benefits.<sup>31</sup> The welfare law was “projected to save the federal government \$54.1 billion over six years.”<sup>32</sup> Thus, immigrants became viewed as an economic burden, depleting public benefits so that federal government spending establishes a welfare state for less educated or skilled immigrants entering the United States for the purpose of obtaining federal, means-tested benefits.<sup>33</sup>

Republican proponents of PRWORA justified it by appealing to American values of self-sufficiency, as well as the need to restrict immigrant eligibility to prevent incentivizing immigration solely for the purpose of collecting benefits.<sup>34</sup> In addition, Republicans sought to save American taxpayers money by reducing spending on entitlement programs aimed primarily at immigrant and non-immigrant communities.<sup>35</sup> However, Democratic opponents of PRWORA argued that as immigrants contribute to the economic

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30. Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL'Y CTR. (Jan. 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/opportunity\\_exclusion\\_011312.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf).

31. 8 U.S.C. § 1613(c).

32. The largest savings—\$23.8 billion or 44 percent of the net savings—was to come from slashing benefits to lawful permanent residents (LPRs). In addition, the Congressional Budget Office (CBO) estimated that 40% of PRWORA's \$54 billion expected savings would come from immigrant restrictions, even though immigrants were only 15% of all welfare recipients in the United States at that time. AUDREY SINGER, WELFARE REFORM AND IMMIGRANTS: A POLICY REVIEW, [https://www.brookings.edu/wp-content/uploads/2016/06/200405\\_singer.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/200405_singer.pdf) (last visited June 29, 2015); KATHY TAKAHASHI, POLICY ANALYSIS PAPER: PRWORA'S IMMIGRANT PROVISIONS, <http://www.uwgb.edu/socwork/files/pdf/takahashi.pdf> (last visited June 29, 2015).

33. KATHY TAKAHASHI, POLICY ANALYSIS PAPER: PRWORA'S IMMIGRANT PROVISIONS, 3–5 <http://docplayer.net/40709067-Policy-analysis-paper-prwora-s-immigrant-provisions-kathy-takahashi-university-of-wisconsin-green-bay.html> (last visited Aug. 24, 2017).

34. *Id.* at 16.

35. *Id.* at 7–8.



fabric of the United States by working and paying taxes, such immigrant communities should be allowed access to means-tested benefits if inevitably necessary to become self-sufficient.<sup>36</sup> What was not discussed, even though apparent in PRWORA's initial structure, is how little the law protected vulnerable elderly, disabled, and child recipients; individuals who were most likely to benefit from public benefits<sup>37</sup> and who were the most at risk from requiring their use.

Furthermore, with regards to immigrant children, the percentage of children born in the United States "with at least one foreign-born parent increased from 13% in 1990 to 23% in 2007."<sup>38</sup> As a result, 20% of children in the United States are the children of immigrants.<sup>39</sup> Among low-income children, 25% live with immigrant parents or in a single-parent immigrant household.<sup>40</sup> Further, among children with foreign-born parents, 97% have a working parent and 72% with a full-time working parent. Nevertheless, half of these families had incomes at or below 200% of the Federal Poverty level.<sup>41</sup> As these findings illustrate, because most children of immigrant and undocumented households are likely to be low-income, and therefore financially eligible for SNAP benefits, PRWORA directly affects their ability to gain access to SNAP benefits, thereby increasing their overall food insecurity.

Prior to the enactment of PRWORA, non-citizens in a lawful immigration status residing in the United States typically received equal access to public benefits in the same manner as citizens.<sup>42</sup> All pre-PRWORA immigrant recipients were allowed access to public benefits, including SNAP benefits, after only five years of residence.<sup>43</sup> Upon its passage, Title IV of the PRWORA specifically created a benefits system that restricted access to eligible immigrants and their families with time-limit bars based upon their date of entry in the United States and divided access based on an applicant's category of immigration relief and their step in the application and filing process.<sup>44</sup> Initially, the PRWORA excluded all non-citizen participation in all federal means-tested benefits. With the exception of refugees and asylees, LPRs "with forty-quarters of work, and those in the military," all other non-citizens were barred from receiving federal means-tested benefits.<sup>45</sup> Therefore, some immigrants, "including those who were participating in the programs" at the time that PRWORA became effective, became ineligible for

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36. *Id.* at 8.

37. *Id.* at 20–21.

38. *Id.* at 10.

39. *Id.*

40. *Id.*

41. *Id.*

42. Singer, *supra* note 4, at 32.

43. Singer, *supra* note 4, at 22.

44. *Id.* at 26.

45. *Id.* at 23.

most federally funded programs.<sup>46</sup>

In addition, PRWORA established a “qualified alien”<sup>47</sup> category that separated immigrants based on their immigration status.<sup>48</sup> PRWORA established two categories of immigrants: (1) qualified immigrants;<sup>49</sup> and (2) non-qualified, as well as unauthorized, immigrants.<sup>50</sup>

In addition to citizenship status, when an immigrant arrived in the United States also determined access to public benefits. Although pre-PRWORA immigrants who were already in the United States when PRWORA was passed remained eligible for federally funded benefits, immigrants arriving after August 22, 1996, the date of the passage of the law, were barred from SNAP benefits until they became U.S. citizens.<sup>51</sup> Subsequent reforms to PRWORA allowed SNAP benefits to lawful immigrants who received LPR status after August 22, 1996, but only after remaining ineligible for federal benefits for five years from the date of receiving their LPR status.<sup>52</sup> This reform is also known as the five-year ban.<sup>53</sup> As a result, without Congressional approval, all immigrants under Title IV of PRWORA entering after August 22, 1996 will be barred from receiving SNAP benefits for five years after adjusting their status to LPR.

Such divisions delayed access to public benefits and made immigrant access dependent upon citizenship. As a result, under PRWORA, a non-disabled adult in a “qualified alien” category must wait a minimum of five

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46. *Id.* at 25.

47. Although the common term in the PRWORA lists “qualified alien” as a categorical eligibility category, the remainder of this article will use the preferred “qualified immigrant” as a substitute for the legal term.

48. Katarina Fortuny & Ajay Chaudry, U.S. Dep’t of Health & Human Servs., Overview of Immigrants’ Eligibility for SNAP, TANF, Medicaid and CHIP 2 (2012) [hereinafter Immigrants’ Eligibility], <https://aspe.hhs.gov/system/files/pdf/76426/ib.pdf>.

49. Categories of qualified immigrants include: Asylees; persons granted withholding of deportation/removal; Cuban/Haitian entrants; Amerasians; persons who are paroled into the U.S. for at least one year; and certain battered spouses and their children. Cross-border Native Americans, because of treaty rights, are eligible for federal benefits, although they are not classified as qualified aliens. In addition, trafficking victims were added to the list of non-citizens eligible for benefits to the same extent as refugees when the Trafficking and Violence Protection Act passed in 2000. In addition, Afghan or Iraqi nationals granted special immigrant visas were also granted eligibly for public benefits to the same extent as refugees. *See also* Cmty. Serv. Soc’y, *Immigrants’ Eligibility for Benefits: Immigrant Statuses*, BENEFITS PLUS, <http://benefitsplus.cssny.org/pbm/immigrants-rights-and-services/immigrants-eligibility-benefits/172506> (last visited Feb. 24, 2017).

50. A non-qualified immigrant is a visa holder who enters the U.S. for a specific purpose, usually for a limited time with no intention to stay permanently. These can include tourists, business people, students, or individuals with a medical visa. Such individuals are generally ineligible for most benefits. *See also* Off. of the Assistant Sec’y for Plan. and Evaluation, *Overview of Immigrants’ Eligibility for SNAP, TANF, Medicaid, and CHIP*, ASPE ISSUE BRIEF (Mar. 27, 2012), <https://aspe.hhs.gov/sites/default/files/pdf/76426/ib.pdf>.

51. *See* Takashi, *supra* note 33, at 12.

52. Singer, *supra* note 4, at 24–25.

53. *See generally* Off. of the Assistant Sec’y for Plan. and Evaluation, *supra* note 50, at 2 (“Select groups of immigrants are exempt from the five-year ban: refugees, asylees and other immigrants exempt on humanitarian grounds; and members of the military and veterans (and their spouses and children).”).

years from the date of the approved status to receive SNAP benefits.<sup>54</sup> As both SIJS kids and U non-immigrant status<sup>55</sup> recipients are not explicitly mentioned as “qualified alien” categories under the PRWORA, such categories would not be eligible to receive SNAP as a means-tested benefit until they became LPRs and maintained that status for five years.<sup>56</sup>

#### A. State Regulation and Administration under PRWORA

Title IV of the PRWORA allowed states to regulate and administer public benefit programs, including SNAP. Prior to PRWORA, states could not restrict access to federal programs on the basis of citizenship status.<sup>57</sup> Upon its passage, PRWORA allowed states to use state funding to cover qualified immigrants during the five-year ban to replace the loss of SNAP benefits, and to also provide state-only-funded assistance to non-qualified immigrants.<sup>58</sup> Furthermore, regardless of the five-year ban, states must provide benefits assistance to particular groups, including refugees and asylees, LPRs with forty qualifying quarters of work, members of the military, and veterans with their spouses and children.<sup>59</sup>

However, states can determine whether other qualified immigrants are eligible for Temporary Assistance for Needy Families (TANF) and Medicaid, and states have the ability to create state-only assistance programs, including state-run SNAP programs.<sup>60</sup> While seven states<sup>61</sup> currently provide state-only food assistance to some qualified immigrants who are not eligible for SNAP, New York does not currently offer such programs for individuals subject to the five-year ban.<sup>62</sup> However, New York is currently one of twelve

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54. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (enacted August 22, 1996).

55. U Non-Immigrant Status, commonly referred to as the “U Visa,” is available to victims of certain crimes who have suffered substantial physical or mental abuse, who have information about the criminal activity, and who are helpful to law enforcement in the investigation or prosecution of the crime. See 8 C.F.R. § 214.14 (2016).

56. PRWORA § 402, 110 Stat. at 2262–63.

57. Title IV of PRWORA does so, in part, by limiting eligibility for certain public programs to qualified aliens. Section 401(a) of PRWORA limits receipt of Federal public benefits, with certain specified exceptions, to qualified aliens. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (enacted August 22, 1996). See also Singer, *supra* note 4, at 23; Off. of the Assistant Sec’y for Plan. and Evaluation, *supra* note 50, at 2.

58. Off. of the Assistant Sec’y for Plan. and Evaluation, *supra* note 50, at 2.

59. *Id.*

60. Since the inception of PRWORA, states can cover immigrants with substitute SNAP, Medicaid, and TANF benefits using their own funding. Since 2009, states have the option of covering lawfully present children and pregnant women in Medicaid and/or CHIP. See *id.* at 2-3.

61. These states include California, Connecticut, Maine, Minnesota, Nebraska, Washington, and Wisconsin. See *id.* at 7, tbl. 1.

62. *Mapping Public Benefits for Immigrants in the States*, Pew Charitable Tr., 1, 6, 8, 11 (Sept. 2014) [hereinafter Pew Charitable Tr.], <http://www.pewtrusts.org/~media/assets/2014/09/mappingpublicbenefitsforimmigrantsinthestatesfinal.pdf>.

states<sup>63</sup> offering state-only health coverage to immigrants that are currently subject to the five-year ban, and the state offers state-only cash assistance coverage to qualified immigrants and to individuals categorized as Permanently Residing Under the Color of Law (PRUCOL).<sup>64</sup>

Such variance between federal and state programs in expanding or restricting benefits categories for immigrants within PRWORA's framework ultimately contributes to confusion and variation in the participation rates in public benefits by immigrants throughout the United States.<sup>65</sup> As a result, income-eligible immigrant families, including children, have lower rates of participation in the major means-tested programs than families of U.S. citizens. This participation gap varies widely depending on where immigrants live within the United States.<sup>66</sup>

In addition, the decision of a majority of states to provide state-funded assistance for SNAP, Public Assistance, and Medicaid programs ultimately created a cost-shifting burden from the federal government to individual state governments.<sup>67</sup> After PRWORA, New York along with forty-eight other states agreed to extend Medicaid and Public Assistance coverage to immigrants who entered the United States prior to August 22, 1996.<sup>68</sup> Furthermore, the decision by federal legislators to allow states to provide state-funding assistance, and to the effect that state lawmakers chose to create state-run programs to assist with the loss of federal benefits for immigrant populations, ironically detracted from Republican lawmakers' goal to restrict access to benefits entirely to immigrant groups.<sup>69</sup> However, while the majority of state-funded assistance, such as Public Assistance and Medicaid, largely supported providing continued assistance to pre-enactment immigrant groups, post-PRWORA eligibility within state-run means-tested ben-

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63. These states include Washington, California, Hawaii, Alaska, New Mexico, Nebraska, Minnesota, Illinois, Virginia, Pennsylvania, New Jersey, Delaware, District of Columbia, and Massachusetts. *See id.*

64. PRUCOL eligibility is established when the United States Citizenship and Immigration Services (USCIS) or Immigration Customs Enforcement (ICE) permits a "non-qualified" alien to permanently or indefinitely remain and reside in the United States. USCIS does not recognize PRUCOL as an immigration status. It is a category established by regulation or statute under the particular benefit program to determine whether immigrants who are not "qualified immigrants" qualify for state or local benefits. In addition, there is no general, universally accepted definition of which immigrants are included in the PRUCOL classification. *See Immigrants: Qualified Aliens/PRUCOL Aliens*, N.Y. STATE OF HEALTH, [https://info.nystateofhealth.ny.gov/sites/default/files/Immigrants\\_Qualified%20Aliens%20-%20PRUCOL%20Aliens\\_5-23-16.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/Immigrants_Qualified%20Aliens%20-%20PRUCOL%20Aliens_5-23-16.pdf) (last visited Feb. 22, 2017).

65. Pew Charitable Tr., *supra* note 62, at 6, 8, 11.

66. Due to the passage of PRWORA, approximately 935,000 non-citizens lost benefits, half of which were poor immigrant families. Furthermore, between 1994 and 1999, legal immigrants' and refugees' use of welfare benefits declined significantly, including a decrease of approximately 48% in the use of SNAP benefits. Amanda Levinson, *Immigrants and Welfare Use*, MIGRATION POLICY INSTITUTE (Aug. 1, 2002), <http://www.migrationpolicy.org/article/immigrants-and-welfare-use>.

67. Pew Charitable Tr., *supra* note 62, at 3–5.

68. Takashi, *supra* note 33, at 14.

69. *See* Takashi, *supra* note 33, at 6–7.

efits programs continues to have mixed success.<sup>70</sup> This is because all state-run programs are either not available in all states or they fail to provide uniform benefits to recipients, as would a federally mandated program.<sup>71</sup>

### B. *The Federal Food Stamps (SNAP) Program*

Introduced as a pilot program during the Great Depression, Food Stamps as a means of permanent relief began with the passage of the Food Stamp Act of 1964 to improve nutrition and purchasing power among low- and no-income households.<sup>72</sup> While monumental in establishing a permanent form of food relief, the act required individuals to purchase vouchers, which in turn would translate into coupons of a higher value than their cash contribution.<sup>73</sup> Seeking to make the program more accessible to vulnerable households, Congress passed the Food Stamp Reform Act of 1977 and eliminated the requirement that households contribute income to purchase food stamps.<sup>74</sup> In 2008, the Food Stamp Program was renamed SNAP, and the Food Stamp Act of 1977 was changed to the Nutrition Act of 2008.<sup>75</sup> Following Congress's lead, the New York State Legislature changed the name of its Food Stamp program to SNAP in August 2012.<sup>76</sup>

Noting the extremely restrictive nature of the original PRWORA, which had reduced or terminated SNAP access to immigrants and immigrant children, executive and legislative efforts helped to restore SNAP benefits to some groups within the immigrant community.<sup>77</sup> The Agricultural Research, Extension, and Education Act of 1998 restored SNAP eligibility to immigrant children, elderly immigrants, and disabled immigrants who resided in the United States prior to the date of the passage of PRWORA.<sup>78</sup> The law also extended the refugee exemption from the SNAP bar from five to seven years.<sup>79</sup> In addition, the Farm Security and Rural Investment Act of 2002, reinstated access to SNAP benefits to legal immigrants who lived in the United States for at least five years, as well as for immigrant children without requiring the residency criteria to be met. It also effectively restored SNAP

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70. *Id.* at 14.

71. Currently, none of the four states with the fastest growing foreign-born populations, Arkansas, Georgia, Nevada, and North Carolina, have state-funded replacement programs for SNAP, Public Assistance, Supplemental Security Income, and Medicaid, creating a disparity between generous and less generous states where opportunities for work may become more readily available and where migrating immigrant families choose to call home. *Id.* at 19.

72. U.S. Dep't of Agric., *A Short History of SNAP*, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), <https://www.fns.usda.gov/snap/short-history-snap> (last visited Feb. 23, 2017).

73. *Id.*

74. Cmty. Serv. Soc'y, *Supplemental Nutrition Assistance Program (SNAP): Overview*, BENEFITS PLUS, <http://benefitsplus.cssny.org/pbm/food-programs/food-stamps/201097> (last visited Feb. 24, 2017).

75. *Id.*

76. *Id.*

77. See Singer, *supra* note 4, at 26–28.

78. Singer, *supra* note 4, at 27.

79. *Id.*

benefits to refugees.<sup>80</sup>

Prior to PRWORA, any individual applicant who applied for SNAP benefits was not required to complete mandatory work requirements.<sup>81</sup> After PRWORA, legislators limited access to SNAP benefits, intending to encourage employment requirements by increasing workforce access.<sup>82</sup> Specifically, the PRWORA limits receipt of SNAP benefits to three months in a three-year period for able-bodied adults without dependents (ABAWDs) who are neither working nor participating in a workfare program for twenty hours or more each week.<sup>83</sup> States can request a waiver<sup>84</sup> of this provision for people in areas with an unemployment rate above ten percent or for those in areas with insufficient jobs.<sup>85</sup> In addition, both children under the age of eighteen and individuals fifty years of age or older are exempt from work requirements.<sup>86</sup> However, the decision to create access to food by means of mandatory work requirements inevitably eliminated SNAP access to individuals who were either unable to find employment or to meet the required time-limits or work requirements.<sup>87</sup>

SNAP is federally funded in its entirety by the U.S. Department of Agriculture (USDA), with administrative costs split evenly between the federal government and New York State.<sup>88</sup> Within the USDA, the Food and

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80. Takashi, *supra* note 33, at 12.

81. *Id.* at 2.

82. *Supplemental Nutrition Assistance Program (SNAP): Able-Bodied Adults without Dependents (ABAWDs)*, U.S. Dep't Agric.: Food Nutrition Serv., <http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds> (last published Apr. 3, 2017) [hereinafter *Able-Bodied Adults*].

83. U.S. Dep't of Agric., *Able-Bodied Adults without Dependents (ABAWDs)*, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), <http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds> (last visited Feb. 23, 2017).

84. On May 19, 2014, New York City joined all other social services districts in New York State to accept a federal waiver to enable ABAWDs to receive ongoing Supplemental Nutrition Assistance Program (SNAP) benefits. The purpose was to end "counterproductive policies and duplicative and/or unnecessary administrative transactions that have adverse impact on staff workload and clients and now subject the City to potential financial penalties due to unnecessary fair hearings." Currently, about 40,000 18 to 49 year olds with no minor children have been affected by this rule; 61 percent of them live in Brooklyn and the Bronx and nearly half are women. As a result of this policy change, the average amount of SNAP assistance that will be received is approximately \$35 per week per person. According to the US Department of Agriculture, every \$1 of SNAP assistance creates \$1.80 of economic activity. N.Y.C. Hum. Res. Admin. Dep't of Soc. Services, *Human Resources Administration Commissioner Banks Announces Reforms to Fight Poverty and Hunger, Prevent Homelessness, Improve Access to Employment, Reduce Unnecessary Bureaucracy, Address Staff Workload, and Avoid Financial Penalties for the City*, [https://www1.nyc.gov/assets/hra/downloads/pdf/news/press\\_releases/2014/pr\\_may\\_2014/hra\\_reforms\\_to\\_fight\\_poverty.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/news/press_releases/2014/pr_may_2014/hra_reforms_to_fight_poverty.pdf) (last visited Feb. 24, 2017).

85. Other exemptions include: a recent 3-month unemployment-rate above 10% designated as Labor Surplus Area (LSA) by the Department of Labor; qualifies for extended unemployment benefits; a 24-month average unemployment rate 20% above the national average; a low and declining employment to population ratio; a lack of jobs in declining occupations or industries; described in an academic study or other publication as an area where there is a lack of jobs. U.S. Dep't of Agric., *supra* note 83.

86. Other individuals are exempt from this provision if they are: responsible for the care of a child or incapacitated household member; medically certified as physically or mentally unfit for employment, pregnant; or already exempt from SNAP general work requirements. *Id.*

87. See 8 U.S.C. § 2015(a)(1)(A) (2012).

88. Cmty. Serv. Soc'y, *supra* note 74.



Nutrition Service (FNS) is responsible for establishing the regulations that carry out the law and providing states with direction in running the program.<sup>89</sup> The Food and Nutrition Act requires the USDA to maintain uniform national standards of eligibility throughout the entire country, with certain exceptions.<sup>90</sup>

In New York State, the Office of Temporary and Disability Assistance (OTDA) oversees the local administration of the SNAP Program.<sup>91</sup> Most administrative functions are delegated to the counties throughout the state.<sup>92</sup> In New York City, for example, the Human Resources Administration (HRA) has local administrative responsibility for the program and is the point of access for city residents.<sup>93</sup> Local SNAP offices process the applications and determine whether households qualify for the benefit.<sup>94</sup>

Because the federal government finances these benefits programs, creates their eligibility criteria, and determines the amount of monthly benefits, debates in New York State have primarily focused on how to enroll both immigrants and their families.<sup>95</sup> After the enactment of PRWORA, participation in New York State declined from “2.2 million in 1995 to 1.3 million in 2002, a drop of 38% over seven years.”<sup>96</sup> As a result of federal laws enacted in 2002, which were aimed to ease the restrictions imposed by Title IV of the PRWORA towards immigrant children, SNAP participation began to increase, with a large surge noted in 2007.<sup>97</sup>

Eligibility and benefit levels for SNAP benefits are based on household size, income, and other factors, such as countable resources, unreimbursed medical expenses if considered either elderly or disabled and utility costs.<sup>98</sup>

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89. *Id.*

90. These exceptions include: Alaska, Hawaii, Guam and the Virgin Islands. *Id.*

91. Cmty. Serv. Soc’y., *supra* note 60.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Frequently Asked Questions*, N.Y. State: Supplemental Nutrition Assistance Program (SNAP), <http://otda.ny.gov/programs/snap/qanda.asp> (last visited Apr. 8, 2017) (answering common questions about the SNAP program, including enrollment of noncitizens); see also Anabel Perez-Jimenez & Nicholas Feudenberg, *Policy Brief: Expanding Food Benefits for Immigrants: Charting a Policy Agenda for New York City*, CUNY Urb. Food Pol’y Inst. (Nov. 10, 2016), <http://www.cunyrurbanfoodpolicy.org/news/2016/11/9/policy-brief-immigrants-and-food-access> (“In 2015, the New York City Coalition against Hunger (now Hunger Free America) found that 50% of New York City’s food pantries and soup kitchens that responded to their annual survey reported they were serving more immigrants than in the previous year.”).

96. Cathy M. Johnson and Thomas L. Gais, *Welfare Policy in New York State*, in GOVERNING NEW YORK STATE 283, 299 (Robert F. Pecorella & Jeffrey M. Stonecash eds., 2012).

97. *Id.* In 2001, while SNAP caseloads only outnumbered Public Assistance caseloads in New York State by a ratio of 2:1, by 2010, the ratio grew to 5:1, which increased New York’s participation in SNAP to match the nationwide average. *Id.*

Furthermore, USDA calculated that during the height of the Great Recession of 2008, 68% of all persons eligible for SNAP benefits received them as compared with 66% overall nationwide. However, only 48% of eligible persons in households with earnings received SNAP benefits as opposed to the national average of 54%. For more information, see JOHNSON & GAIS, *supra* note 96, at 299.

98. Cmty Serv. Soc’y, *supra* note 74.

Income guidelines and benefit amounts are annually adjusted in October at the end of the fiscal year.<sup>99</sup> Eligible households receive a benefit card with the amount of monthly SNAP benefits encoded on the card.<sup>100</sup>

### C. SNAP Immigrant Eligibility Confusion Post-PRWORA

The passage of PRWORA created, and continues to create, confusion within the immigrant community as to SNAP eligibility, resulting in many otherwise eligible immigrants not applying for and receiving SNAP benefits. This “confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and a lack of adequate training on the rules as clarified by federal agencies.”<sup>101</sup> As a result, eligible immigrants have not applied for assistance, and eligibility officials mistakenly deny eligible immigrants.<sup>102</sup>

One confusing point that continues to create fear within the immigration community related to SNAP benefits is the fear of becoming a “public charge.” Current immigration law allows immigration or consular officers to deny adjustment of status applications for LPR status or to deny entry into the United States if the authorities determine that the immigrant may become a “public charge.”<sup>103</sup> In making this determination, immigration or consular officials review the immigrant’s “health, age, income, education and skills, employment, family circumstances, and, most importantly, the affidavits of support.”<sup>104</sup> In 1999, USCIS issued helpful guidance stating that receipt of non-cash benefits such as SNAP benefits will not prevent individuals from adjusting their status or the status of their family members.<sup>105</sup> Nevertheless, many immigrants refrain from applying for public benefits because of the fear of becoming a public charge.

Another area of concern is whether family members who sign affidavits of support would be legally obligated to repay SNAP benefits and other

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99. *Id.*

100. Community Service Society, *Supplemental Nutrition Assistance Program (SNAP): Overview*, BENEFITS PLUS, <http://benefitsplus.cssny.org/pbm/food-programs/food-stamps/201097> (last visited June 28, 2015).

101. Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, NATIONAL IMMIGRATION LAW CENTER, <https://www.nilc.org/overview-immeligfedprograms.html> (last visited Aug. 30, 2015).

102. *Id.*

103. Explicit policy goals stated in section 400 of Title IV of the PRWORA included reducing immigrant dependence on public benefits and to discourage immigrants who could be deemed as a public charge by preventing them from entering into the United States. For more information, see Kathy Takahashi, *Policy Analysis Paper: PRWORA's Immigrant Provisions*, <http://www.uwgb.edu/socwork/files/pdf/takahashi.pdf>.

104. DOJ, “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689-93 (May 26, 1999); see also DOJ, “Inadmissibility and Deportability on Public Charge Grounds,” 64 FR 28676-88 (May 26, 1999); U.S. Department of State, INA 212(A)(4) Public Charge: Policy Guidance, 9 FAM 40.41.

105. *Id.*

means-tested benefits.<sup>106</sup> Since December 1997, relatives of applying immigrants have been required to meet strict income requirements and sign an I-864 affidavit of support to ensure that an immigrant will remain above 125 percent of the federal poverty level and will repay any means-tested public benefit that he or she may receive.<sup>107</sup> Issued in 2006, regulations on these affidavits of support “make clear that states are not obligated to pursue sponsors and that states cannot collect reimbursement for services used prior to public notification that they are considered means-tested public benefits for which sponsors will be liable.”<sup>108</sup> Although an overwhelming majority of states have not attempted to pursue reimbursement,<sup>109</sup> sponsor liability has nonetheless deterred some eligible immigrants from applying for benefits, because they do not want their sponsors to become responsible for repaying their means-tested benefits.<sup>110</sup>

In addition, language barriers to immigration services and to benefits services, while increasingly mitigated, continue to preclude the immigrant community from receiving important information about public benefits and access to services in an understandable and constructive matter.<sup>111</sup> New York continues to be progressive on the issue of language access. In 2003, advocacy groups collaborated to file a civil rights complaint and a federal lawsuit, *Ramirez v. Giuliani*, and, as a result, Local Law 73 was implemented, requiring language access at HRA for government benefits including language access to information regarding Public Assistance, Medicaid, and SNAP benefits.<sup>112</sup> In addition, in 2006, advocacy groups similarly were able to compel hospitals to provide interpreters to patients with limited or no English proficiency.<sup>113</sup> The resultant work culminated in 2008 with the enactment into law of Executive Order 120, designed to provide access for all New York City inhabitants to all city government programs and services, including the state and local agencies that administer public benefits.<sup>114</sup>

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106. Broder et al., *supra* note 101.

107. 8 USC § 1183a (2012).

108. See Broder et al., *supra* note 101.

109. Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, <https://www.nilc.org/overview-immeligfedprograms.html> (last accessed August 30, 2015).

110. See Broder et al., *supra* note 101.

111. See Broder et al., *supra* note 101.

112. New York Immigration Coalition: “*Immigrant Groups Win Citywide Language Access Executive Order in New York City*,” <http://www.nilc.org/issues-language.html> (last accessed August 31, 2015).

113. Subsequent work in 2006 led to a Chancellor’s Regulation for language access with school report cards and interpreters for parent-teacher conferences, and the Equal Access to Housing Services Act to provide a citywide language access policy with the New York City Housing Authority. For more information, see <http://www.nilc.org/issues-language.html> (last accessed August 31, 2015).

114. Executive Order 120 requires that all city government agencies Translate essential public documents and forms and provide interpretation services into the top six languages spoken in New York City; post visible signs about the rights to interpretation and translation in all agency offices; designate a language access coordinator; and convey information in their materials using plain, nontechnical language. For more information, see <http://www.nilc.org/issues-language.html> (last accessed August 31, 2015).

However, despite progressive efforts by city government and local advocacy communities to provide immigrants with access to information in a comprehensible language, barriers still exist. These barriers prevent immigrants from obtaining public benefits or working with government agencies to ensure access to services in an efficient manner. In fact, a 2007 study verified that “69 HRA centers in New York City routinely failed to provide translation services, translated documents, and other language assistance to New Yorkers with Limited English Proficiency (LEP) despite federal, state and city laws and regulations mandating the city agency to so.”<sup>115</sup> According to the study, 66% of HRA offices did not provide translated applications in the most common languages used in New York, and 15% offered no translated applications at all.<sup>116</sup> Furthermore, 18% of the HRA offices could not provide applications in Spanish, and none of the Medicaid offices provided any application assistance.<sup>117</sup>

Despite efforts to provide information and meaningful access for immigrant populations on issues relating to public charge, affidavits of support, and language access, the intersection between immigration and receipt of public benefits is intertwined and associated with ethnic, language, and cultural stereotypes that surface from economic and cultural fear.<sup>118</sup> There is, and there continues to be, a cycle of nativism against immigration and public benefits that inevitably arises when economic and social hardship ultimately leads to government intervention and a crackdown on recently arrived immigrant populations.<sup>119</sup> Regarding public benefits, such economic downturn leads to a communal response that often vilifies both legal and undocumented immigrants who receive lawfully entitled benefits to support themselves and provide for their families. Stereotyped and blamed for draining federal and state resources,<sup>120</sup> immigrants continually face legally restrictive laws, such as Title IV of PRWORA, which result from economic and public pressure. Ironically, instead of responsibly promoting entitlements to a population that economically contributes to the U.S. economy, laws like Title IV of the PRWORA restrict access to programs that immigrants ultimately pay for with the federal, state, and local taxes that they file.<sup>121</sup> Along with attempting to navigate an immigration system that was fundamentally altered by IIRIRA in

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115. Amy Taylor and Dimple Abichandani, Translation Woes: Language Barriers at New York City’s Human Resources Administration, [http://www.migrationpolicy.org/sites/default/files/language\\_portal/Translation%20Woes\\_0.pdf](http://www.migrationpolicy.org/sites/default/files/language_portal/Translation%20Woes_0.pdf) (last accessed August 31, 2015).

116. *Id.* at 3.

117. *Id.*

118. Johnson, *supra* note 17.

119. Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1511 (1995).

120. *Id.*

121. *See* Johnson at 1538 (“This exclusion is less than satisfying in light of the fact that undocumented persons live, work, and pay taxes in this nation, and at some level are members of the national community.”).

1996,<sup>122</sup> it may be argued that both the U.S. immigration and public benefits systems “are often shaped more by public fears and anxieties than by sound public policy.”<sup>123</sup>

#### IV. NOEMI’S STORY: A CASE STUDY OF AN UNACCOMPANIED CHILD

Noemi<sup>124</sup> is an eighteen year old woman of Haitian descent who was born and raised in the Dominican Republic. Her father abandoned the family when she was a baby; she has no memory of him. Her mother, Esperanza, cared for Noemi deeply and did the best she could to support her little girl.

Noemi’s life in the Dominican Republic was difficult. After Esperanza left for the United States to find work, Noemi’s grandmother assumed responsibility for her care. Esperanza sent them all that she could afford, but it wasn’t enough. Every day, Noemi arose before dawn to help her grandmother prepare food to sell in the large open-air marketplace. When they could afford the school fees, Noemi attended classes. When they could not, Noemi went to the marketplace to help her grandmother. The work was hard and the sun was fierce. Sometimes, on Sundays, Noemi’s grandmother allowed them a day of rest to attend church services. But when times were especially difficult, they worked every day. From time to time, the husband of a close friend tutored Noemi at night.

As a dark-skinned person of Haitian descent living in the Dominican Republic, Noemi faced constant harassment from the local police and other Dominicans. Walking home one evening from her tutoring session, Noemi was stopped by a police car out on patrol. Two police officers ordered Noemi to stop and asked her why she was out at night and where she was from. Although Noemi explained to the officers that she was receiving evening tutoring sessions, the officers ignored her story and asked her again why she was out after dark and if she was Haitian. Afraid, Noemi did not reply. Angered, the officers forced Noemi into their police car where one of the officers proceeded to sexually assault her.

Degraded and humiliated, Noemi forced herself to go home to her grandmother. She couldn’t tell her grandmother about the sexual assault, as she knew her grandmother would find fault with her for being out after dark. Noemi didn’t know what to do and cried all night. The next morning, her grandmother scolded her for “being lazy.”

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122. *Id.*

123. Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGRATION POLICY CENTER (Jan. 2012), [http://www.immigrationpolicy.org/sites/default/files/docs/opportunity\\_exclusion\\_011312.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/opportunity_exclusion_011312.pdf).

124. The names of the individuals in this story have been changed to protect identities and profiles have been combined. This story, however, is rooted in the experiences of young people who have received *pro bono* legal representation through the Safe Passage Project or African Services Committee.

Noemi turned to her friend and explained to her about what had happened. Her friend told Noemi that she and her husband were planning to leave to go to the United States. Noemi was welcome to join them.

The journey to Mexico was difficult. Noemi was not used to the sea and its movements. Their drinking water had nearly run out by the time they finally made it ashore. After a day of rest, Noemi and her companions took busses across Mexico. For Noemi, only seventeen years old at the time, the experience was a blur.

After being apprehended by U.S. immigration officials, Noemi was placed in immigration detention for children, known as “ORR custody.”<sup>125</sup> There, with the help of a social worker, Noemi connected with her Aunt Mirlande, her mother’s stepsister, in Brooklyn. “Tantie Mirlande” promised Noemi that she would provide for care for her. Noemi was given a stack of papers in English, told she would soon be scheduled for a hearing in Immigration Court in New York City and that it was crucial that she attend. Soon after she was released into Tantie Mirlande’s care, Noemi realized that things were not as they seemed. Noemi was introduced to José as Tantie Mirlande’s “business partner.” Noemi always felt uncomfortable around José. Tantie Mirlande took Noemi’s immigration paperwork for “safekeeping” and showed her the couch she could sleep on. She promised Noemi that they would call her mother, Esperanza, the next day. Noemi tried to forget her troubles and soon fell asleep.

Before dawn, Tantie Mirlande and José woke Noemi up. They explained that she needed to go to work to pay back the money they had spent for her journey to the United States. Noemi was familiar with hard work and remembered that Madame Martine had explained that the trip cost a lot of money. She quickly got ready.

José explained that he was the superintendent of the building in which they lived, which means that he took care of everything inside it. Noemi was to keep the building clean. Naïve and eager to please, Noemi promised she would not dare to do so.

Noemi worked hard that day sweeping, scrubbing the floors, and washing the windows. The day flew by. Late in the afternoon, when José came to check on her, she asked him when she might have a glass of water or something to eat. He smirked at her and told her to “ask Tantie Mirlande.”

Exhausted, hungry, and thirsty, Noemi returned to the basement apartment when the sun went down. As soon as she entered, Tantie Mirlande locked the door behind her. She slapped Noemi across the face and scolded her for being disrespectful to José. As punishment, Noemi was not to have dinner.

For several months, Noemi continued to clean, sweep, and scrub the floors to pay off her “debt” for traveling into the United States. Noemi worried that

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125. Here, ORR refers to the Office of Refugee Resettlement within the U.S. Department of Health and Human Services. <http://www.acf.hhs.gov/orr/programs/ucs/about>.



she had not yet received her appointment notice to come to Immigration Court in New York. She tried to find her papers from the ORR facility, and asked Tantie Mirlande if she had seen them. Tantie Mirlande told her that she had taken Noemi's papers for "safekeeping" and that Noemi shouldn't worry about any notices from Immigration Court. Noemi grew very anxious.

One day, Joaquin, an elderly neighbor of Tantie Mirlande who saw Noemi daily and noticed her physical deterioration, approached Noemi and asked her if she was getting enough food. Fearful, but tired of the abuse and inability to contact her mother, Noemi told Joaquin that she had been forced to work and had not been able to leave the apartment since she arrived several months ago. Joaquin offered to call Noemi's mother to explain the situation, and Noemi quickly gave Joaquin her mother's number, which she had memorized for the journey.

Joaquin worried about Noemi, as she reminded him of his granddaughter. He knew she would be in danger if she stayed with Tantie Mirlande and José any longer. The next day, Joaquin approached Noemi while she was completing her chores. He told Noemi that he would distract José so that she could climb out the window of his apartment to run to safety. Joaquin had arranged for Noemi's mother to meet her on the bottom floor. Scared, but without any choice, Noemi agreed to the plan and was able to run down the fire escape in her mother's waiting arms.

Once away from Tantie Mirlande and José, Noemi felt a sense of relief that she could now live her life with her mother without fear in the United States.

## V. NOEMI'S IMMIGRATION OPTIONS AND CORRELATING BENEFITS ELIGIBILITY

Fortunately, Noemi is eligible for certain remedies that will terminate the removal proceedings pending against her in Immigration Court and permit her to remain lawfully in the United States. These immigration remedies include SIJS, asylum, and T and U non-immigrant status. Each of these immigration remedies, if successful, would establish lawful permanent residency and put Noemi on a path to obtaining U.S. citizenship. However, access to SNAP and other public benefits will greatly depend on the specific type of immigration relief secured.

In this section, we will explore the elements of different forms of immigration relief and how Noemi might qualify for each one. Following, we will compare and contrast the public benefits to which Noemi would be entitled at each step of the process of obtaining each immigration status.

### A. *Special Immigrant Juvenile Status (SIJS)*

In 1990 Congress amended the INA by creating SIJS to protect young people who had been mistreated and misguided under existing family-

sponsored immigration programs.<sup>126</sup> Pursuant to statutory amendments made in 1997, SIJS became limited to immigrant youth whom a juvenile court found were abused, abandoned, neglected, in the child welfare system, or were found to be eligible for long-term foster care.<sup>127</sup>

The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (2008 TVPRA)<sup>128</sup> amended the eligibility requirements for SIJS. The amendment eliminated the Department of Homeland Security's "specific consent" requirement, provided "age-out" protection to SIJS kids, and also required the adjudication of SIJS petitions by USCIS within 180 days of filing.<sup>129</sup> Additionally, the 2008 TVPRA amendments removed the previous restriction in which the only youth who were eligible for SIJS were those who qualified for long-term foster care.<sup>130</sup>

Following these amendments, young people whose "reunification with one or both of parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law"<sup>131</sup> were now eligible for SIJS. This change meant that children outside of the foster care system, including those who were living with one biological parent, could qualify for SIJS.

SIJS acts as an immigration remedy available to some undocumented young people under the age of twenty-one who meet statutory requirements of both juvenile court protection and immigrant visa benefits adjudication.<sup>132</sup> SIJS provides young people with a number of benefits, including allowing a young person to be on a path to lawful permanent residence in the United States to minimize the risk of deportation. Also, SIJS waives some grounds of inadmissibility, such as unlawful entry, working without authorization, and public charge, which would otherwise prevent a young person from becoming a lawful permanent resident. For example, as the beneficiary of an

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126. Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63.1 *Juvenile and Family Court Journal* 50 (2012).

127. See Pub. L. No. 105-119, § 113 (1997); *id.* See also Deborah Lee, Overview of Special Immigrant Juvenile Status in New York, New York County Bar Training Materials 9-11, (Mar. 25, 2015), <http://www.mynacc.org/NYCLA-%20SIJS%20MANAL.pdf>.

128. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

129. Memorandum from Donald Neufeld, Acting Assoc. Dir., Domestic Operations and Pearl Chang, Acting Chief, Office of Policy & Strategy, to Field Leadership (March 24, 2009), [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf) (last visited Jan. 28, 2015).

130. *Id.*

131. *Id.*

132. To be eligible for SIJS, the young person must meet the criteria codified in 8 U.S.C. § 1101(a)(27)(J) (2014). We restate the basic elements here:

1. The young person must be under 21 years of age;
2. S/he must be unmarried;
3. S/he must be declared dependent upon the state—this means that a state court has taken jurisdiction over a petition addressing the needs of the young person;
4. Reunification with one or both of the young person's parents must no longer be a viable option due to abuse, abandonment, neglect, or other similar basis under state law;
5. It is not in the best interests of the young person to return to his/her country of nationality or last habitual residence.

approved SIJS petition, a young person can terminate immigration removal proceedings, obtain work authorization, apply to adjust her immigration status to that of a lawful permanent resident, and eventually apply for U.S. citizenship.

As mentioned, juvenile court protection is crucial for securing SIJS remedies. For children in New York, the appropriate “juvenile court” is most commonly the Family Court, which hears matters including custody and visitation of children, guardianship, paternity, and family offense petitions.<sup>133</sup> However, any court that would have the ability to make a ruling about the child’s dependency would qualify to rule on the essential findings of the child’s best interests. Other such courts in New York State include the Supreme Court, Surrogate’s Court, and Criminal Court.

As part of this juvenile court proceeding, a young person must obtain a “Special Findings Order” from the judge, hearing officer, or referee that declares her factual eligibility for SIJS. Most often, young people request the Special Findings Order through a motion that accompanies a guardianship or custody petition. The guardianship or custody petition allows the Court to have the necessary jurisdiction over the young person and, importantly, allows for the young person to have an adult appointed as a caretaker to provide for permanency and stability in the young person’s life.

### 1. *Noemi’s Eligibility for SIJS*

Noemi satisfies the prima facie eligibility for SIJS. She is under the age of twenty-one and is unmarried. She was abandoned by her father as an infant. Her father has made no effort to participate, financially or emotionally, in her upbringing and she no idea where he is or how to contact him. As a result, Noemi is not able to reunite with her father. The appointment of Noemi’s mother as her legal guardian would ensure that Noemi receives the attention, guidance, support and love that she needs as a young survivor of trauma.<sup>134</sup> Because Noemi is eighteen years old, she is ineligible for a custody determination and therefore will need to seek a guardianship order.<sup>135</sup> After obtaining a state court order, a guardianship order, and a Special Findings Order, Noemi would be able to file a petition with USCIS for SIJS. Upon its approval, Noemi could terminate removal proceedings and move forward with an application for adjustment of status.

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133. For more information on New York Family Courts, see New York State Unified Courts System *Overview*, NEW YORK CITY FAMILY COURT, <http://www.nycourts.gov/courts/nyc/family/overview.shtml> (last visited Jan. 27, 2015).

134. The New York Family Court has jurisdiction to grant an order of guardianship for consenting children up to the age of twenty-one. See N.Y. Fam. Ct. Act § 661 (McKinney 2011); see also N.Y. Fam. Ct. Act § 661 (McKinney 2011).

135. Child custody in New York is available up until the child’s eighteenth birthday. See N.Y. Fam. Ct. Act § 661 (McKinney 2011).

## 2. Access to Benefits as a SIJS Kid

While Noemi is likely eligible for SIJS, the question remains as to whether this is the best legal relief option based on Noemi's goals as well as her access to public benefits through SIJS. For example, if one of Noemi's goals is to help her mother obtain lawful permanent residency in the United States, Noemi will not be able to do so if Noemi becomes a lawful permanent resident through SIJS.<sup>136</sup>

Noemi's ability to access public benefits requires a similar goal balancing analysis. Title IV of the PRWORA does not provide a specific "qualified immigrant" category for SIJS-eligible children. Thus, any form of immediate benefits relief upon having Noemi's I-360 Petition filed and acknowledged for SIJS status would not confer any additional benefit that she would not already received as an undocumented immigrant. In other words, as an SIJS kid, for purposes of benefits eligibility, Noemi would only be eligible for medical assistance benefits conferred to an undocumented immigrant, which due to Noemi's age of eighteen would be either Medicaid under the Affordable Care Act (ACA)<sup>137</sup> or Child Health Plus (CHIP).<sup>138</sup>

In New York State, Noemi would not be eligible to receive Public Assistance or SNAP because she is an SIJS kid, even though she would meet the specific definition criteria.<sup>139</sup> For example, New York State offers a state-funded cash assistance program called Safety Net Assistance (SNA)<sup>140</sup> for "qualified immigrants" and immigrants classified as PRUCOL, both

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136. A young person who adjusted status through SIJS may not petition for immigration benefits for her biological parents or siblings 8 U.S.C. § 1101(a)(27)(J) (2014). There is no reported case law addressing sponsorship of a sibling. Only citizens can sponsor their siblings for immigration and it may be that children who acquired SIJS and then became U.S. citizens have sponsored siblings. The typical quota delay for a sibling is over ten years after sponsorship and therefore, it is important to recognize that SIJS is not a visa category designed to promote family reunification.

137. Under the Affordable Care Act (ACA), individuals who are "lawfully present" in the United States are eligible to purchase health plans on their state's health insurance marketplace, and are also eligible for new health insurance affordable coverage options under the ACA. The list of individuals who are considered to be "lawfully present" for ACA purposes includes SIJS kids. For more information, see *Immigrants' Rights and Services Benefits Plus*, Community Service Society, <http://benefitsplus.cssny.org/pbm/immigrants-rights-and-services> (last visited Feb 24, 2017).

138. Child Health Plus (CHIP) is a health-insurance program for children who are under nineteen, New York Residents and who are not covered by any other form of health insurance. All immigrants, regardless of status, and including the undocumented, are eligible for CHIP. For more information, see *Child Health Plus Overview*, Community Service Society, <http://benefitsplus.cssny.org/pbm/health-programs/child-health-plus/201810> (last visited Feb 24, 2017).

139. If Noemi had been under the age of five, she may have been eligible for the Women, Infant, Children (WIC) program, which is discussed, in further detail below. In addition, based on her age for this hypothetical, Noemi could be eligible for Medicare as a person under the age of sixty-five. However, for Medicare eligibility, Noemi would have to either been entitled to Social Security Disability Insurance (SSDI) for at least twenty-four months; receive a disability pension from the Railroad Retirement Board; have Lou Gehrig's Disease (ALS); or have permanent kidney failure requiring dialysis or a transplant and have paid Social Security taxes for a certain length of time. In addition, only upon approval I-360 petition could Noemi apply for Medicare as an additional benefit. For more information, see *Medicare Overview*, Community Service Society, <http://benefitsplus.cssny.org/pbm/health-programs/medicare/186974> (last visited Feb 24, 2017).

140. State-funded Public Assistance is referred to as Safety Net Assistance (SNA) in New York State. SNA provides benefits to single adults and childless couples, families who have time out of

regardless of their date of entry. PRUCOL eligibility is established when a “non-qualified” immigrant is permanently or indefinitely residing in the United States and has been given permission by USCIS or ICE to remain in the United States.<sup>141</sup> PRUCOL is not an immigration status, but it is a category established by regulation or statute under each particular benefit program to determine whether immigrants who are not yet “qualified immigrants” are eligible for federal or local benefits.<sup>142</sup> However, at present, the New York State Office of Temporary and Disability Assistance (OTDA) has yet to determine whether as an SIJS kid, Noemi could apply for, and receive, state-funded cash assistance as a PRUCOL-eligible individual.<sup>143</sup> As a result, even if all other benefits-specific criteria are met she would not be eligible for SNA until she adjusts status from an SIJS kid to an approved LPR status.

In regards to SNAP benefits, Noemi can only become eligible once her adjustment to LPR status is approved. If Noemi adjusted her status prior to her eighteenth birthday, she would become eligible to receive SNAP benefits immediately. However, because Noemi is currently eighteen years old and because she entered the United States after August 22, 1996, she would only be eligible for SNAP benefits after five years from the date of when her LPR card was issued. The only alternative to receive SNAP benefits post-PRWORA over the age of eighteen would be if Noemi would be considered “disabled” as defined by SNAP law.<sup>144</sup> However, with no evidence to demonstrate that Noemi is disabled, food security for Noemi could only be achieved by enrolling in school and becoming eligible for free student meals or by relying on emergency food programs such as food pantries or soup kitchens.

## VI. ASYLUM

Asylum is a form of humanitarian immigration protection for individuals who are physically in the United States or at a port of entry and fear returning to their home countries, where they may face persecution. In the United States asylum is governed by § 208 of the INA. A grant of asylum allows the

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federal funded Family Assistance, and immigrants not eligible for the federal TANF funded benefit. Funding comes from state and local funds.

141. *Welcome to Benefits Plus*®, Community Service Society, <http://benefitsplus.cssny.org/> (last visited Feb 24, 2017).

142. *Id.*

143. Although the OTDA has determined specific individuals who qualify for SNA Cash Assistance in New York State, OTDA has not included “SIJ Kids” in its list of individuals who meet the OTDA PRUCOL criteria and who may be eligible for SNA benefits. Such criteria are based on the PRUCOL definition which designates eligibility if it has been officially determined by the United States Citizenship and Immigration Service (USCIS) that the alien is legitimately present in the United States (U.S.) and the USCIS is allowing the alien to reside in the country for an indefinite period of time.

144. United States Department of Agriculture, *SNAP Special Rules for the Elderly or Disabled*, <https://www.fns.usda.gov/snap/snap-special-rules-elderly-or-disabled> (last accessed January 14, 2017).

individual to obtain work authorization, terminate immigration removal proceedings, and apply to adjust her immigration status to LPR after one year. Eligibility for asylum can be thought of as a three-step process in which an individual must establish that she: (1) meets the definition of a “refugee;”<sup>145</sup> (2) is not statutorily barred from asylum;<sup>146</sup> and (3) merits a grant of asylum in the adjudicator’s discretion.

To demonstrate that she is a refugee, an applicant must establish that she is outside her country of origin and is unable or unwilling to return to her country of origin because she suffered past persecution or has a well-founded fear of persecution, by a government entity or a person or group the government is unable or unwilling to control, on account of her race, religion, nationality, membership in a particular social group, or political opinion.<sup>147</sup>

Persecution “encompasses a variety of forms of adverse treatment, including non-life[-]threatening violence and physical abuse, or non-physical forms of harm such as the deliberate imposition of a substantial economic disadvantage.”<sup>148</sup> Persecution may include psychological or emotional harm.<sup>149</sup> All harm must be considered cumulatively to determine whether it constitutes persecution, and persecution must be suffered on the basis of one of five protected grounds: race, religion, nationality, membership in a particular social group, or political opinion.<sup>150</sup> An applicant who has established past persecution on account of one of these grounds is entitled to a presumption that she has a well-founded fear of future persecution on the same basis.<sup>151</sup> This presumption can be rebutted only if the government bears its burden to prove by a preponderance of the evidence that: (1) there has been a fundamental change in circumstances such that he no longer has a well-founded fear of persecution; or (2) the applicant could avoid persecution by relocating within his country of origin and it would be reasonable to

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145. 8 U.S.C. § 1101 (a)(42)(A); INA 101(a)(42)(A) defines a refugee as: “Any person who is outside any country of such person’s nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself to the protection of, that country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”

146. There are six mandatory bars to asylum, found in INA §§ 208(b)(2)(A) and (B). These bars include persecution of others; conviction of a particularly serious crime; commission of a serious non-political crime outside of the United States; threat to U.S. national security; participation in terrorist activities; or firm resettlement. In addition, the availability of a “safe third country” (INA 208(a)(2)(A)); the one-year filing deadline (INA § 208(a)(2)(B); 8 C.F.R. ea208.4(a)(2)(ii)); and a previous denial of asylum (INA §§ 8208(a)(2)(C) and (D); 8 C.F.R. §§ 8208.4(a)(3) and (4)) could present bars to applying for asylum.

147. See INA § 208(b)(1)(B)(i).

148. *Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 342 (2d Cir. 2006) (internal citations and quotations omitted).

149. See *Ouk v. Gonzales*, 464 F.3d 108, 111 (1st Cir. 2006); see also *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004).

150. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211(BIA 2007).

151. 8 C.F.R. § 208.13(b)(1).



expect him to do so.<sup>152</sup>

If the government rebuts the presumption of a well-founded fear of persecution, the applicant may nonetheless demonstrate eligibility for asylum by showing either that: (1) she has compelling reasons for not wanting to return to her country of origin arising out of the severity of her past persecution; or (2) there is a reasonable possibility that she would suffer “other serious harm” upon removal to that country.<sup>153</sup>

The Board of Immigration Appeals<sup>154</sup> developed a three-part test for determining whether a group meets the definition of a particular social group eligible for asylum. First, the group must be comprised of individuals who share a common, immutable characteristic that its members either cannot change or should not be required to change because it is a characteristic so fundamental to their identities or conscience.<sup>155</sup> Second, the group must have particularity, which means it must be defined by characteristics that provide a clear benchmark for who is in the group and who is not in the group.<sup>156</sup> Third, the group must be socially distinct, in that it must be recognizable and distinct within the society in question.<sup>157</sup>

When Noemi was apprehended by U.S. immigration officials, she was under the age of eighteen and not accompanied by a parent or guardian. Therefore, she was deemed to be an “Unaccompanied Alien Child<sup>158</sup>” (UAC). While Noemi will have to meet the same standard of asylum as an adult applicant, she will be able to have her asylum case adjudicated first before the Asylum Office instead of as a trial in Immigration Court.<sup>159</sup>

#### A. *Noemi's Eligibility for Asylum*

Noemi satisfies eligibility for asylum both based on the past persecution she suffered on account of her race and nationality as well as from her membership in various social groups. Noemi is effectively a stateless

152. *Id.* See also *Matter of A-T-*, 24 I&N Dec. 617 (AG 2008).

153. 8 C.F.R. § 208.13(b)(1)(iii).

154. The Board of Immigration Appeals (BIA) “is the highest administrative body for interpreting and applying immigration laws.” See Dep’t of Justice, *Board of Immigration Appeals*, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, <http://www.justice.gov/eoir/board-of-immigration-appeals> (last visited Aug. 30, 2015).

155. See *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (B.I.A. 1985).

156. See *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (B.I.A. 2014); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (B.I.A. 2007).

157. See *Matter of M-E-V-G-*, 26 I&N Dec. at 240-43.

158. “The term “unaccompanied alien child” means a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” 6 U.S.C. §279(g)(2) (2016).

159. Ordinarily, an applicant for asylum who is in immigration removal proceedings will have her application adjudicated in a hearing in Immigration Court. However, USCIS retains initial jurisdiction for asylum cases filed by UACs. This means that children who have been designated UACs are able to file their asylum applications with USCIS and have a non-adversarial interview before the Asylum Office to determine their asylum application. Only if this initial adjudication is not successful will their case be referred back to the Immigration Court for a hearing.

individual because she has been denied identity papers in her country of birth and has never stepped foot in her ancestor's county of origin. As she presently does not have a nationality, her case for asylum will be made on account of the persecution she suffered in her country of last habitual residence- the Dominican Republic.<sup>160</sup> Noemi faced constant harassment from local police in the Dominican Republic on account of her race and her Haitian ancestry. Additionally, she was sexually assaulted by police officers in the Dominican Republic because of her Haitian ancestry.<sup>161</sup> Therefore, the harm that Noemi suffered, considered cumulatively, is serious enough to rise to the level of persecution.

Because Noemi suffered from past persecution, she is presumed to have a well-founded fear of persecution. In this instance, it would be difficult for the U.S. government to overcome the presumption that there has been a fundamental change in circumstance or that Noemi could reasonably relocate to another area of the Dominican Republic.<sup>162</sup>

#### B. *Access to Benefits through Asylum*

Unlike Noemi's status as an SIJS kid, Title IV of the PRWORA recognizes asylum as a "qualified immigrant" category for purposes of benefits eligibility. However, this distinction of "qualified immigrant" is only made after the I-589 Application for Asylum is granted by USCIS. If Noemi filed her I-589 application for asylum, Noemi would appear to qualify as PRUCOL. Again, PRUCOL eligibility is established when a "non-qualified" immigrant is permanently or indefinitely residing in the United States and has been given permission by USCIS or ICE to remain in the country.<sup>163</sup> PRUCOL is not an immigration status, but it is a category established by regulation or statute under each particular benefit program to determine whether immigrants who are not yet "qualified immigrants" are eligible for federal or local benefits.<sup>164</sup> Like her status as a SIJS kid, even if Noemi, as an asylum applicant, appears to satisfy the OTDA PRUCOL definition for benefits eligibility purposes, Noemi would not be eligible for SNA benefits in New York State because asylee applicants are currently not included in the OTDA PRUCOL definition of individuals who would be eligible for SNA.<sup>165</sup>

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160. See 8 U.S.C. § 1101 (a)(42)(A) (2016); I.N.A. 101(a)(42)(A) (2014).

161. USCIS, ASYLUM OFFICER BASIC TRAINING COURSE: GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS, (Sept. 1, 2009), <http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Guidelines-for-Childrens-Asylum-Claims-31aug10.pdf> (last visited Aug. 30, 2015).

162. See 8 C.F.R. § 208.13(b)(1) (2014).

163. Community Service Society, "*Benefits Plus Manual, 4<sup>th</sup> Edition*," <http://benefitsplus.cssny.org/> (last visited Aug. 30, 2015).

164. *Id.*

165. Memorandum, Permanently Residing Under the Color of Law, February 20, 2007 [available at <https://otda.ny.gov/policy/gis/2007/07dc001.rtf>].

However, unlike a SIJS kid who could not access Public Assistance benefits until after becoming an LPR and possibly being subject to a five-year ban, Public Assistance as an asylee is far more accessible once asylum is granted. Once Noemi's I-589 is approved, Noemi becomes a "qualified immigrant" for purposes of benefits eligibility.<sup>166</sup> As a result, if other eligibility criteria were met, she would have access to Family Assistance (FA), SNA, and SNAP benefits.<sup>167</sup> Title IV of the PRWORA exempts asylees as not having to be subject to the five-year ban.<sup>168</sup> As a result, solely for the purpose of applying as an asylee as opposed to an "SIJS kid," Noemi can receive greater access to benefits faster for herself simply through choosing an alternative path to humanitarian relief. However, it should be noted that delays in the asylum adjudication process for those residing in New York State might not allow an application for asylum to be adjudicated for up to two or more years.<sup>169</sup> As an asylee, as opposed to an SIJS kid, Noemi could receive public assistance benefits faster than as opposed to after she became an LPR, but she would still have to wait years until her asylum application was approved by USCIS.

Finally, while the OTDA PRUCOL definition prevents Noemi from receiving SNA in New York State, the OTDA PRUCOL definition does not confer an immediate right for Noemi to receive SNAP benefits as an asylum applicant. This is because Title IV of the PRWORA only allows "qualified immigrants" to receive SNAP benefits, and SNAP is a fully federally funded benefit subject to PRWORA. As asylum has yet to be conferred, Noemi could begin to receive SNAP benefits only after her asylum application is approved by USCIS, therefore making her as a "qualified immigrant" for Title IV purposes. However, unlike a SIJS kid, who cannot receive SNAP benefits even after his or her I-360 application is approved, Noemi, as an asylee, could begin to receive SNAP benefits immediately upon approval of her asylum application. In addition, once she has adjusted to an LPR, Noemi will continue to be eligible SNAP benefits, waiving the five-year bar, even though she is over the age of eighteen, because of her asylee status. As a SIJS kid, Noemi would have to wait five years after becoming an LPR to receive SNAP benefits, increasing her food insecurity for no reason other than the type of humanitarian relief obtained.

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166. Alien Eligibility Desk Aid, <https://otda.ny.gov/programs/publications/4579.pdf> (last visited Aug. 24 2017).

167. *Id.*

168. Pub. L. No. 104-193, 110 Stat. 2105 (enacted Aug. 22, 1996).

169. As of June 2015, there were 94,734 asylum cases pending before the Asylum Office. *See* USCIS, ASYLUM OFFICE WORKLOAD (June 2015), [http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED-Asylum\\_Office\\_Workload\\_June\\_2015.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED-Asylum_Office_Workload_June_2015.pdf) (last visited Sept. 1, 2015); *see also* AILA, *The Affirmative Asylum Backlog Explained*, [https://www.immigrantjustice.org/sites/immigrantjustice.org/files/AILA\\_Explanation%20of%20the%20Affirmative%20Asylum%20Backlog\\_4.2.14.pdf](https://www.immigrantjustice.org/sites/immigrantjustice.org/files/AILA_Explanation%20of%20the%20Affirmative%20Asylum%20Backlog_4.2.14.pdf) (last visited Sept. 1, 2015).

### C. *T Non-Immigrant Status (T-Visa)*

Stemming from the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000<sup>170</sup> and subsequently re-authorized and expanded by the TVPRA,<sup>171</sup> T Non-Immigrant Status (T-Visa) “is a set aside for those who are or have been victims of human trafficking,<sup>172</sup> protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.”<sup>173</sup> In addition to these criteria, to be eligible for a T-Visa, a survivor must establish that she “would suffer extreme hardship involving unusual and severe harm if removed from the United States.”<sup>174</sup> Non-citizen survivors of “severe forms of trafficking in persons”<sup>175</sup> who are granted a T-Visa by USCIS receive permission to remain in the United States for three years, to obtain employment authorization, and to terminate removal proceedings. Following three years of physical presence or the conclusion of the law enforcement investigation<sup>176</sup> into the trafficking, the survivor may apply to adjust her immigration status to LPR and therefore be on a path to becoming a U.S. citizen.

Unlike other forms of immigration relief, both T non-immigrant status and U non-immigrant status allow for a young person who is under age twenty-one at the time of filing her petition to include her spouse, children, parents

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170. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (VTVPA).

171. Trafficking Victims Protection Reauthorization Act 2003, Pub. L. No. 108-193, 22 U.S.C.A. § 7105(3)(iv).

172. The United Nations defines human trafficking in Article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons as defines Trafficking in Persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” See UN GENERAL ASSEMBLY, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (Nov. 15 2000), <http://www.refworld.org/docid/4720706c0.html>.

173. USCIS, *Victims of Human Trafficking: T Non Immigrant Status*, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last visited Aug. 30, 2015).

174. TVPA § 107(c); 8 C.F.R. § 214.11(b).

175. The TVPA breaks that term “severe forms of trafficking” into two categories: (1) Sex trafficking: recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; (2) Labor trafficking: recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery. See USCIS, *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status-0> (last visited Aug. 30, 2015).

176. 8 C.F.R. § 214.11(b). However, there is an exception to compliance with law enforcement, for young people who were under age eighteen at the time that they were victims of human trafficking and for those who are deeply affected by trauma.

and unmarried siblings who are under the age of eighteen as derivatives.<sup>177</sup> This generous provision allows for the resettlement of the survivor's family with her in order to build a new life in the United States. However, should any of the family members be complicit in the trafficking of the survivor, those family members will not be eligible to receive derivative status.

### 1. *Noemi's Eligibility for T-Visa*

The horrific circumstances of Noemi's initial months in the United States meet the definition of trafficking. Noemi's immigration documents were taken away from her. Her aunt and her aunt's business partner forced her to work hard manual labor as a domestic servant for no pay and with hardly any food, water, or rest. She was repeatedly locked in the closet, sometimes for over twenty-four hours, degraded, humiliated, physically and sexually assaulted. Because Noemi was under the age eighteen at the time that the trafficking occurred, her cooperation with law enforcement is not required. Further, she is likely able to show that she would suffer extreme hardship if removed from the United States, as she has no ability to live in safety in the Dominican Republic and has recently reunited with her mother after a prolonged separation. If her application for a T-Visa were successful, Noemi would also be able to apply for derivative benefits for her mother.

### 2. *Access to Benefits through T-Visas*

Unlike Noemi's status as a SIJS kid and as an asylee, Noemi would be afforded faster access to public benefits as a recipient of a T-Visa due to the granting of refugee status. Trafficking victims were added to the "qualified immigrants" list under Title IV of the PRWORA, and subsequently treated as refugees, with the passage of the Trafficking and Violence Protection Act of 2000.<sup>178</sup>

Once Noemi's T-Visa Application is either filed and acknowledged or granted either by continued presence or through notice of a bona fide T-Visa application from the Department of Homeland Security (DHS), Noemi would become eligible for public benefits as a refugee under Title IV of the PRWORA.<sup>179</sup> Furthermore, once Noemi's T-Visa application is granted by USCIS, she "may be eligible for a number of federally funded benefits and services regardless of immigration status if they have been certified by the U.S. Department of Health and Human Services (HHS), Office of Refugee

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177. 8 C.F.R. § 214.11(o)(1).

178. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (VTVPA).

179. USCIS, *Victims of Human Trafficking, T Nonimmigrant Status*, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status/questions-and-answers-victims-human-trafficking-t-nonimmigrant-status-0> (last visited Aug. 30, 2015).

Resettlement (ORR).”<sup>180</sup>

Once certified, Noemi will also become eligible for public benefits as a refugee under Title IV of the PRWORA. Under Title IV of the PRWORA, a refugee is considered a “qualified immigrant” category eligible for public benefits.<sup>181</sup> In regards to Public Assistance, unlike SIJS where Noemi would be ineligible to receive SNA regardless of the filing or approval of the I-360, or an Asylum applicant while the I-589 is pending approval, refugee status would allow Noemi to become eligible for SNA immediately as either a T-visa applicant or recipient and because the five-year ban for SNA benefits is waived for individuals identified as refugees.

Furthermore, regardless of whether or not Noemi would apply for relief as a SIJS kid or as an asylum applicant, Noemi would not be eligible under either form of humanitarian relief for SNAP benefits. Only when the asylum application is granted could Noemi apply for, and, if eligible, receive SNAP benefits. However, unlike asylum and SIJS, even if Noemi’s application for a T-Visa is only filed and acknowledged, because Noemi would qualify under Title IV of the PRWORA as a refugee, and regardless of the fact that she entered the United States post-PRWORA, Noemi would be eligible to receive SNAP benefits while her application is pending.<sup>182</sup>

Therefore, when comparing a SIJS applicant, an asylum applicant or a T-Visa applicant whose immigration application is filed and acknowledged, Noemi would have faster relief from food insecurity as T-Visa applicant. Finally, unlike a SIJS applicant who would have to wait five years to be eligible for SNAP benefits, or an asylum applicant who may have to wait up to two years until her application is approved to be eligible for SNAP benefits, Noemi, even as a T-Visa recipient, will continue to receive SNAP benefits as an LPR because the five-year ban is waived and acknowledgement of her T-visa application automatically infers refugee status and immediate access to SNAP benefits.<sup>183</sup>

#### D. *U Non-Immigrant Status (U-Visa)*

U non-immigrant status (“U-Visa”) was created by Congress in 2000<sup>184</sup> as a type of immigration status for non-citizens who are victims of certain crimes and who cooperate with law enforcement in the prosecution of those crimes.<sup>185</sup> Non-citizen victims of one or more of the twenty-six “qualifying

180. *Id.*

181. Pub. L. No. 104-193, 110 Stat. 2105 (enacted August 22, 1996).

182. *See id.*

183. Pub. L. No. 104-193, 110 Stat. 2105 (enacted August 22, 1996).

184. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (TVPA).

185. VAWA 2000 § 1513(a)(2)(B), 114 Stat. at 1534; *see also* Julie E. Dinnerstein, *The Not So New But Still Exciting U*, in IMMIGRATION & NATIONALITY LAW HANDBOOK at 452 (2008). *See also* INA 1 101(a)(15)(U)(i); 8 U.S.C. § 1101(a)(15)(U)(i).



criminal activities” listed in the regulations, including rape, torture, trafficking, sexual assault, and involuntary servitude,<sup>186</sup> might be eligible to obtain a U-Visa if they have suffered mental or physical abuse and are helpful to the investigation into the criminal activity.<sup>187</sup>

It is important to note that there is an annual cap of 10,000 U-Visas issued by USCIS in a fiscal year. However, this cap does not apply to derivative family members. Like the T-Visa, the U-Visa allows for applicants who are under age twenty-one to apply for derivative benefits for their spouse, children, parents, and unmarried brothers and sisters under the age of eighteen.<sup>188</sup>

### 1. *Noemi's Eligibility for a U-Visa*

Noemi is likely eligible for a U-Visa as the victim of rape or human trafficking, two of the enumerated crimes. She has suffered substantial mental and physical abuse as the victim of these qualifying criminal activities. In order to be eligible, Noemi will need to cooperate with law enforcement in the investigation into the criminal activity that took place, meaning that she would likely have to report the crimes committed against her to the police. If her application for a U-Visa was successful, Noemi would also be able to petition for derivative immigration benefits for her mother.

### 2. *Access to Benefits through U-Visa*

Similar to an asylum applicant, Noemi's U-Visa application, even when filed and acknowledged, would not infer either SNA or SNAP benefits, as U-Visa applicants are not considered PRUCOL for public benefits purposes in New York State, and PRUCOL is not considered a “qualified immigrant” category under Title IV of the PRWORA.

Furthermore, unlike Noemi's asylum application, when Noemi's application for a U-Visa is approved, her immigration status will be considered PRUCOL in New York State for SNA purposes, though not for SNAP purposes. A U-Visa recipient is not considered a “qualified immigrant” category under Title IV of the PRWORA.<sup>189</sup> As a result, due to New York State policy, while Noemi as a U-Visa recipient would be allowed to receive SNA benefits based on the OTDA PRUCOL definition, she would not be eligible to receive SNAP benefits until she became a LPR and, therefore, a “qualified immigrant.”

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186. 8 C.F.R. § 214.14(a)(9).

187. USCIS, *Victims of Criminal Activity: U Nonimmigrant Status*, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last visited Aug. 30, 2015).

188. 8 C.F.R. § 214.14(a)(9).

189. Pub. L. No. 104-193, 110 Stat. 2105 (enacted August 22, 1996).

In addition, just as if Noemi had applied for SNAP as a SIJS kid, because PRUCOL is not a “qualified immigrant” category, when Noemi adjusts status from a U-Visa recipient to LPR, she would be subject to the five-year ban under Title IV of the PRWORA. However, similar to SIJS kids who apply for SNA once LPR status is approved, Noemi, as a U-Visa recipient, would receive SNA when she adjusts to LPR status. If all SNA eligibility criteria are met she would not be subject to a five-year bar.

#### E. *A Call for Inclusion*

##### 1. *Summary of Noemi’s Immigration and Benefits Options*

Based on the above mentioned fact pattern, as a SIJS kid, Noemi’s options for Public Assistance and SNAP access due to Title IV of the PRWORA are extremely limited and afford similar benefits available to undocumented immigrants. Although an asylee and a T-Visa applicant or recipient can access SNAP benefits, neither a U-Visa applicant or recipient nor a SIJS kid can receive SNAP benefits. Thus, even if Noemi’s I-360 petition is either pending or approved, she will still be unable to access SNAP benefits.

Furthermore, only as a U-Visa recipient, T-Visa applicant or recipient, or asylee could Noemi be able to access SNA benefits under the Public Assistance program in New York State prior to adjusting her status to LPR. As a SIJS kid, Noemi must wait to apply for SNA benefits until after her SIJS status is adjusted to LPR.

Obtaining SIJS requires both a juvenile court and an immigration court adjudication. The process is cumbersome and lengthy and often requires months, if not years, of direct legal preparation and advocacy. As a result of Title IV of the PRWORA, whether Noemi has her I-360 Application for Special Immigrant Status pending or approved is immaterial because it still affords her the same level of benefits access as when she initially entered the United States as an undocumented immigrant.

Therefore, we argue that SIJS kids, like Noemi, should be included in the “humanitarian” category of “qualified aliens” for public benefits eligibility purposes for two main reasons. First, the original intent of SIJS in its inception in the 1990s was to provide a mechanism to regularize immigration status for undocumented young people who were aging out of the foster care system. After reaching age eighteen, these young people would effectively be out on their own. Without question, these young people are among our society’s most vulnerable, regardless of the fact that they have reached the state age of majority.<sup>190</sup>

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190. It is interesting to note that while in many states, like New York, eighteen is the typical age of majority, under immigration law, a child is defined as an individual who is under twenty-one and unmarried. *See* INA § 101(b)(1)(A); 8 U.S.C. § 1101(b)(1)(A), (D).

Furthermore, in 2014, in response to the increasing flow of unaccompanied minors from the Northern Triangle region of Central America who were making the dangerous journey to the United States, the U.S. government developed the Central American Minors (CAM) In-Country Refugee/Parole Program in an attempt to reduce the numbers of unaccompanied children migrating alone.<sup>191</sup> The CAM program began accepting petitions in December 2014, allowing “qualifying parents”<sup>192</sup> in the United States to petition for their unmarried, minor children in Honduras, El Salvador, or Guatemala with the assistance of a resettlement agency. Upon the completion of DNA testing and an interview for the child in one of the three countries by a U.S. immigration official, who would adjudicate the child’s claim for refugee status, the child was then resettled with his or her parent or parents in the United States.

SIJS kids, like the children who could be beneficiaries of the CAM program, are a highly vulnerable population. SIJS kids, who have been abused, abandoned, or neglected by at least one of their parents and are unable to reunite with that offending parent, are even more vulnerable than a child who is being firmly resettled, with the supervision of the U.S. government, to a parent. Importantly, these SIJS kids, like the beneficiaries of the CAM program who will receive refugee status in the United States, are often in need of benefits assistance in order to live healthy and productive lives.

## 2. *Advocating for a New York State Inclusive Response*

The State of New York has a long history of expanding immigrant access to public benefits. In 2000, the New York Court of Appeals explained in *Aliessa v. Novello* that, “Title IV [of the 1996 Welfare Act] does not impose a uniform immigration rule for States to follow. Indeed, it expressly authorizes States to enact laws extending ‘any State or local public benefit’ even to those aliens not lawfully present within the United States.”<sup>193</sup> The Court continued to explain that while Congress is the “only body with authority to set immigration policy,”<sup>194</sup> it has allowed states to have broad discretionary power. In implementing the PRWORA, Congress restricted non-citizen

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191. “U.S. Expands Initiatives to Address Migration Challenges,” U.S. Department of Homeland Security, 26 July 2016, <https://www.dhs.gov/news/2016/07/26/us-expands-initiatives-address-central-american-migration-challenges>.

192. “Qualifying Parent(s)” must be the genetic, step, or legal parents through adoption of the child for whom they wish to file a petition. In addition, the parent(s) must be at least eighteen years old and hold lawful immigration status in the United States, including lawful permanent residence, Temporary Protected Status (TPS), Parole, Deferred Action, Deferred Enforced Departure, or Withholding of Removal. See USCIS “In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador, and Guatemala (Central American Minors- CAM), <http://www.uscis.gov/CAM> (last visited Aug. 31, 2015). United States citizens and asylees or refugees are excluded from petitioning for their children via the CAM program. See REFUGEE PROCESSING CENTER, *CAM Frequently Asked Questions*, <http://www.wrapsnet.org/CAMProgram/tabid/420/Default.aspx> (last visited Aug. 31, 2015).

193. *Aliessa v. Novello*, 712 N.Y.S. 2d 96, (N.Y. App. Div. 2000), rev’d, 754 N.E.2d 1085 (2001).

194. *Id.*

access to certain public benefits, but specifically allowed states the authority to enact laws that “affirmatively provides for such eligibility.”<sup>195</sup>

Categorical expansion of PRWORA is neither a novel nor new concept. Subsequent Congressional legislation restored pre-PRWORA SNAP eligibility to particular categories, including all minor immigrant children, disabled immigrants, and elderly immigrants who resided in the United States prior to the effective date of PRWORA, and who are otherwise in a “qualified alien” category. However, most exclusionary restrictions of Title IV of PRWORA with regards to current SNAP eligibility, such as the immigrant’s date of entry into the United States and, more importantly, upon what type of humanitarian relief the applicant applied for at the time of entry or shortly thereafter, still remain and prevent certain humanitarian groups from receiving SNAP benefits, such as SIJS kids.<sup>196</sup> In addition, since PRWORA’s re-authorization in the Deficit Reduction Act (DRA) of 2005, there has been no congressional push to revisit or amend any of the restrictive Title IV provisions.<sup>197</sup> Thus, in its current iteration, SNAP divides immigrant and non-immigrant populations, and subsequently creates a system of food insecurity for vulnerable populations within New York State.

The discretionary power of states to determine certain aspects of immigration policy is found in areas outside of the realm of public benefits. One example of this discretionary power of states is found in matrimonial law. In order for a marriage-based immigration petition to be successful, the law of the state in which the marriage occurs governs. When the marriage takes place in the United States, the marriage must be valid under state law.<sup>198</sup> Another example lies in the domain of criminal law and the severe immigration consequences, such as inadmissibility and deportability that non-citizens face when being charged with “crimes involving moral turpitude.”<sup>199</sup> It is state law that defines the crime and the time to be served. Thus, as scholars have noted, “our immigration policies may apply to aliens differently depending upon the state in which they married or in which they committed a crime.”<sup>200</sup>

“In essence, states may redefine ‘qualified aliens’ to cover additional legal aliens, so long as they do not cover those aliens explicitly excluded by the

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195. See Pub. L. No. 104-193 (411), 110 Stat. at 2268-69 (1996).

196. See Audrey Singer, *Welfare Reform and Immigrants: A Policy Review*, [http://www.brookings.edu/media/research/files/reports/2004/5/demographics%20singer/200405\\_singer.pdf](http://www.brookings.edu/media/research/files/reports/2004/5/demographics%20singer/200405_singer.pdf) (last accessed June 29, 2015); Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, <https://www.nilc.org/overview-immeligfedprograms.html> (last visited August 30, 2015).

197. See Kathy Takahashi, *Policy Analysis Paper: PRWORA’s Immigrant Provisions*, <http://www.uwgb.edu/socwork/files/pdf/takahashi.pdf> (last visited June 29, 2015).

198. *Id.*

199. INA § 212(a)(2)(A)(i)(I) (2013); 8 U.S.C. § 1182(a)(2)(A)(i)(I) (2013).

200. Howard F. Chang, *Migration Regulation Goes Local: The Role of States in U.S. Immigration Policy: Public Benefits and Federal Authorization for Alienage Discrimination by the States*, 58 N.Y.U. ANN. SURV. AM. L. 357, 360 (2002).

PRWORA.”<sup>201</sup> As such, we call for the inclusion of SIJS kids in the “qualified alien” category of public benefits recipients in New York State. These young people, who are among the most vulnerable, could benefit greatly from the food security promised by SNAP benefits to which they would be entitled should they be deemed to be “qualified aliens.” In the following sections, we will discuss the federally-funded, yet state-administered, School Breakfast and Lunch programs for children of moderate means; the Women, Infants and Children (WIC) program; and the Emergency Food Assistance Program (TEFAP) as examples of inclusive methods of addressing food insecurity in indigent immigrant populations.

### 3. *Expanding WIC, TEFAP, and School Breakfast and Lunch Program Immigrant Eligibility Criteria to the SNAP Program*

To encourage New York State to ensure access to SNAP benefits for SIJS kids, one only needs to review existing food programs already funded by the federal government and administered in New York State. These food programs provide nutritional assistance to already vulnerable populations, including pregnant women and their infants, the homeless and chronically homeless population, and immigrant and citizen schoolchildren.

In 1969, the United States Department of Agriculture (USDA) responded to the public concern that many low-income Americans were suffering from malnutrition and hunger due to poverty, by creating the Commodity Supplemental Food Program.<sup>202</sup> The program provided resources to feed low-income pregnant women, infants, and children up to age six.<sup>203</sup> In 1974, the Special Supplemental Food Program for Women, Infants, and Children (WIC) was created and established nationally to provide additional access to food to children up to the age of four.<sup>204</sup> The WIC program currently provides nutritional and supplemental food via food vouchers, nutrition education, and health care referrals to eligible low-income pregnant women, breastfeeding, post-partum women, or infants and children up to the age of five.<sup>205</sup>

Although WIC is not an entitlement, New York State prioritizes both pregnant mothers and their children to receive access to healthy nutrition and to prevent malnourishment both during pregnancy and infancy.<sup>206</sup> WIC eligibility is based on categorical, residential, income and nutritional risk

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201. *Soskin v. Reinertson*, 353 F.3d 1242, 1246 (10th Cir. 2004).

202. Community Service Society, *Benefits Plus Manual*, <http://benefitsplus.cssny.org/> (last visited Aug. 30, 2015).

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

requirements. There are no immigration or resource requirements.<sup>207</sup>

The Food and Nutrition Service (FNS) of the USDA administers WIC in partnership with New York State and local agencies.<sup>208</sup> Every state, including New York, has opted to provide access to the WIC program.<sup>209</sup> WIC is federally funded with no requirement for State matching funds.<sup>210</sup> The New York State Department of Health receives WIC program funds and distributes them to approved local voluntary non-profit health clinics, public health clinics and non-profit community agencies with health services components.<sup>211</sup>

In addition, the Emergency Food Assistance Program (TEFAP) was created in 1981 to distribute surplus food to households.<sup>212</sup> In 1988, the Hunger Prevention Act authorized funding for the U.S. Secretary of Agriculture to buy additional foods and to continue the distribution of surplus foods for low-income households, local food pantries, and soup kitchens.<sup>213</sup>

The USDA administers TEFAP at the federal level by purchasing the food and sending it to the states for distribution where the amount received depends on the low income and unemployed population of the state.<sup>214</sup> The New York State Office of General Services (OGS) administers TEFAP at the state level.<sup>215</sup> New York City's program is entitled the Emergency Food Assistance Program (EFAP) and is administered by the Human Resources Administration (HRA) who coordinates and delivers the food items to local soup kitchens and food pantries.<sup>216</sup>

Both federal and state financial support is provided through the USDA EFAP, the FEMA Emergency Food and Shelter Program, and the New York State Department of Health, Division of Nutrition, Bureau of Nutrition Risk Reduction, Hunger Prevention and Nutrition Assistance Program.<sup>217</sup> The New York City EFAP also provides funding to many soup kitchens and food pantries.<sup>218</sup> While eligibility criteria vary by site, there are no citizenship or immigration criteria for households seeking food assistance through soup kitchens or food pantries.<sup>219</sup> As a result, undocumented immigrants can also access these services.

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207. In NYC, applicants apply for WIC at voluntary non-profit health clinics, hospitals, public health clinics and non-profit community agencies with health services components. Community Service Society, *Benefits Plus Manual*, <http://benefitsplus.cssny.org/> (last visited Aug. 30, 2015).

208. Community Service Society, *Benefits Plus Manual*, <http://benefitsplus.cssny.org/> (last visited Aug. 30, 2015).

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. Community Service Society, *Benefits Plus Manual*, <http://benefitsplus.cssny.org/> (last visited Aug. 30, 2015).

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*



Finally, the School Breakfast Program and the National School Lunch Program are financed and administered federally by the FNS of the USDA and administered locally by the New York Department of Education and local schools in both public and nonprofit private schools, as well as residential child care institutions.<sup>220</sup> Both programs provide free, reduced-price or full-priced breakfast and lunch at participating schools throughout New York State.<sup>221</sup> The meals are the same for all children regardless of payment category. Schools are not permitted to identify students who get free or reduced-price meals.<sup>222</sup> Depending on family size and income, a child may have access to school breakfast and lunch programs for free or for a reduced price.<sup>223</sup> Children participating in these programs may be given numbers, tickets, or swipe cards, and may either prepay for meals or may simply pay at the register.<sup>224</sup>

Households can apply either at the beginning or at any time throughout the school term.<sup>225</sup> Eligibility for the program is based on family size and income. Families receiving either Public Assistance or SNAP benefits, or both, do not need to submit an application if the school provides a direct certification letter to HRA.<sup>226</sup> In addition, SNAP and Public Assistance households can apply by providing only the applicant's case number, the names of the children, and an adult household signature on the application.<sup>227</sup> Based on the eligibility criteria, the school notifies the family as to whether the child will receive a free, reduced price, or full-price school breakfast and lunch. As with WIC and TEFAP, all eligible children, including undocumented immigrants, may receive free school breakfast and lunches.<sup>228</sup>

Other programs, such as the Afterschool Snack Program, the Summer Food Service Program, the Special Milk Program, and the Fresh Fruit and Vegetable Program, work to ensure that all children enrolled in school have access to nutritious and healthy options, even when school is not in session,

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220. New York State Department of Education, *Child Nutrition Program Participation and Termination Information*, [http://portal.nysed.gov/portal/page/portal/CNKC/Programs\\_pp](http://portal.nysed.gov/portal/page/portal/CNKC/Programs_pp) (last visited Aug. 29, 2015).

221. New York State Office of Temporary and Disability Assistance, *School Breakfast and Lunch Programs*, <https://otda.ny.gov/workingfamilies/schoollunch.asp> (last visited Aug. 29, 2015).

222. *Id.*

223. A child will be eligible for free meals if their family household income is under 130% of the Federal Poverty Level; reduced meals at 25 cents per meal, if the family household income is under 185% of the Federal Poverty Level, and full price if the family household income is over 185% of the Federal Poverty Level. Furthermore, full price varies by school district. For more information, see New York State Office of Temporary and Disability Assistance, *School Breakfast and Lunch Programs*, <https://otda.ny.gov/workingfamilies/schoollunch.asp> (last visited Aug. 29, 2015).

224. New York State Office of Temporary and Disability Assistance, *School Breakfast and Lunch Programs*, <https://otda.ny.gov/workingfamilies/schoollunch.asp> (last visited Aug. 29, 2015).

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

by reimbursing local schools with federal funds provided by the USDA.<sup>229</sup> Specifically, the Summer Food Service Program provides free meals to all children eighteen years of age at approved sites in areas with “significant concentrations of low-income children.”<sup>230</sup>

New York State directly administers federally funded programs designed to provide access to nutrition to existing populations vulnerable to food insecurity. It does so indiscriminately to PRUCOL, qualified immigrants, non-immigrants, and undocumented immigrants as defined by Title IV of the PRWORA. The paradox only heightens the fact that while SIJS kids can get access to food as infants, while in school, or at local soup kitchens and food pantries, they still cannot access SNAP benefits at home without adjusting their status to LPR and incurring significant time delays in the process.

## VII. CONCLUSION

U.S. immigration law defines a “child” as under the age of twenty-one and unmarried. Those “children,” who are eligible for SIJS relief, but are over the age of eighteen, will remain vulnerable to food insecurity in New York State. Access to capital to afford healthy food options and basic cash grants should be a priority and necessity to protect one of the most vulnerable humanitarian populations in the United States.

Furthermore, even if Noemi may be considered a child for U.S. immigration law purposes and still qualify for SIJS, Title IV of the PRWORA directly mandates that any applicant over the age of eighteen who adjusts status to LPR must wait an additional five years until they are eligible to receive SNAP benefits. Amending Title IV of PRWORA to remove the age requirement for SNAP benefits, or enlisting the assistance of the New York State Legislature to create a state-funded program that would allow access to SNAP benefits in the interim, would allow children access to nutrition and immediately impact the lives of children with a necessary and basic resource that all should have.

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229. New York State Department of Education, *Child Nutrition Program Participation and Termination Information*, [http://portal.nysed.gov/portal/page/portal/CNKC/Programs\\_pp](http://portal.nysed.gov/portal/page/portal/CNKC/Programs_pp) (last visited Aug. 29, 2015).

230. *Id.*

ASYLUM QUALIFICATION CHART<sup>‡</sup>

Benefit	Before Filing Application	I-589 Filed (PRUCOL)	Asylum Granted	LPR Status Approved
Public Assistance	FA <sup>231</sup> : No SNA <sup>232</sup> : No	FA: No SNA: No	FA: Yes, if other eligibility criteria met SNA: Yes, if other eligibility criteria met	FA: Yes, if other eligibility criteria met SNA: Yes, if other eligibility criteria met
Emergency Assistance	EAA <sup>233</sup> : No EAF <sup>234</sup> : No ESNA <sup>235</sup> : No	EAA: No EAF: No ESNA: No	EAA: Yes, if eligible under SSI criteria EAF: Yes, if other eligibility criteria met ESNA: Yes, if other eligibility criteria met	EAA: Yes, if eligible under SSI criteria EAF: Yes, if other eligibility criteria met ESNA: Yes, if other eligibility criteria met
Child Care	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent
Food Stamps/ SNAP	No	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
WIC	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
SSI	No	No	Yes, if asylee status was granted within 7 years of filing for SSI	Yes, if lawfully residing in U.S. on 8/22/96, and determined to be blind or disabled If entry was after 8/22/96, yes, but only within 7 years of grant of asylum and if other eligibility criteria met

<sup>‡</sup> © 2017, Ernie Collette, Esq., Mobilization for Justice, Inc.

231. **Family Assistance (FA)** provides benefits to families with children under the age of 18, or under the age of 19, if either attending secondary school or vocational or technical training. It is funded with a mix of federal, state, and local funds.

232. **Safety Net Assistance (SNA)** provides benefits to single adults and childless couples, families who have time out of federal funded Family Assistance, and immigrants not eligible for the federal TANF funded benefit. Funding comes from state and local funds.

233. **Emergency Assistance for Adults (EAA)** is a grant for individuals who receive or are eligible for SSI and who are facing an emergency from a serious event beyond the applicant's control. Funds can be used to pay for relocation expenses, utility or rental arrears, storage fees, furniture allowances, or clothing allowances.

234. **Emergency Assistance for Families (EAF)** is a grant for families or children who receive public assistance and who are facing an emergency from a serious event beyond the applicant's control. Funds can be used to pay for relocation expenses, utility or rental arrears, storage fees, furniture allowances, or clothing allowances.

235. **Emergency Safety Net Assistance (ESNA)** is a grant for single adults and childless couples and who are facing an emergency from a serious event beyond the applicant's control. Funds can be used to pay for relocation expenses, utility or rental arrears, storage fees, furniture allowances, or clothing allowances.

Benefit	Before Filing Application	I-589 Filed (PRUCOL)	Asylum Granted	LPR Status Approved
SSD	No	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Medicare	No	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Medicaid	Eligible only for pre-natal care and emergency room treatment	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Child Health Plus	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met

## SIJS QUALIFICATION CHART

Benefit	Before Filing I-360	I-360 Filed and Pending	I-360 Approved	LPR Status Approved
Public Assistance	FA: No SNA: No	FA: No SNA: No	FA: No SNA: No*	FA: Yes, eligible after a five-year bar (unless entered before 8/22/96 and continually resided until attaining status) and if other eligibility criteria met SNA: Yes, if other eligibility criteria met, regardless of date of entry
Emergency Assistance	EAA: No EAF: No ESNA: No	EAA: No EAF: No ESNA: No	EAA: No EAF: No ESNA: No*	EAA: Yes, if eligible under SSI criteria EAF: Yes, eligible after a five-year bar (unless entered before 8/22/96 and continually resided until attaining status) and if other eligibility criteria met ESNA: Yes, if other eligibility criteria met, regardless of date of entry
Child Care	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent
Food Stamps/ SNAP	No	No	No	Yes, if under 18; If over 18, eligible after a five-year bar (unless receiving a disability based benefit) and other eligibility criteria met
WIC	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
SSI	No	No	No	If entry was after 8/22/96, eligible only after a five-year bar and with 40 qualifying quarters of work
SSD	No	No	No	Yes, if other eligibility criteria met
Medicare	No	No	No	Yes, if other eligibility criteria met
Medicaid	Eligible only for pre-natal care and emergency room treatment	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Child Health Plus	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met

\* There is currently no definitive response by the Office of Temporary and Disability Assistance, the state agency, as to whether SIJ grantees qualify as PRUCOL for SNA cash purposes.

## T NON-IMMIGRANT STATUS QUALIFICATION CHART

Benefit	Before Filing	T-Status Filed and Acknowledged* or Certification Approved (Refugee Status)	LPR Status Approved
Public Assistance	FA: No SNA: No	FA: Yes, if other eligibility criteria met SNA: Yes, if other eligibility criteria met	FA: Yes, if other eligibility criteria met SNA: Yes, if other eligibility criteria met
Emergency Assistance	EAA: No EAF: No ESNA: No	EAA: Yes, if eligible under SSI criteria EAF: Yes, if other eligibility criteria met ESNA: Yes, if other eligibility criteria met	EAA: Yes, if eligible under SSI criteria EAF: Yes, if other eligibility criteria met ESNA: Yes, if other eligibility criteria met
Child Care	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent
Food Stamps/ SNAP	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
WIC	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
SSI	No	Yes, but only within 7 years of obtaining T-status	Yes, but only within 7 years of obtaining T-status
SSD	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Medicare	No	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Medicaid	Eligible only for pre-natal care and emergency room treatment	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Child Health Plus	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met

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\* Granted either Continued Presence or notice of a bona-fide T visa application from the Department of Homeland Security (DHS).



## U NON-IMMIGRANT STATUS QUALIFICATION CHART

Benefit	Before Filing	U-Status Application Filed and Acknowledged; or Approved (PRUCOL)	LPR Status Approved
Public Assistance	FA: No SNA: No	FA: No SNA: No, if petition is pending; yes if U-Status is <i>approved</i> and if other eligibility criteria met; and yes if U-status petition is pending and applicant granted deferred action	FA: Yes, eligible after a five-year bar (unless entered before 8/22/96 and continually resided until attaining status) and if other eligibility criteria met SNA: Yes, if other eligibility criteria met, regardless of date of entry
Emergency Assistance	EAA: No EAF: No ESNA: No	EAA: No EAF: No ESNA: No, if petition is pending; yes if U-Status is <i>approved</i> and if other eligibility criteria met; and yes if U-status petition is pending and applicant granted deferred action	EAA: No, unless receiving SSI EAF: Yes, eligible after a five-year bar (unless entered before 8/22/96 and continually resided until attaining status) and if other eligibility criteria met ESNA: Yes, if other eligibility criteria met, regardless of date of entry
Child Care	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent	Yes, if the child is a U.S.C. or in a qualified status, regardless of the immigration status of the parent
Food Stamps/ SNAP	No	No	Yes, if under 18; If over 18, eligible after a five-year bar (unless receiving a disability-based benefit) and other eligibility criteria met
WIC	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
SSI	No	No	Yes, if receiving benefit on 8/22/96, continue to receive benefit, and continue to meet the eligibility criteria, <b>or</b> , lawfully residing in U.S. on 8/22/96, and determined to be blind or disabled If entry was after 8/22/96, eligible only after a five-year bar and with 40 qualifying quarters of work
SSD	No	No, unless U-Status is <i>approved</i> and if other eligibility criteria met	Yes, if other eligibility criteria met
Medicare	No	No	Yes, if other eligibility criteria met

Benefit	Before Filing	U-Status Application Filed and Acknowledged; or Approved (PRUCOL)	LPR Status Approved
Medicaid	Eligible only for pre-natal care and emergency room treatment	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met
Child Health Plus	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met	Yes, if other eligibility criteria met