

**BARRING SURVIVORS OF DOMESTIC VIOLENCE
FROM FOOD SECURITY: THE UNINTENDED
CONSEQUENCES OF 1996 WELFARE AND
IMMIGRATION REFORM**

*Claire R. Thomas and Ernie Collette**

ABSTRACT

During the 1990s, Congress amended the Immigration and Nationality Act (“INA”) to create forms of immigration relief for previously neglected vulnerable groups. One such group – survivors of domestic violence – was aided through the Violence Against Women Act (“VAWA”), which amended the INA to allow abused spouses, children, and parents of U.S. citizens or lawful permanent residents to self-petition for family-based immigration benefits without the abuser’s knowledge. Both abused female and male spouses are able to receive immigration benefits under VAWA, as well as spouses in same-sex marriages.

Despite protections in immigration law for survivors of domestic violence, two other acts – the Professional Responsibility and Work Opportunity Reconciliation Act (“PWORA”) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) – which also passed in the 1990s fundamentally changed immigration policy and made it more difficult for members of these vulnerable groups to access public benefits.

This Article will focus on the “unintended consequences” that both of these Acts created by excluding vulnerable groups from access to the Supplemental Nutrition Assistance Program (“SNAP”). By comparing public benefits access for categories of immigrants, such as survivors of domestic

* Claire R. Thomas is an Adjunct Professor of Law at New York Law School where she teaches immigration law and co-teaches a year-long clinical course. She is a visiting scholar with The New School’s Zolberg Institute on Migration and Mobility and an attorney with the Safe Passage Project, a non-profit organization that provides *pro bono* representation for unaccompanied children in immigration removal proceedings. She previously served as a staff attorney at African Services Committee. Ernie Collette brings over ten years of advocacy for low-income New Yorkers to his current position as a staff attorney at MFY Legal Services, Inc., a non-profit organization in New York City providing free legal assistance to residents of New York City on a wide range of legal issues, prioritizing services to vulnerable and underserved populations. Mr. Collette focuses his practice on government benefits law and also serves as a *pro bono* attorney for the Safe Passage Project. Ms. Thomas and Mr. Collette have been collaborating for years on how to improve immigrant access to public benefits and to educate the immigrant and advocacy communities respectively. The authors wish to thank Professor Anil Kalhan for his advice and Timothy Greenberg, New York Law School ’16 for his assistance.

violence, trafficking, and those who obtained asylum protection, this Article will advocate for reforms at the federal, state, and local level to increase access to food security for vulnerable groups.

TABLE OF CONTENTS

INTRODUCTION	354
I. EXCLUDING THE MOST VULNERABLE: A BRIEF HISTORY OF U.S. IMMIGRATION POLICY	357
A. <i>History of Exclusion</i>	357
B. <i>Domestic Violence and Immigration Law</i>	360
II. PRE-PRWORA AND POST-PRWORA IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS.....	363
A. <i>A State Regulation and Administration Under PRWORA</i>	367
B. <i>The Federal Food Stamps ("SNAP") Program</i>	369
C. <i>SNAP Immigrant Eligibility Confusion Post- PRWORA</i>	372
III. A SURVIVOR'S IMMIGRATION OPTIONS AND CORRELATING BENEFITS ELIGIBILITY	375
A. <i>U Non-Immigrant Status ("U-Visa")</i>	376
1. <i>Eligibility under U-Visa</i>	376
2. <i>Public benefits access under U-Visa</i>	377
B. <i>Violence Against Women Act</i>	380
1. <i>Eligibility for immigration relief through VAWA</i>	380
2. <i>Public benefits access through VAWA</i>	382
IV. CALLING FOR REFORM	383
A. <i>Summary of a Survivor's Immigration and Benefits Options</i>	383
B. <i>Advocating for a stronger New York State approach</i>	386
CONCLUSION.....	389
EPILOGUE.....	390

INTRODUCTION

Imagine living in the South Bronx borough of New York City as an undocumented, French-speaking, West African woman. You have limited English skills and little formal education. As a teenager, you married an older man from your home country. He got a green card and brought you to the United States to build a better life. But he hits you. Your bruises last weeks. He yells at you and calls you names. He

forces himself on you and tells you that it is his right to have sex with you whenever he wants because you are his wife.

You have five children together. He blames you for being HIV-positive and threatens to expose your medical condition to your friends—your only companions outside your abusive marriage. He tells you that if you report him to the police, he will keep the children and have you deported back to Africa. You are afraid you will never see your children again. He tells you there is no point in calling the police anyway—“they won’t believe you because you have HIV.” Your husband makes you believe you have no legal rights in the United States. Without hope, you remain isolated, abused, and voiceless.

Domestic violence is the leading cause of injury to women in the United States.¹ Statistics show that every 15 seconds, an act of domestic violence occurs in the form of willful intimidation, physical assault, sexual assault, or other abusive behavior perpetrated by one partner against another.² The 2010 National Intimate Partner and Sexual Violence Survey reported that “[m]ore than 1 in 3 women . . . in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.”³ While domestic violence also occurs in same-sex relationships, the vast majority of these acts are committed by men against women.⁴ Defined as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner,”⁵ domestic violence can be physical, emotional, sexual, economic, or psychological threats or actions.⁶ Domestic violence is a universal phenomenon that exists in all countries and all cultures of the world. It is not confined to any particular social, cultural, ethnic, age, racial, or religious group and affects women of all economic and educational classes. Alarming, the New York City Department of Health and

1. See *Facts About Domestic Violence*, ILL. DEP’T PUB. HEALTH, <http://www.idph.state.il.us/about/womenshealth/factsheets/dv.htm> (last visited May 15, 2017).

2. See *id.*; *Domestic Violence National Statistics*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, (2015), [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf).

3. NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 2* (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

4. As a result of this gendered aspect of domestic violence, the authors have chosen to use female and male pronouns for the purposes of this Article.

5. See *Domestic Violence*, U.S. DEP’T JUST. (Oct. 31, 2016), <https://www.justice.gov/ovw/domestic-violence>.

6. *Id.*

Mental Hygiene asserts “foreign- and U.S.-born women have had similar risk of intimate partner femicide over time.”⁷

U.S. immigration laws have implemented various legal procedures to promote the health and safety of immigrant women in abusive relationships. In the 1990s, Congress amended the Immigration and Nationality Act (“INA”) when it passed the Violence Against Women Act (“VAWA”),⁸ as part of the Violent Crime Control and Law Enforcement Act (HR. 3355), to allow abused spouses, children, and parents of U.S. citizens and lawful permanent residents to self-petition for family-based immigration benefits without the abuser’s knowledge.⁹ Both abused female and male spouses are eligible to receive immigration status through VAWA, as well as spouses in same-sex marriages.¹⁰ In 2000, Congress passed the Victims of Trafficking and Violence Prevention Act, which created the U Non-Immigrant Status, frequently referred to as the “U Visa.”¹¹ Immigrant victims of certain crimes, including domestic violence, who cooperate with law enforcement, are eligible to apply for this status.¹²

In 1996, Congress enacted the Professional Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) with the hope of reducing dependence upon the Public Assistance, Supplemental Nutrition Assistance (“SNAP”), and Medicaid programs, by creating employment requirements to increase workforce access.¹³ Also in 1996, Congress enacted the Illegal Immigration Reform and Immi-

7. *Femicide in New York City: 1995-2002*, N.Y.C. DEP’T HEALTH AND MENTAL HYGIENE (Aug. 2011), <https://www1.nyc.gov/assets/doh/downloads/pdf/ip/ip-femicide-stats-1995-2009.pdf>.

8. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40701-40703, 108 Stat. 1796.

9. See discussion *infra* Part II.B.

10. After the Supreme Court found that Section 3 of the Defense of Marriage Act (“DOMA”) was unconstitutional, same-sex married couples are treated the same as opposite sex married couples for the purposes of immigration law. See *United States v. Windsor*, 570 U.S. 2675 (2013) (noting that DOMA applied “to over 1,000 federal statutes and a whole realm of federal regulations”); see also *Same-Sex Marriages*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/family/same-sex-marriages> (last visited Apr. 18, 2017).

11. See *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, §§ 1501-1513, 114 Stat. 1464; see also INA § 101(a)(15)(U); 8 C.F.R. § 214.14 (2016).

12. See 8 C.F.R. § 214.14. While these legal mechanisms do not purport to solve the problem of domestic violence in the United States and worldwide, they advance the safety and health of immigrant women and children by enabling them to secure legal immigration status.

13. See *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, § 403(a), 110 Stat. 2105 (1996) [hereinafter PRWORA]; see also discussion *infra* Part III.

grant Responsibility Act (“IIRIRA”), which significantly changed immigration policy.¹⁴ Title IV of the PRWORA created a “qualified alien” category that divides non-citizens based on their immigration status.¹⁵ These divisions restrict and delay immigrant access to public benefits, even for such vulnerable groups as survivors of domestic violence and abused children, and make benefit access dependent upon acquiring U.S. citizenship.¹⁶

Inaction by Congress on immigration reform allows for an opportunity to reexamine the immigrant eligibility categories put into place by the PRWORA, specifically regarding SNAP, and especially for vulnerable groups like survivors of domestic violence.

This Article will first discuss the historical exclusionary background of U.S. immigration policy, particularly towards women and individuals thought to become a “public charge,” and the correlations between this anti-immigrant sentiment and the subsequent passage of laws restricting access to public benefits for immigrants. Next, this Article will explore the sections of the PRWORA pertaining to SNAP through a review of pre-PRWORA eligibility rules and the expansion of post-PRWORA categories since 1996. Following, this Article will focus on the “unintended consequences” that both the IIRIRA and PRWORA created by excluding vulnerable groups from SNAP benefits like survivors of domestic violence. By comparing public benefits access for other categories of immigrants, such as survivors of human trafficking and asylum, this Article will advocate for reforms on the federal, state, and local level to increase access to SNAP as well as to provide immediate access to food security for vulnerable groups.

I. EXCLUDING THE MOST VULNERABLE: A BRIEF HISTORY OF U.S. IMMIGRATION POLICY

A. History of Exclusion

Despite the noble intent of the words engraved on the pedestal of the Statue of Liberty in New York Harbor,¹⁷ U.S. immigration law has

14. See Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996) [hereinafter IIRIRA]; see also *infra* text accompanying notes 37–40.

15. See PRWORA §§ 440–451.

16. See discussion *infra* Part III.

17. “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door.” Emma Lazarus, *The New Colossus*, (Nov. 2, 1883), reprinted in EMMA LAZARUS SELECTION FROM HER POETRY AND PROSE, 40–41 (Morris U. Schappes ed., 1944)

historically prevented vulnerable categories of individuals from entering the United States. This section will briefly explain America's history of barring "undesirable" aliens or those deemed likely to become a "public charge"¹⁸ to build a foundational understanding of the relationship between anti-immigration attitudes and the promulgation of laws restricting access to public benefits.

The federal government did not begin comprehensively regulating immigration until the late 1800s.¹⁹ Laws were passed to prevent those immigrants considered "undesirable," including prostitutes, criminals, and those with contagious diseases, from entering the U.S. beginning in 1875.²⁰ Less than a decade later, in 1882, Congress began excluding certain nationalities, such as the Chinese, from immigrating to the United States and from becoming U.S. citizens.²¹ Also in

(containing a poem written for Bartholdi Pedestal Fund in 1883, now inscribed on a plaque on the Statue of Liberty).

18. 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." INA § 212(a)(4), 8 U.S.C. § 1182(a)(4) (2012). USCIS further clarifies that:

[F]or 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.

Public Charge, USCIS, <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last updated Sept. 3, 2009).

19. Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW AND CONTEMP. PROBS. 1, 5 (2009).

20. See generally Immigration Act of 1875, ch. 141, 18 Stat. 477 (1875) (repealed 1974).

[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, 1520 (1995) [hereinafter *Public Benefits and Immigration*] (citing Act of Mar. 3, 1891, ch. 551, 26 Stat. 1084, 1084 (codified and amended as 8 U.S.C. § 1551-1574 (2012) (emphasis added)); see, e.g., *Nishimura Ekiu v. United States*, 142 U.S. 651, 664 (1892) (upholding exclusion of Japanese woman as a public charge); see also *Gegiow v. Uhl*, 239 U.S. 3, 10 (1915) (holding that noncitizen could not be excluded as a public charge on grounds 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. Chinese Exclusion Act of 1882, ch. 125, 22 Stat. 58 (1882) (repealed 1943).

21. The Chinese Exclusion Act was extended in 1892 and again in 1902. See Walter A. Ewing, *Opportunity and Exclusion: A Brief History of U.S. Immigration Policy*, IMMIGR. POL'Y CTR. 3 (2012), https://www.americanimmigrationcouncil.org/sites/default/files/research/opportunity_exclusion_011312.pdf.

1882, Congress specifically denied admission to “lunatics” and immigrants who were likely to become a “public charge.”²² Today, “public charge” remains one of the most widely used grounds for immigrant visa denials by consular officials.²³ It is defined by case law as a person who “by reason of poverty, insanity, disease or disability would become a charge upon the public.”²⁴

In the early 1900s, Congress expanded exclusionary immigration laws to ban other “undesirable” individuals from immigrating to the United States. Racial bias against Chinese individuals continued, characterizing women as “prostitutes.”²⁵ Exclusionary laws were further extended in 1907 to ban immigration of Japanese workers.²⁶ Laws were also passed in 1907 expressly banning “imbeciles” and “children not accompanied by their parents” from immigrating to the United States.²⁷

Scholars have noted that “the immigration laws [regarding the immigration of women] enacted from 1875 to 1910, in conjunction with the prevailing opinion that the European countries were encouraging their paupers and undesirables to emigrate, assumed that single women would become wards of the state or turn to prostitution in order to make a living.”²⁸ Views supporting these laws excluding women remained normal well into the late twentieth century.²⁹

In the 1920s, quotas favoring immigrants from northwestern Europe came into U.S. immigration law.³⁰ Around the same time, restrictions, if not outright bans, were placed on African, Arab, and Asian immigrants.³¹ However, during the Second World War and early Cold War, immigration law became contradictory as it “expanded political grounds for exclusion and surging anti-Japanese sentiments on the one hand, but the loosening of restrictions against other Asian immigrants and the rise of humanitarian refugee policies

22. *Id.*

23. See 8 U.S.C. § 1182(4)(A) (2012); see generally U.S. Dep’t of State – Bureau of Consular Affairs, *Visa Denials*, U.S. VISAS, <https://travel.state.gov/content/visas/en/general/denials.html> (last visited Apr. 18, 2017).

24. *Immigration, Public Benefits*, OLTARSH & ASSOCIATES, P.C., <http://www.oltarsh.com/march2008.php> (last visited Apr. 18, 2017); *Gegiow*, 239 U.S. at 8, 10.

25. Act of March 3, 1903, ch. 1012 § 3, 32 Stat. 1213, 1214 (repealed 1917).

26. Act of February 20, 1907, ch. 1134, § 2, 34 Stat. 898 (repealed 1917).

27. *Id.*

28. *Immigration*, LAW LIBR. CONG., <https://memory.loc.gov/ammem/awhhtml/awlaw3/immigration.html> (last visited Apr. 19, 2017).

29. *Id.*

30. Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153.

31. *Id.*

on the other hand.”³² In 1952, the INA combined the various immigration-related laws into a single statute.³³ Interestingly, the national-origins quota system, which was viewed as discriminatory based on race, ancestry, or national origin, was not removed from the statute until the Immigration Act of 1965.³⁴

In the 1980s, U.S. immigration law began to limit the rights of immigrants.³⁵ The 1986 Immigration Reform and Control Act (“IRCA”) enabled large numbers of non-citizens living in the United States to gain legal immigration status, but it also created employer sanctions and additional support for border security.³⁶ In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) fundamentally changed immigration law by expanding the definition of “aggravated felony,” implementing new grounds of inadmissibility, and further increasing border enforcement.³⁷ The Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), also passed in 1996, had a profoundly chilling effect on immigrants’ admittance to the United States.³⁸

B. Domestic Violence and Immigration Law

U.S. immigration law allows citizens or lawful permanent residents to petition for their immigrant spouses. In a U.S. citizen and immigrant relationship affected by domestic violence, however, the abusive U.S. citizen or lawful permanent resident has complete control over the survivor’s ability to obtain legal immigration status.³⁹ Frequently, as a means of control over the immigrant partner, the abuser does not file the necessary paperwork for his immigrant spouse.⁴⁰

32. Ewing, *supra* note 21, at 4.

33. *Id.* at 5.

34. *Id.*

35. *Id.* at 6.

36. *Id.*

37. IIRIRA, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996); Ewing, *supra* note 21, at 6.

38. See PRWORA, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

39. See Lianna E. Donovan, *The Violence Against Women Act’s Protection of Immigrant Victims: Past, Present, and Proposals for the Future*, 66 RUTGERS L. REV. 745, 752 (2014); Mariela Olivares, *A Final Obstacle: Barriers to Divorce for Immigrant Victims of Domestic Violence in the United States*, 34 HAMLIN L. REV. 149, 153 (2011). But see *Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrants on a Marriage-Based Visa Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/news/fact-sheets/information-legal-rights-available-immigrant-victims-domestic-violence-united-states-and-facts-about-immigrating-marriage-based-visa-fact-sheet> (last updated Jan. 11, 2011) [hereinafter *Legal Rights for Immigrant Victims*] (discussing the options available for immigrant spouses who are victims of abuse and domestic violence).

40. Donovan, *supra* note 39, at 751-58.

Immigrant women and children survivors of domestic violence face additional challenges. Because many come from cultures in which domestic violence is a private matter that brings shame upon the family to speak about abuse or seek help for, it is often assumed that these individuals have limited options available to seek self-sufficiency and independence.⁴¹ Further, individuals living in closely-knit immigrant communities in the United States believe that challenging the authority of their husbands or partners breaks religious or ethnic taboos.⁴² They might lack knowledge about what remedies exist in the American judicial system or that these remedies are available regardless of their immigration status.⁴³ They might not speak English, not have legal status to work in the United States, not know how to use public transportation, or simply be too afraid to seek help.⁴⁴

Besides physical and psychological abuse, immigrant women in the United States are vulnerable to mistreatment by their partners relating to their immigration status. To explain, an abuser might threaten to have an immigrant woman deported by reporting her to the Immigration and Customs Enforcement (“ICE”).⁴⁵ An abuser might use his U.S. citizenship or lawful permanent residency as a privilege and refuse to file a relative petition to legalize her immigration status or withdraw the petition he previously filed.⁴⁶ If a woman is undocumented or has not yet received work authorization in the United States, an abuser might threaten to report her if she works “under the table.”⁴⁷ Further, an abuser might isolate the immigrant

41. *Id.* at 751–54.

42. *Immigration and Domestic Violence: A Short Guide for New York State Judges*, N.Y. ST. JUD. COMM. ON WOMEN CTS. 1 (2009), <https://www.nycourts.gov/ip/womeninthecourts/pdfs/ImmigrationandDomesticViolence.pdf> [hereinafter *Immigration and Domestic Violence*].

43. Donovan, *supra* note 39, at 751–53.

44. *Id.* at 752–53; *Legal Rights for Immigrant Victims*, *supra* note 39.

45. Shahid Haque-Hausrath, *Domestic Violence: Immigrant Abuse Victims Often Face New Threats Due to Status: Spouse’s Manipulation of System, Misguided Police Enforcement Sometimes Cause Additional Troubles, Fear of Deportation*, 40 MONTANA LAWYER 24, 24 (2015); see also Caitlin Dickson, *Woman Who Says She Was Held Captive for 10 Years Feared Deportation*, DAILYBEAST (May 23, 2014, 1:55 PM), <http://www.thedailybeast.com/articles/2014/05/23/woman-who-says-she-was-held-captive-for-10-years-feared-deportation.html> (discussing the story of a victim of domestic abuse who did not report the abuse to the police for fear of deportation).

46. Haque-Hausrath, *supra* note 45, at 24.

47. *Domestic Violence and Immigrant Women*, AZ CTR. FOR RURAL HEALTH, http://crh.arizona.edu/sites/default/files/pdf/DomesticViolenceandImmigrantWomen_060503.pdf; see also Lauri J. Owen, *Forced Through the Cracks: Deprivation of the Violence Against Women Act’s Immigration Relief in San Francisco Bay Area Immigrant Domestic Violence Survivors’ Cases*, 21 BERKELEY J. GENDER L. & JUST. 13, 27–29 (2006) (discussing the lack of relief available to victims of abuse who may be forced to work under the table).

woman from her family and friends who speak her language or forbid her from learning English. He might also intimidate her by destroying her property from her home country, or hiding her passport or other legal documents.⁴⁸ According to the New York State Judicial Committee on Women in the Courts, “[w]hen an abuser is a lawful permanent resident or United States citizen, threatening to have a victim who is undocumented or has conditional status deported becomes the perfect means of maintaining the power and control that are the defining characteristics of domestic violence.”⁴⁹

In 1994, U.S. Congress passed the Violence Against Women Act (“VAWA”) as part of the Violence Crime Control Act.⁵⁰ VAWA was the first item of federal legislation that attempted to curb domestic violence, and it included specific provisions to protect abused women who were not U.S. citizens.⁵¹ These provisions were expanded in the 2000 and 2005 amendments to the original VAWA Act and were strengthened when VAWA was re-enacted in 2013.⁵²

By creating the VAWA, Congress recognized that an immigrant survivor of domestic violence “may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police because of the threat or fear of deportation.”⁵³ VAWA creates a special process through which domestic violence survivors married to or recently divorced from U.S. citizens or lawful permanent residents can self-petition to obtain legal immigration status in the United States.⁵⁴ This self-petition can be accomplished without the abusive spouse’s consent or knowledge.⁵⁵

However, the VAWA self-petition process is not available to all abused immigrant women. Immigrant women who are not legally married to their abusive spouses and those who are married to abus-

48. See, e.g., Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U.L. REV. 665 (1998) (discussing legal problems faced by the immigrant women who have been subjected to domestic violence and some remedies offered by the Violence Against Women Act).

49. *Immigration and Domestic Violence*, *supra* note 42, at 1.

50. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796.

51. Immigration and Nationality Act § 204(a)(1)(A)(iii)(1)(bb), 8 U.S.C. § 1154 (2012).

52. Violence Against Women Act of 2000, Pub. L. 106-386, 114 Stat. 1491; Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54.

53. House Judiciary Report accompanying H.R. Rep. No. 103-395 at 40-41.

54. See *Battered Spouse, Children & Parents*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/humanitarian/battered-spouse-children-parents> (last updated Feb. 16, 2016) [hereinafter *Battered Spouse*].

55. See *id.*

ers who are not U.S. citizens or legal permanent residents are not eligible to VAWA self-petition.⁵⁶ Congress implemented the “U-Visa” through the Victims of Trafficking and Violence Prevention Act of 2000 with the dual purpose of helping abused immigrant women ineligible for VAWA and assisting law-enforcement investigations and criminal prosecutions.⁵⁷ U.S. Citizenship and Immigration Services (“USCIS”) identifies the purpose of the U-Visa as “strengthen[ing] the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country.”⁵⁸ Non-citizen victims of one or more of the twenty-six “qualifying criminal activities” listed in the regulations, including rape, torture, trafficking, sexual assault, and involuntary servitude,⁵⁹ 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.⁶⁰

There is an annual allotment of only 10,000 U-Visas available in a fiscal year.⁶¹ However, this cap does not apply to derivative family members. Thus, applicants who are under age twenty-one may apply for derivative benefits for their spouse, children, parents, and unmarried brothers and sisters under the age of eighteen.⁶²

II. PRE-PRWORA AND POST-PRWORA IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS

The legislative purpose behind PRWORA was fourfold: (1) to reduce recipient dependence upon public benefits, including SNAP, in order to eliminate federal spending on public benefits to non-citizens; (2) to divide immigrant groups into eligible and non-eligible recipients; (3) to shift part of the financial burden of implementing such

56. *See id.*

57. 8 U.S.C. § 1101(a)(15)(U) (2012).

58. *U Visa Law Enforcement Certification Resource Guide*, DEP’T OF HOMELAND SECURITY 2, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (last visited Apr. 19, 2017).

59. 8 C.F.R. § 214.14(a)(9) (2017).

60. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last updated July 28, 2016) [hereinafter *Victims of Criminal Activity*].

61. *Id.* As of the time this Article was written, there are over 70,000 applications for U-Visas in a queue with USCIS. AILA, *Frequently Asked Questions (FAQs) for U VISA Applicants Regarding Processing Delays*, AILA Doc No. 17011832 (Jan. 18, 2017).

62. 8 C.F.R. § 214.14(a)(10) (2016).

programs to state and local governments; and (4) to create employment requirements to increase workforce access.⁶³

Restricting access to benefits gained traction with Republicans in Congress in the 1990s, under the premise that by preventing non-citizens from receiving federal entitlements the federal government would be able to reduce spending in the federal budget, effectively saving the government "\$54.1 billion over six years."⁶⁴ However, such viewpoints also labeled immigrants as a burden on federal means-tested benefits whose dependency would establish a perpetual welfare state and whose sole reason for entering the United States is to receive public benefits.⁶⁵

Republican proponents justified PRWORA by appealing to American values of self-sufficiency, as well as the need to restrict immigrant eligibility to prevent incentivizing immigration solely to collect benefits.⁶⁶ In addition, Republicans sought to save American taxpayers money by reducing spending on entitlement programs aimed both at immigrant and non-immigrant communities.⁶⁷ However, Democratic opponents of PRWORA argued that since immigrants contribute to the economic fabric of the United States by working and paying taxes, such immigrant communities should be allowed access to means-tested benefits in order to eventually become self-sufficient.⁶⁸ Both proponents and opponents failed to discuss how little the law protected vulnerable elderly, disabled, and child recipients—individuals who most need the public benefits and who were the most at risk.⁶⁹

With regard 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."⁷⁰ Furthermore, 25 percent of low-

63. Audrey Singer, *Welfare Reform and Immigrants: A Policy Review*, in IMMIGRANTS, WELFARE REFORM AND THE POVERTY OF POLICY 21, 21–22 (Ana Aparicio & Philip Kretsedemas eds., 2004).

64. *Id.* at 25; "[T]he largest savings—\$23.8 billion or 44 percent of the net savings—was to come from slashing benefits to legal permanent residents." *Id.* 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 U.S." Kathy Takahashi, *Policy Analysis Paper: PRWORA's Immigrant Provisions* 13 (unpublished M.S.W. paper, University of Wisconsin - Green Bay) (on file with U.W.- Green Bay Master of Social Work Program), <http://www.uwgb.edu/socwork/files/pdf/takahashi.pdf> (last visited Apr. 19, 2017).

65. Takahashi, *supra* note 64, at 4, 16.

66. *Id.* at 16.

67. *Id.* at 18.

68. *Id.* at 8.

69. *Id.* at 20–21.

70. *Id.* at 10.

income children in the United States live in an immigrant household;⁷¹ while 97 percent have a working parent in the household with 72 percent of those parents working in a full-time capacity.⁷² Nevertheless, half of these families are under 200 percent of the Federal Poverty level.⁷³ As a result, the inability for immigrant households to access SNAP benefits, even though the household would be financially eligible, increases food insecurity for that immigrant household.⁷⁴

Before PRWORA, access to public benefits was similar between legal immigrants and citizens.⁷⁵ However, after the enactment of Title IV of the PRWORA, time bars and new citizenship criteria limited immigrants' opportunity to apply for, and receive, federally-funded benefits.⁷⁶ Initially, "PRWORA excluded noncitizen participation in all federal means-tested benefits."⁷⁷ "With the exception of refugees and asylees, legal permanent residents with forty-quarters of work, and those in the military," all other non-citizens could not access federal public benefits.⁷⁸ As a result, "legal immigrants, including those who were participating in the programs at the time the law became effective, became ineligible for most federally funded programs."⁷⁹

Moreover, PRWORA and subsequent reauthorizations created a "qualified alien"⁸⁰ category that divided immigrants based on current

71. *Id.*

72. *Id.*

73. *Id.* at 10.

74. Singer, *supra* note 63, at 32.

75. *Id.*

76. *See id.* at 21-22.

77. *Id.* at 26.

78. *Id.* at 27.

79. *Id.* at 25.

80. 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.

immigration statuses.⁸¹ PRWORA established two categories of immigrants: (1) qualified immigrants,⁸² and (2) non-qualified and unauthorized immigrants.⁸³

In addition to citizenship status, the timing of an immigrant's arrival in the United States is another critical marker of benefits eligibility. Pre-PRWORA immigrants who were in the United States before August 22, 1996, the date PRWORA was passed, remained eligible for federally funded benefits; unfortunately, immigrants arriving after the passage of the law were barred from SNAP benefits until they became U.S. citizens.⁸⁴ Subsequent reforms to PRWORA afforded SNAP benefits to lawful immigrants who received LPR status after August 22, 1996, but only after remaining ineligible for federal benefits for a period of five years from the date of receiving their LPR status.⁸⁵ This reform is known as the five-year ban.⁸⁶

Therefore, unless Congress decides to amend Title IV of the PRWORA, all immigrants who entered after August 22, 1996, and who adjusted their immigration status to LPR after receiving a prior form of humanitarian immigration relief, will otherwise be barred from SNAP benefits for a period of five years.

These divisions delayed or otherwise restricted immigrant access to public benefits and made such access more dependent upon 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 the approved status to receive SNAP benefits.⁸⁷ As both Special Immigrant Juvenile Status ("SIJS") kids and U nonimmigrant

81. 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>.

82. Other categories of qualified immigrants include: asylees; persons granted withholding of deportation/removal; persons who are paroled into the U.S. for at least one year; and certain battered spouses and their children. KATARINA FORTUNY & AJAY CHAUDRY, U.S. DEP'T OF HEALTH & HUMAN SERVS., A COMPREHENSIVE REVIEW OF IMMIGRANT ACCESS TO HEALTH AND HUMAN SERVICES 2 n.8 (2011), <https://aspe.hhs.gov/system/files/pdf/76301/index.pdf>. 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. *Id.* Afghan or Iraqi nationals granted special immigrant visas were also granted eligibly for public benefits to the same extent as refugees. *Id.* at 4.

83. Nonqualified immigrants, including tourists, business people, students, or individuals with a medical visa, are generally less eligible for most benefits. *See* IMMIGRANTS' ELIGIBILITY, *supra* note 81, at 10.

84. Takahashi, *supra* note 64, at 12.

85. Singer, *supra* note 63, at 24–25.

86. 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). *Id.*

87. PRWORA, Pub. L. No. 104-193, § 403, 110 Stat. 2105, 2115–25 (1996).

status⁸⁸ recipients are not explicitly mentioned as “qualified alien” categories under 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.⁸⁹

A. A State Regulation and Administration Under PRWORA

Title IV of the PRWORA also provided states with the opportunity to regulate and administer public benefit programs, including SNAP. Before PRWORA, states could not restrict access to federal programs because of citizenship status.⁹⁰ Upon its passage, to replace the loss of SNAP benefits, PRWORA allowed states to use state funding to cover qualified immigrants during the five-year ban and also to provide state-only funded assistance to non-qualified immigrants.⁹¹ 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.⁹²

However, states have authority to 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.⁹³ While seven states⁹⁴ 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.⁹⁵ However, New York is currently one of

88. U nonimmigrant 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 (2013).

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

90. Singer, *supra* note 63, at 27; 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 IMMIGRANTS’ ELIGIBILITY, *supra* note 81, at 2.

91. Singer, *supra* note 63, at 28–29.

92. *Id.* at 26–27.

93. 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. For more information, see *id.*

94. These states include California, Connecticut, Maine, Minnesota, Nebraska, Washington, and Wisconsin. See *id.*

95. *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>.

twelve states⁹⁶ offering state-only health coverage to immigrants that are currently subject to the five-year ban, and offering state-only cash assistance coverage to qualified immigrants and to individuals categorized as Permanently Residing Under the Color of Law ("PRUCOL").⁹⁷

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.⁹⁸ 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.⁹⁹ This participation gap varies widely depending on where immigrants live within the United States.¹⁰⁰

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.¹⁰¹ 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 before August 22, 1996.¹⁰² Ironically, states utilizing their authority to

96. Alaska, California, Illinois, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, Pennsylvania, Virginia and Washington. See IMMIGRANTS' ELIGIBILITY, *supra* note 81.

97. PRUCOL eligibility is established when a "non-qualified" alien is permanently or indefinitely residing in the United States and has been given permission by the United States Citizenship and Immigration Services ("USCIS") or Immigration Customs Enforcement ("ICE") to remain in the United States. PRUCOL is not recognized as an immigration status by the USCIS. 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 Cmty. Serv. Soc'y, *Immigrants' Eligibility Chart*, BENEFITS PLUS (Jan. 2017), http://benefitsplus.cssny.org/system/files/%252Ftmp/Immigrants%27%20Eligibility%20Chart_0.pdf.

98. PEW CHARITABLE TR., *supra* note 95, at 6, 8, 11.

99. See Amanda Levinson, *Immigrants and Welfare Use*, MIGRATION POL'Y INST. (Aug. 1, 2002), <http://www.migrationpolicy.org/article/immigrants-and-welfare-use> ("Between 1994 and 1999 legal immigrants' and refugees' use of welfare benefits declined significantly. This decline was not accounted for in the number of naturalizations or by rising incomes within immigrant families.").

100. As a result of the passage of PRWORA, approximately 935,000 non-citizens lost benefits, half of which were poor immigrant families. *Id.* Furthermore, between 1994 and 1999, legal immigrants' and refugees' use of welfare benefits declined significantly, including a decrease of approximately 48 percent in the use of SNAP benefits. See *id.*

101. See PEW CHARITABLE TR., *supra* note 95, at 3-5.

102. See Takahashi, *supra* note 64, at 12.

provide state-funded assistance and create state-run programs to assist immigrants who lost federal benefits detracted from Republican lawmakers' goal to restrict immigrants' access to benefits.¹⁰³ 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 benefits programs continues to have mixed success.¹⁰⁴ This is because 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.¹⁰⁵

B. The Federal Food Stamps ("SNAP") Program

Food Stamps, initially introduced as a pilot program during the Great Depression, began as a means of permanent relief with the passage of the Food Stamp Act of 1964.¹⁰⁶ The Act was made to improve nutrition and purchasing power among low- and no-income households.¹⁰⁷ While monumental in establishing a permanent form of food relief, the Act required individuals to purchase vouchers, which, in turn, translated into coupons of a higher value than their cash contribution.¹⁰⁸ 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.¹⁰⁹ In 2008, the Food Stamp Program was renamed SNAP, and the Food Stamp Act of 1977 was changed to the Nutrition Act of 2008.¹¹⁰ Following Congress's lead, the New York

103. *Id.* at 6-7 (discussing the legislative history of PRWORA).

104. *Id.* at 14 ("[T]reatment of post-enactment immigrants was less generous with a widely divergent state response.").

105. "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 (alteration in the original) (quoting Kinsey Alden Dinan, *Children in Low-Income Immigrant Families Policy Brief: State Policies Can Promote Immigrant Children's Economic Security*, NAT'L CTR. FOR CHILD. POVERTY (Oct. 2005), http://www.nccp.org/publications/pdf/text_639.pdf).

106. Cmty. Serv. Soc'y, *Supplemental Nutrition Assistance Program (SNAP): Overview*, BENEFITS PLUS, <http://benefitsplus.cssny.org/pbm/food-programs/food-stamps/201097> (last reviewed Mar. 2016) [hereinafter *SNAP Overview*]; see also *A Short History of SNAP*, U.S. DEP'T AGRIC. (Nov. 20, 2014), <http://www.fns.usda.gov/snap/short-history-snap>.

107. *SNAP Overview*, *supra* note 106; see also *A Short History of SNAP*, *supra* note 106.

108. *SNAP Overview*, *supra* note 106.

109. *Id.*

110. *Id.*

State Legislature changed the name of its Food Stamp program to SNAP in August 2012.¹¹¹

PRWORA's restrictive nature reduced or terminated SNAP access to immigrants and immigrant children; to combat this effect, legislatures put forth efforts to restore snap benefits to some groups within the immigrant community.¹¹² 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 before the date of the passage of PRWORA.¹¹³ This law also extended the refugee exemption from the SNAP bar from five to seven years.¹¹⁴ In addition, the Farm Security and Rural Investment Act of 2002 reinstated access to SNAP benefits to qualified 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.¹¹⁵ It also effectively restored SNAP benefits to refugees.¹¹⁶

Prior to PRWORA, any individual applicant who applied for SNAP benefits was not required to complete mandatory work requirements.¹¹⁷ After PRWORA, legislators limited access to SNAP benefits, intending to encourage employment requirements by increasing workforce access.¹¹⁸ Specifically, the PRWORA limits SNAP benefits to three months in a three-year period for able-bodied adults without dependents ("ABAWDs") who are neither working for eighty hours or more each month nor participating in a workfare program.¹¹⁹ States can request a waiver¹²⁰ of this provision for people in areas

111. *Id.*

112. See Singer, *supra* note 63, at 26–28.

113. *Id.* at 28.

114. *Id.*

115. Takahashi, *supra* note 64, at 5.

116. *Id.*

117. See *id.* at 2.

118. *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*].

119. *Id.*

120. "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." *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*, N.Y.C. HUM. RESOURCE ADMIN. (May 19, 2014), https://www1.nyc.gov/assets/hra/downloads/pdf/news/press_releases/2014/pr_may_2014/hra_reforms_to_fight_poverty.pdf. The purpose was to end "counterproductive policies and duplicative and/or unnecessary ad-

with an unemployment rate above ten percent or for those in areas with insufficient jobs.¹²¹ In addition, children under the age of eighteen and individuals fifty years of age or older are exempt from work requirements.¹²² However, the decision to create access to food through mandatory work requirements inevitably eliminated SNAP access for individuals either unable to find employment or to meet the required time limits or work requirements.¹²³

The U.S. Department of Agriculture (“USDA”) funds SNAP in its entirety, with administrative costs being the only financial measure equally divided between the federal government and New York State.¹²⁴ In New York, the Office of Temporary and Disability Assistance (“OTDA”) administers the SNAP program from the state-level while, in New York City, the Human Resources Administration (“HRA”) provides city-level access to applicants applying to receive SNAP benefits depending on whether the household meets the eligibility criteria required.¹²⁵

Because the federal government finances these benefits programs, creates their eligibility criteria, and determines the amount of monthly benefits, debates in New York have primarily focused on how to enroll immigrants and their families.¹²⁶ After the enactment of

ministrative transactions that have adverse impact on staff workload and clients and now subject the City to potential financial penalties due to unnecessary fair hearings.” *Id.* The press release announcing this waiver stated that, [c]urrently, 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. *Id.*

121. Other exemptions include: a recent 3-month unemployment-rate above 10 percent designated as Labor Surplus Area (“LSA”) by the Department of Labor; qualification for extended unemployment benefits; a 24-month average unemployment rate 20 percent above the national average; a low and declining employment to population ratio; a lack of jobs in declining occupations or industries; or description in an academic study or other publication as an area where there is a lack of jobs. 7 C.F.R. § 273.24(f) (2017); see *Able-Bodied Adults*, *supra* note 118.

122. 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. See *Able-Bodied Adults*, *supra* note 118.

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

124. *SNAP Overview*, *supra* note 106.

125. *Id.*

126. *Id.*; see also *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.cunyurbanfoodpolicy.org/news/2016/11/9/policy-brief-immigrants->

PRWORA, food stamp participation in New York declined from “2.2 million in 1995 to a low of 1.3 million in 2002, a drop of 38 percent over seven years.”¹²⁷ 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, particularly in 2007.¹²⁸

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.¹²⁹ Income guidelines and benefit amounts are annually adjusted in October at the end of the fiscal year.¹³⁰ Once eligibility is determined, the head of household will receive a benefit card that acts like a debit card with SNAP benefits to be used at participating retailers.¹³¹

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, which results in many otherwise eligible immigrants not applying for and receiving SNAP benefits. The “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.”¹³² As a result, eligible immigrants have not applied for assistance, and eligibility officials mistakenly deny eligible immigrants.¹³³

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.”).

127. Cathy M. Johnson & Thomas L. Gais, *Welfare Policy in New York State*, in GOVERNING NEW YORK STATE 283, 299 (Robert F. Pecorella & Jeffrey M. Stonecash eds., 6th ed. 2012).

128. *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 percent of all persons eligible for SNAP benefits received them as compared with 66 percent overall nationwide. *Id.* at 300. However, only 48 percent of eligible persons in households with earnings received SNAP benefits as opposed to the national average of 54 percent. *Id.*

129. *SNAP Overview*, *supra* note 106.

130. *Id.*

131. *Id.*

132. Tanya Broder et al., *Overview of Immigrant Eligibility for Federal Programs*, NAT’L IMMIGR. L. CTR. (Dec. 2015), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/>.

133. *Id.*

One specific point of confusion between PRWORA and the immigrant community regarding SNAP benefits is the “public charge” risk. 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.”¹³⁴ Immigration or consular officials consider the “immigrant’s health, age, income, education and skills, employment, family circumstances, and, most importantly, the affidavits of support” when making this determination.¹³⁵ In 1999, USCIS issued helpful guidance, stating that receipt of non-cash benefits such as SNAP benefits will not prevent individuals from adjusting their, or their family’s status.¹³⁶ Nevertheless, deterrence amongst immigrants applying for public benefits still exists due to concerns over becoming a public charge.

Another area of concern is whether family members who sign affidavits of support are legally obligated to repay SNAP benefits and other means-tested benefits, despite federal guidance on the matter.¹³⁷ Since 1997, relatives of applying immigrants have been required to meet strict income requirements and sign an I-864 affidavit of support, which ensures that an immigrant will remain above 125 percent of the federal poverty level and will repay any means-tested public benefit that they may receive.¹³⁸ Issued in 2006, regulations on these affidavits of support “make clear that states are not obligated to seek reimbursements from sponsors and that states cannot collect reimbursement for services used prior to issuance of public notification that the services are considered means-tested public benefits for which sponsors will be liable.”¹³⁹ Although an overwhelming majority of states have not attempted to pursue reimbursement, sponsor

134. “Explicit policy goals stated in Title IV § 400 [of the PRWORA] included reducing immigrants’ dependence on public resources and discouraging immigrants with the potential to become ‘public charges’ from entering the United States.” Takahashi, *supra* note 64, at 15.

135. Broder et al., *supra* note 132; see INA § 212(a)(4)(A)-(B), 8 U.S.C. § 1182(a)(a)(A)-(B) (2012); Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28689 (May 26, 1999); Inadmissibility and Deportability on Public Charge Grounds, 64 Fed. Reg. 28676, 28679 (May 26, 1999) (to be codified at 8 CFR pts. 212 & 237); see also U.S. Dep’t of State, 9 Foreign Affairs Manual § 40.41 (2009) (explaining determining circumstances and affidavits of support).

136. See Broder et al., *supra* note 132.

137. *Id.*

138. See 8 USC § 1183a (2012).

139. Broder et al., *supra* note 132.

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.¹⁴⁰

Another issue of concern includes language barriers to immigration and benefit services. While increasingly mitigated, this continues to preclude the immigrant community from receiving important information about public benefits and access to services in an understandable and constructive matter.¹⁴¹ 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 on this issue; as a result, Local Law 78 was implemented, requiring language access at Human Resources Administration (“HRA”) for government benefits including language access to information regarding public assistance, Medicaid, and SNAP benefits.¹⁴² Similarly, in 2006, advocacy groups were able to compel hospitals to provide interpreters to patients with limited or no English proficiency.¹⁴³ The resultant advocacy work culminated in 2008 with the enactment of Executive Order 120, a law designed to provide language assistance for all New York City inhabitants accessing city government programs and services, including the state and local agencies that administer public benefits.¹⁴⁴

However, despite progressive efforts by city government and local advocacy communities to provide immigrants with access to information in a comprehensible language, barriers remain. These barriers prevent immigrants from interacting with government agencies in a timely and constructive manner to ensure quick and simple access to public benefits. In fact, a 2007 study verified that “69 HRA centers in New York City routinely fail[ed] to provide translation services, translated documents, and other language assistance to New Yorkers” with Limited English Proficiency (“LEP”) despite federal, state,

140. *Id.*

141. *Id.*

142. *Immigrant Groups Win Citywide Language Access Executive Order in New York City*, MAKE ROAD N.Y. (July 23, 2008), <http://www.maketheroad.org/article.php?ID=630>.

143. 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 also built momentum to provide a citywide language access policy with the New York City Housing Authority. *See id.*

144. Executive Order 120 requires that all city government agencies translate essential public documents and forms 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. *Id.*; see also Michael R. Bloomberg, *Citywide Policy on Language Access to Ensure the Effective Delivery of City Services*, Executive Order No. 120 (July 22, 2008), www.nyc.gov/html/records/pdf/executive_orders/2008EO120.pdf.

and city laws and regulations mandating the city agency to do so.¹⁴⁵ According to the study, 66 percent of HRA offices did not provide translated applications in the six most common languages used in New York, and almost 15 percent offered no translated applications at all.¹⁴⁶ Furthermore, 18 percent of the HRA offices could not provide applications in Spanish.¹⁴⁷

Despite efforts to provide immigrant populations with information on issues relating to public charge, affidavits of support, and language access, the intersection between immigration and receipt of public benefits is greatly influenced by ethnic, language, and cultural stereotypes that surface from economic and cultural fear.¹⁴⁸ The current unpopularity of immigrant benefit recipients is consistent with a historical cycle of nativism that inevitably arises when economic and social hardship leads to a government intervention or crackdown on recently arrived immigrant populations.¹⁴⁹ Such economic downturn leads to a communal response to public benefits that often vilifies both documented and undocumented immigrants who receive lawfully entitled benefits to support themselves and provide for their families.¹⁵⁰ Stereotyped and blamed for draining federal and state resources,¹⁵¹ immigrants continually face legally restrictive laws that 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 by filing their federal, state, and local taxes.¹⁵² Arguably, both the U.S. immigration and public benefits systems “are often shaped more by public fears and anxieties than by sound public policy.”¹⁵³

III. A SURVIVOR’S IMMIGRATION OPTIONS AND CORRELATING

145. Amy Taylor & Dimple Abichandani, Legal Servs. for N.Y.C., *Translation Woes: Language Barriers at New York City’s Human Resources Administration*, MIGRATION POL’Y INST. 1-9 (2007) http://www.migrationpolicy.org/sites/default/files/language_portal/Translation%20Woes_0.pdf.

146. *Id.* at 9.

147. *Id.*

148. *See generally Public Benefits and Immigration*, *supra* note 20.

149. *Id.*

150. *Id.* at 1512-13.

151. *Id.* at 1512.

152. *See id.* 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.”).

153. Ewing, *supra* note 21, at 6.

BENEFITS ELIGIBILITY

*A. U Non-Immigrant Status ("U-Visa")**1. Eligibility under U-Visa*

To be eligible for a U-Visa, a survivor must prove that he or she is a victim of a crime, possesses information about that crime, suffered substantial mental or physical abuse as a result of that crime, and is or was helping law enforcement in the investigation or prosecution of that crime.¹⁵⁴ Eligible crimes include rape, domestic violence, sexual assault, and the attempt, conspiracy or solicitation to commit any of these crimes.¹⁵⁵ Additionally, U-Visa applicants must provide certifications attesting to their helpfulness to law enforcement in order to qualify.¹⁵⁶

Like in VAWA self-petitions, the "any credible evidence" standard is used for U-Visa applications.¹⁵⁷ Mothers may include children under the age of 21 as derivatives on their U-Visa applications regardless of whether the children were abused.¹⁵⁸ Children survivors of crimes may file their own U-Visa applications.¹⁵⁹ If the child victim is under the age of 16, a parent or guardian may file a U-Visa application on the child's behalf.¹⁶⁰

Because of the statutory cap of 10,000 U-Visas per fiscal year, the demand for U-Visas far exceeds the allocated amount, leading to a backlog.¹⁶¹ Advocates state that the wait time is at least two years for an applicant to have their U-Visa application adjudicated.¹⁶² At that point, they will be placed on a "waitlist," which would allow them to

154. *Victims of Criminal Activity*, *supra* note 60.

155. LENNI BENSON ET AL., IMMIGRATION AND NATIONALITY LAW: PROBLEMS AND STRATEGIES, chapter 8: Asylum and Relief for People Seeking Refuge (2009).

156. In New York, certifiers for U-Visas include the Commission on Human Rights, Family Court Judges, the Police Department, District Attorneys, the Administration for Children's Services, and Department of Labor. See Cecile Noel & Nisha Agarwal, *How NYC is Helping Immigrant Survivors of Domestic Violence*, HUFFINGTON POST (Oct. 20, 2016), http://www.huffingtonpost.com/cecile-noel/how-nyc-is-helping-immigrant-survivors-of-domestic-violence_b_12572734.html.

157. INA § 214(p)(4) ; 8 U.S.C. § 1184(p)(4); 8 C.F.R. 214.14(c)(ii)(4) (2016).

158. See 8 U.S.C. § 1101(a)(15)(T)(IV)(ii)(I) (2015).

159. *Id.* § 1101(a)(15)(T)(IV)(ii)(III).

160. *Id.* § 1101(a)(15)(U)(i)(II).

161. See Letter from Akin Gump Strauss Hauer & Feld et al. to Hon. León Rodríguez, Dir., U.S. Citizenship & Immigr. Servs., 1 (May 16, 2016), <http://lawprofessors.typepad.com/files/whitehousetruvisasmay16.pdf>.

162. *Id.*

receive an interim “deferred action” status and employment authorization until they can actually receive her U-Visa status.¹⁶³

After three years in U-Visa status, a survivor may apply for adjustment of status to become a lawful permanent resident, assuming they meet the other eligibility criteria. These criteria include: (1) they have been physically present in the United States for at least three years since admission with U status; (2) they have not unreasonably refused to provide assistance in the investigation or prosecution of the crime; (3) they are not inadmissible under INA section 212(a)(3)(E); and (4) they show that continued presence in the United States is justified on “humanitarian grounds, to ensure family unity or is in the public interest.”¹⁶⁴

2. Public benefits access under U-Visa

A U-Visa applicant’s ability to access public benefits requires a balancing analysis that includes understanding the different types of public benefits programs available in the applicant’s state and the subsequent eligibility rules. Individuals applying can receive public benefits only if they meet the eligibility criteria for each program.

For example, New York State offers a state-funded cash assistance program called Safety Net Assistance (“SNA”)¹⁶⁵ for “qualified immigrants” and immigrants classified as PRUCOL, with those attaining either status qualifying for benefits 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.¹⁶⁶ PRUCOL is not an immigration status but instead a category

163. *See id.* at 2.

164. *Green Card for a Victim of a Crime (U Nonimmigrant)*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/other-ways-get-green-card/green-card-victim-crime-u-nonimmigrant> (last updated Mar. 23, 2011) [hereinafter *Green Card for Victim*]; 8 C.F.R. §§ 212.17, 214.14 (2016). INA § 212(a)(3)(E) excludes “participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing” from U Visa eligibility.

165. State-funded public assistance in New York is referred to as Safety Net Assistance (“SNA”). Cmty. Serv. Soc’y, *Cash Assistance: Overview*, BENEFITS PLUS (Jan. 2010) [hereinafter *Cash Assistance*], <http://benefitsplus.cssny.org/pbm/cash-benefits/cash-assistance/197000>. 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. *Id.* Funding comes from state and local funds. *Id.*

166. *Id.*

established by regulation or statute under each particular benefit program to determine whether immigrants who are not yet “qualified immigrants” are nevertheless eligible for federal or local benefits.¹⁶⁷

Presently, the New York Office of Temporary and Disability Assistance (“OTDA”) has determined that, as a U-Visa recipient only, the survivor can apply for and receive state-funded cash assistance as a PRUCOL-eligible individual.¹⁶⁸ However, as a U-Visa applicant, such status is not recognized unless the applicant has already received an affirmative decision on a deferred action application.¹⁶⁹ Thus, a pending U-Visa recipient would not be able to receive SNA benefits while USCIS is processing the U-Visa application.¹⁷⁰ This methodology is further applied to SNAP benefits even when the U-Visa application is approved. As a result, even if all other benefits-specific criteria were met, the applicant and recipient of a U-Visa would not be eligible for SNAP benefits until he or she adjusts status to an approved LPR status.¹⁷¹ In addition, even when the LPR status is approved, the LPR recipient would be ineligible to receive SNAP benefits for five years after receipt of their LPR status due to the PRWORA five-year bar.¹⁷²

Furthermore, Family Assistance (“FA”),¹⁷³ a federally funded cash assistance program for households with minor children, does not include the PRUCOL designation for applicants or recipients of a U-Visa.¹⁷⁴ As a result, individuals are not eligible for FA under the U-

167. *Id.*; see also Betsy Gotbaum, N.Y. Immigr. Coal., *Guide to Public Benefits for Immigrants*, NYC 4 (Nov. 2008) [hereinafter *Guide to Public Benefits*], <http://www.nyc.gov/html/records/pdf/govpub/moved/pubadvocate/PA002ImmigrantGuidewebv6.pdf>.

168. Such criteria is 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.” Russell Sykes, *Permanently Residing Under the Color of Law (PRUCOL)*, N. Y. ST. OFF. TEMPORARY & DISABILITY ASSISTANCE, <https://otda.ny.gov/policy/gis/2007/07dc001.rtf> (last visited Apr. 29, 2017).

169. *Id.* Deferred action is an exercise of discretion by the USCIS District Director not to prosecute or deport an immigrant. Further, deferred action is “an act of administrative choice to give some cases lower priority and is no way an entitlement.” Prakash Khatri, *Recommendation from the CIS Ombudsman to the Director*, U.S. DEP’T HOMELAND SEC. 3 n.8 (April 6, 2007), https://www.dhs.gov/xlibrary/assets/CISOmbudsman_RR_32_O_Deferred_Action_04-06-07.pdf.

170. See Sykes, *supra* note 168.

171. See *Guide to Public Benefits*, *supra* note 167, at 15.

172. *Id.* at 6.

173. 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. See *Cash Assistance*, *supra* note 165; *New York Temporary Assistance*, BENEFITS.GOV, <https://www.benefits.gov/benefits/benefit-details/1673> (last visited Apr. 29, 2017).

174. See *Guide to Public Benefits*, *supra* note 167.

Visa designation, nor are they eligible for FA as a LPR recipient until they pass the five-year bar.¹⁷⁵ However, LPR recipients who adjusted from a U-Visa status and who also have minor children in the household who are eligible for benefits can avoid the five-year bar by applying for SNA assistance, which would provide identical benefits to them just as if they were applying for benefits under the FA designation.¹⁷⁶

Again, Title IV of the PRWORA does not provide a specific “qualified immigrant” category for U-Visa recipients.¹⁷⁷ Since U-Visa applicants are considered PRUCOL for public benefits purposes in New York,¹⁷⁸ but PRUCOL is not considered a “qualified immigrant” category under Title IV of the PRWORA, when a survivor simply files a U-Visa application, SNA or SNAP benefits are not inferred.¹⁷⁹ Therefore, for purposes of benefits eligibility, the U-Visa applicant would only be eligible for medical assistance benefits conferred to an undocumented immigrant, which, depending on the age of the applicant would be either Medicaid under the Affordable Care Act (“ACA”)¹⁸⁰ or Child Health Plus (“CHIP”).¹⁸¹

However, if the U-status petition is pending *and* the survivor is granted deferred action, or a survivor’s U-Visa application is approved, his or her immigration status would be considered PRUCOL

175. See *id.* at 6; see also Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

176. See *Guide to Public Benefits*, *supra* note 167, at 10 (stating generally that SNA, unlike FA, is not a federal program, and therefore, it is not subject to the five-year ban of PRWORA); see also *Temporary Assistance*, N. Y. ST. OFF. TEMPORARY & DISABILITY ASSISTANCE, <http://otda.ny.gov/programs/temporary-assistance/> (last visited Apr. 29, 2017).

177. See 8 U.S.C. § 1641(b) (2012).

178. See *Temporary Assistance Source Book*, N. Y. ST. OFF. TEMPORARY & DISABILITY ASSISTANCE, 24-16, <https://otda.ny.gov/programs/temporary-assistance/TASB.pdf> (last visited Apr. 29, 2017) (explaining applicants who meet the OTDA PRUCOL criteria includes aliens granted U-Visa status).

179. See § 1641(b).

180. *Coverage for lawfully present immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants/> (last visited Apr. 29, 2017). 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. *Id.* The list of individuals who are considered to be “lawfully present” for ACA purposes includes SIJS kids. *Id.*

181. Cmty. Serv. Soc’y, *Child Health Plus: Overview*, BENEFITS PLUS, <http://benefitsplus.ccsny.org/pbm/health-programs/child-health-plus/201810> (last visited Apr. 29, 2017). 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. *Id.* All immigrants, regardless of status, and including the undocumented, are eligible for CHIP. *Id.*

in New York for SNA purposes,¹⁸² but not SNAP purposes.¹⁸³ The reason for this is because a U-Visa recipient is not considered a “qualified immigrant” category under Title IV of the PRWORA.¹⁸⁴ As a result, because of New York State policy, while the survivor as a U-Visa recipient would be allowed to receive SNA benefits based on the OTDA PRUCOL definition, and again either when the application is approved *or* is pending *with* an approved deferred action petition,¹⁸⁵ she would not be eligible to receive SNAP benefits until she became a LPR and, therefore, a “qualified immigrant.”¹⁸⁶

In addition, because PRUCOL is not a “qualified immigrant” category, when the survivor adjusts status from U-Visa recipient to LPR, she would be subject to the five-year ban under Title IV of the PRWORA for both FA and for SNAP benefits.¹⁸⁷ However, in regards to Public Assistance benefits, once LPR status is approved, the survivor, as a U-Visa recipient, would receive SNA once she adjusts to LPR status, even if the survivor is applying for themselves and for any additional minor children in the household.¹⁸⁸ Unlike SNA eligibility, even if the U-Visa recipient were to apply for SNAP benefits for themselves and for other eligible minors or disabled individuals in the household, the five-year ban would still apply and therefore, the U-Visa recipient would be ineligible for SNAP benefits.¹⁸⁹

B. Violence Against Women Act

1. Eligibility for immigration relief through VAWA

VAWA requires the abused spouse to prove that they are legally married to, or have been divorced within the last two years from, a U.S. citizen or lawful permanent resident.¹⁹⁰ They must prove that the marriage was in “good faith,” the marriage was not conducted solely to receive immigration benefits,¹⁹¹ they resided with the abusive spouse in the U.S., the spouse in fact abused them, and that they are a person of “good moral character.”¹⁹² A child filing a VAWA self-

182. See *Temporary Assistance Source Book*, *supra* note 178, at 24-16.

183. *Id.*

184. See § 1641(b).

185. See Sykes, *supra* note 168.

186. See *Guide to Public Benefits*, *supra* note 167, at 4.

187. IMMIGRANTS' ELIGIBILITY, *supra* note 81, at 2; see Singer, *supra* note 63, at 21-22.

188. *Guide to Public Benefits*, *supra* note 167, at 10.

189. See *id.* at 6.

190. BENSON ET AL., *supra* note 155, at 13.

191. 8 C.F.R. § 204.2(c)(1)(ix) (2007).

192. 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), (a)(1)(A)(iii)(II)(bb), (dd) (2009).

petition must prove that they are the natural child, stepchild, or adopted child of a U.S. citizen or lawful permanent resident and that they resided with the abusive parent in the U.S., were abused by the parent, and are a person of “good moral character.”¹⁹³

Immigration law accepts the “any credible evidence” standard in VAWA self-petitions.¹⁹⁴ This is a realistic standard for evidence for VAWA self-petitioners because gathering evidence, such as official documents, is often very difficult for undocumented immigrant women.¹⁹⁵ Survivors might be living in shelters, away from documents stored at home, or their abusive spouse might keep official documents from them. Without proper identification, it is difficult for undocumented women or men to receive official copies of important documents, such as marriage certificates.¹⁹⁶ The “any credible evidence” standard therefore allows immigrant survivors of domestic violence to use other credible documents, such as signed declarations and letters.¹⁹⁷

Once a survivor has their VAWA self-petition approved, the ability to adjust status and become a lawful permanent resident or “green card” holder depends on whether the abuser is a U.S. citizen or a lawful permanent resident.¹⁹⁸ If the abuser is a U.S. citizen, the survivor is an “immediate relative”¹⁹⁹ and is eligible to file the application for adjustment of status immediately upon the approval of the VAWA self-petition.²⁰⁰ However, if the abuser is a lawful permanent resident, the survivor must wait until their “priority date” is current in order to file the application for adjustment of status.²⁰¹

193. *Id.*

194. 8 C.F.R. § 204.2(c)(2)(i).

195. Margot Mendelson, *Document Gathering for Self-Petitioning Under the Violence Against Women Act: A Step-by-Step Guide*, IMMIGRANT LEGAL RESOURCE CTR. 2 (Apr. 2008), https://www.ilrc.org/sites/default/files/documents/document_gathering_for_self-petitioning_under_the_violence_against_women_act.pdf.

196. *Id.* at 7–8.

197. *Id.*

198. *See id.* at 17.

199. Immediate relatives are: spouses of citizens, children (under 21 years of age and unmarried) of citizens, and parents of citizens 21 years of age or older. 8 U.S.C. § 1151(b)(2)(A)(i) (2012). Immediate relatives are exempt from the numerical limitations imposed on immigration to the United States. § 1154(a)(1)(A)(i).

200. Misty Wilson Borkowski, *Battered, Broken, Bruised, or Abandoned: Domestic Strife Presents Foreign Nationals Access to Immigration Relief*, 31 U. ARK. LITTLE ROCK L. REV. 567, 568 (2009).

201. 8 U.S.C. § 1153(a)(2)(A); *see also* *Visa Availability and Priority Dates*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates> (last updated Nov. 5, 2015).

2. Public benefits access through VAWA

A VAWA-applicant's ability to access public benefits also requires a balancing analysis that must determine eligibility at the stage in which the recipient is either applying for or receiving VAWA status through USCIS.²⁰² However, unlike U-Visa status, both pending applicants and approved recipients of VAWA receive greater access to Safety Net Assistance and SNAP benefits due to the eligibility criteria category designated to such recipients by Title IV of the PRWORA.²⁰³

Unlike U-Visa recipients, Title IV of the PRWORA does provide a specific "qualified immigrant" category for both VAWA applicants and recipients of both SNA and SNAP eligibility.²⁰⁴ In addition, the categories for VAWA recipients are further expanded to include not only both filed and acknowledged petitions, but also credible victims of battery who have either:

- a pending VAWA application;
- a pending I-130 petition based on a immediate-relative filing that already occurred with their U.S. citizen or LPR spouse;
- a pending I-360 petition for victims whose abusive spouses have died within the past two years; or
- who have a prima facie determination of battery pending.²⁰⁵

A showing of any of the above mentioned statuses under VAWA allows both the applicant and recipient to receive a "qualified immigrant" category under VAWA.²⁰⁶

As a result of the "qualified immigrant" designation, VAWA applicants and recipients are eligible to receive SNA and SNAP benefits following the five-year ban; however, if they are under eighteen years of age or disabled, they are immediately eligible.²⁰⁷ Additionally, once LPR status is approved, a former VAWA recipient – similar to a U-Visa recipient – may receive SNA upon adjusting to LPR status, including for any additional minor children in the household, and is

202. See generally *Battered Spouse*, *supra* note 54.

203. See Takahashi, *supra* note 64, at 12.

204. IMMIGRANTS' ELIGIBILITY, *supra* note 81, at 2.

205. *Battered Spouse*, *supra* note 54.

206. See Mendelson, *supra* note 195.

207. *Id.*

not subject to a five-year ban.²⁰⁸ Therefore, the former VAWA-recipient would be ineligible for SNAP benefits for five years from the date LPR status is granted.

IV. CALLING FOR REFORM

In addition to physical, sexual, and emotional harm, survivors are made economically vulnerable by their abusers.²⁰⁹ Research shows that up to 74 percent of survivors of domestic violence in the United States stay with their abusers longer for economic reasons.²¹⁰

A. Summary of a Survivor's Immigration and Benefits Options

Immigrants who have been victims of domestic violence while in the United States have two options for immigration relief. For those married to abusers who are U.S. citizens or lawful permanent residents, survivors may qualify for immigration relief through VAWA.²¹¹ Survivors not married to their abusers, or whose abusers are not U.S. citizens or lawful permanent residents, may seek U-Visa relief. As previously discussed however, the U-Visa requires cooperation with law enforcement.²¹² If the abuser committed an act of domestic violence but the abuse was either never documented or the abuser died before the abuse could be documented, relief would be limited in terms of a conferrable immigration benefit.

Under federal and New York state law, VAWA's less stringent eligibility requirements allow for more options and greater likelihood for recipients to receive SNA benefits. Unlike VAWA applicants, U-Visa applicants are only eligible to receive SNA benefits if the applicant has both an application pending and a deferred action claim already approved by USCIS.²¹³

Although VAWA recipients have greater access to SNAP, such access comes in a limited capacity, as either applicants or recipients. Currently under the PRWORA, SNAP access is possible because

208. *See id.*

209. *Domestic Violence*, U. S. DEP'T JUST., <https://www.justice.gov/ovw/domestic-violence> (last updated Oct. 31, 2016).

210. *Truth About Abuse Survey Report*, MARY KAY 2 (2012), <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>.

211. *Battered Spouse*, *supra* note 54.

212. *Victims of Criminal Activity*, *supra* note 60.

213. Kristina Gasson, *How Long will it Take to Get a U Visa? Understanding "Normal" Processing Times and Common Sources of Delay*, NOLO, <http://www.nolo.com/legal-encyclopedia/how-long-will-it-take-get-u-visa.html> (last visited Apr. 29, 2017).

VAWA applicants and recipients are considered “qualified immigrant[s].”²¹⁴ However, only victims of abuse under the age of eighteen or disabled victims are eligible for SNAP benefits.²¹⁵ This prevents adult victims of domestic violence from attaining food security. Further, the five-year ban prevents recipients from receiving SNAP benefits until after five years in VAWA status or, if having adjusted to LPR status, five years after adjusting to LPR status.²¹⁶ This restricts economic access to victims of domestic violence solely because of age and disability, further increasing their risk and the risk of others in their household of food insecurity.²¹⁷

Unlike VAWA recipients, U-Visa applicants and recipients cannot receive SNAP benefits under U-Visa status at any time, regardless of age or disability.²¹⁸ As a result, victims of domestic violence, must not only wait to adjust to LPR status after three years of receiving their U-Visa, but also wait an additional five years to receive SNAP benefits.²¹⁹

Survivor insecurities are further compounded when victims of domestic violence in application or receipt of VAWA or a U-Visa are compared to other humanitarian-based categories such as asylum²²⁰

214. See Jordan Tacher & Leslye E. Orloff, *VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 6 n.16 (Apr. 17, 2013), <http://library.niwap.org/wp-content/uploads/2015/PB-BchCrd-VAWAEligibilityProcess-04.17.13.pdf> (last visited May 24, 2017).

215. *SNAP Policy on Non-Citizen Eligibility*, U.S. DEP'T AGRIC. FOOD & NUTRITION SERV., <https://www.fns.usda.gov/snap/snap-policy-non-citizen-eligibility> (last updated Mar. 24, 2017).

216. Tacher & Orloff, *supra* note 214, at 6; Alison Siskin, *NONCITIZEN ELIGIBILITY FOR FEDERAL PUBLIC ASSISTANCE: POLICY OVERVIEW*, CONG. RESEARCH SERV. 2 (2016), <https://fas.org/sgp/crs/misc/RL33809.pdf>.

217. Tacher & Orloff, *supra* note 214, at 6.

218. Mass. Law Reform Inst., *Appendix D: Eligibility Chart by Immigration Status*, MASSLEGALHELP, <http://www.masslegalhelp.org/income-benefits/food-stamps/advocacy-guide/appendixd/eligibility-chart-by-immigration-status> (last updated Mar. 2016).

219. *Green Card for Victim*, *supra* note 165 (stating that a U-Visa holder must be physically present in the United States for three continuous years in order to obtain LPR status); Tacher & Orloff, *supra* note 214, at 6.

220. 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. 8 U.S.C. §§ 1158, 1101(a)(42) (2012). In the United States, asylum is governed by § 208 of the INA. § 1158. A grant of asylum allows the individual to obtain work authorization, terminate immigration removal proceedings, and apply to adjust her immigration status to LPR after one year. *Id.* at § 1158(c)(1); *Green Card for an Asylee*, U.S. CITIZENSHIP & IMMIGR. SERV., <http://www.uscis.gov/green-card/green-card-through-refugee-or-asylee-status/green-card-asylee#eligibility> (last updated Feb. 17, 2016). 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” under INA § 101(a)(42)(A); (2) is not statutorily barred from

or victims of human trafficking under a T Non-Immigrant Status (T-visa).²²¹

Survivors of domestic violence who suffered abuse by their intimate partners in their countries of origin were unable to find protection, and therefore fled to the United States to escape the abuse, might be eligible for immigration relief through asylum.²²²

Similar to U-Visa applicants, individual asylum applicants are generally ineligible for either SNA or SNAP benefits.²²³ Again, the rationale is due to PRUCOL eligibility, which is established when a “non-qualified” immigrant is permanently or indefinitely residing in the United States and has been given permission by USCIS to remain in the country.²²⁴

Like their status as a U-visa applicant, an asylum applicant appears to satisfy the OTDA PRUCOL definition for benefits eligibility purposes. However, the victim would not be eligible for SNA benefits in New York because asylee applicants are currently not included in the OTDA PRUCOL definition of individuals eligible for SNA.²²⁵ Despite this similarity with U-Visa applicants, once an asylum application is approved, asylees, designated as “qualified immigrants” under Title IV of the PRWORA, become immediately eligible for both SNA and SNAP benefits.²²⁶

Furthermore, VAWA applicants and recipients, unlike asylum applicants, can receive SNAP benefits for minor children or disabled individuals.²²⁷ However, all asylees, once approved and regardless of age or disability, are eligible for SNAP benefits.²²⁸

T-Visa²²⁹ protects individuals who are victims of domestic violence and human trafficking “and allows [those] victims to remain in the

asylum under INA §§ 208 (b)(2)(A) and (B); and (3) merits a grant of asylum in the adjudicator’s discretion. § 1158(b).

221. A T-Visa status, or “T” nonimmigrant status, is created by the Victims of Trafficking and Violence Protection Act (“VTVPA”) and allows victims to receive protections, access to information, and protection from removal for certain crime victims. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

222. See generally Matter of A-R-C-G, 26 I. & N. Dec. 388 (B.I.A. 2014).

223. *Frequently Asked Questions for Asylum Seekers*, HUM. RTS FIRST, <http://www.humanrightsfirst.org/asylum/frequently-asked-questions-asylum-seekers> (last visited Apr. 15, 2017) (“In general, asylum seekers are not eligible for federally funded benefits until they receive asylum.”).

224. See Sykes, *supra* note 168.

225. See *Guide to Public Benefits*, *supra* note 167, at 4, 6.

226. *Id.* at 4.

227. Tacher & Orloff, *supra* note 214, at 6, 6 n.16

228. See *Guide to Public Benefits*, *supra* note 167, at 4, 6.

229. The United Nations defines human trafficking in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons:

United States to assist in an investigation or prosecution of human trafficking.”²³⁰ Under Title IV of the PRWORA, trafficking victims are “qualified immigrants” and are subsequently treated as refugees under the Trafficking and Violence Protection Act of 2000.²³¹ Therefore, pending certification by the U.S. Department of Health and Human Services, Office of Refugee Resettlement, the T-Visa applicant or recipient becomes eligible for both SNA and SNAP benefits, regardless of age or disability and regardless of whether the application is pending or approved.²³² This immediate eligibility allows T-Visa applicants and recipients immediate access to SNA and SNAP benefits, as compared to both U-Visa and VAWA applicants and recipients.

B. Advocating for a stronger New York State approach

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*:

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.²³³

“Trafficking in Persons” shall mean 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.

U.N. General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime art. 3(a) (Nov. 15, 2000), <http://www.refworld.org/docid/4720706c0.html>; see also Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000).

230. *Victims of Human Trafficking: T Non Immigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last updated Oct. 3, 2011).

231. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); see *Guide to Public Benefits*, *supra* note 167, at 4.

232. See *Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://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 updated Dec. 29, 2014).

233. *Aliessa v. Novello*, 754 N.E.2d 1085, 1098 (N.Y. 2001).

The court further explained that while Congress is the “only body with authority to set immigration policy,”²³⁴ it has allowed states to have broad discretionary power. In implementing the PRWORA, Congress restricted non-citizen access to certain public benefits, but specifically allowed states the authority to enact laws that “affirmatively provide[] for such eligibility.”²³⁵

Categorical expansion of PRWORA is not a novel 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.²³⁶ 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. For example, U-Visa applicants or recipients or VAWA applicants or recipients, are restricted based on age or disability eligibility.²³⁷ 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.²³⁸ Thus, in its current iteration, SNAP divides immigrant and non-immigrant populations, and subsequently creates a system of food insecurity for vulnerable populations.²³⁹

Either through VAWA or U-Visa status, victims of domestic violence also have access to alternative food-security programs such as the Women, Infant, and Children (“WIC”) program.²⁴⁰ 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

234. *Id.*

235. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 411(d), 110 Stat. 2105, 2268–69 (1996).

236. *SNAP Overview*, *supra* note 106.

237. *See Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility*, U.S. DEP’T AGRIC. 18–20 (June 2011), https://www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf.

238. *See* Takahashi, *supra* note 64, at 6.

239. *See id.* at 11.

240. *See WIC Eligibility Requirements*, U.S. DEP’T. AGRIC., <https://www.fns.usda.gov/wic/wic-eligibility-requirements> (last visited Apr. 29, 2017) (listing eligibility criteria as categorical, residential, income, nutrition risk, not immigration status).

Supplemental Food Program.²⁴¹ The program provided resources to feed low-income pregnant women, infants, and children up to age six.²⁴² In 1972, WIC was created and established nationally to provide additional access to food to children up to the age of four.²⁴³ The WIC program currently provides nutritional and supplemental food via food vouchers, nutrition education, and health care referrals to eligible low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, as well as infants and children up to age five.²⁴⁴

Although WIC is not an entitlement, New York prioritizes both pregnant mothers and their children to receive access to healthy nutrition and to prevent malnourishment both during pregnancy and infancy.²⁴⁵ WIC eligibility is based on “categorical, residential, income and nutritional risk requirements.”²⁴⁶ There are no immigration or resource requirements in order to be eligible for WIC.²⁴⁷

Currently the USDA, in collaboration with New York State and City agencies, manages the WIC program.²⁴⁸ Every state, including New York, has opted to provide access to the WIC program.²⁴⁹ WIC is federally funded with no requirement for State matching funds.²⁵⁰ WIC funds administered by the USDA are distributed by the New York State Department of Health to public and non-profit health clinics, and non-profit community health organizations.²⁵¹

In addition, the Emergency Food Assistance Program (“TEFAP”) was created in 1981 to distribute surplus food to households and, in 1988, to local food pantries and soup kitchens.²⁵²

The USDA distributes food to New York State where the New York Office of General Services (“OGS”) and, in New York City, the Emergency Food Assistance Program (“EFAP”) administered by the Human Resources Administration (“HRA”), delivers the food to local

241. Cmty. Serv. Soc’y, *Women, Infants and Children (WIC)*, BENEFITS PLUS, <http://benefitsplus.cssny.org/pbm/food-programs/women-infant-and-children-wic/183995> (last reviewed May 2016).

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.* 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. *Id.*

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. Cmty. Serv. Soc’y, *Emergency Food Programs: Overview*, BENEFITS PLUS (Jan. 2010), <http://benefitsplus.cssny.org/pbm/food-programs/emergency-food-programs/184870>.

soup kitchens and food pantries.²⁵³ As there are no citizenship or immigration criteria to receive food through soup kitchens or food pantries, undocumented immigrants can access these services.²⁵⁴

New York directly administers federally funded programs designed to provide access to nutrition to existing populations vulnerable to food insecurities. It does so indiscriminately to PRUCOL, qualified immigrants, non-immigrants, and undocumented immigrants as defined by Title IV of the PRWORA.²⁵⁵ This paradox only heightens the fact that while victims of domestic violence can get access to food for themselves and for their infants through WIC, or at local soup kitchens and food pantries, they still cannot, except under limited circumstances as a VAWA applicant or recipient, access SNAP benefits at home without adjusting their status to LPR and incurring significant time delays in the process.²⁵⁶

CONCLUSION

U.S. immigration law, as well as New York State and City laws, recognize survivors of domestic violence, especially immigrant survivors, as one of the most vulnerable humanitarian populations in the United States.²⁵⁷ While efforts made to increase access to law enforcement and other services for immigrant survivors should be lauded,²⁵⁸ access to affordable healthy food options and basic financial assistance should also be a priority.

Despite the severe economic impacts of domestic violence on survivors, especially immigrant survivors, 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 she is eligible to receive SNAP benefits.²⁵⁹ Amending Title IV of the 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,

253. *Id.*

254. *Id.*

255. See Part II.A-B.

256. *Id.*

257. *New York State's Response to Domestic Violence: Systems and Services Making a Difference*, OFF. FOR PREVENTION DOMESTIC VIOLENCE, www.opdv.ny.gov/whatisdv/about_dv/nyresponse/index.html (last visited Apr. 29, 2017).

258. Cecile Noel & Nisha Agarwal, *How NYC Is Helping Immigrant Survivors Of Domestic Violence*, HUFFINGTON POST (Oct. 20, 2016), http://www.huffingtonpost.com/cecile-noel/how-nyc-is-helping-immigrant-survivors-of-domestic-violence_b_12572734.html.

259. *Green Card for Victim*, *supra* note 165; Tacher & Orloff, *supra* note 214, at 6.

would allow survivors access to nutrition and be immediately impactful.

EPILOGUE

Ms. Thomas dedicates this Article to “P,” her first client. Together, they filed a petition for P to receive a “green card” through the VAWA. Her petition was granted during Ms. Thomas’ second year of law school. For the first time in the twenty-one years that she had been in the United States, P held lawful immigration status. She learned English and gained a full-time job. She started to hold her head up high when she walked. She divorced her husband and gained full custody of her children. Ms. Thomas and P attended an interview together during Ms. Thomas’ third year of law school and P was approved for her “green card.” In June 2014, Ms. Thomas was by her side, as her attorney and her friend, when P became a U.S. Citizen at a naturalization ceremony in federal court in New York.