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AMERICAN UNIVERSITY
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COLLEGE of LAW

Law Enforcement and Prosecution Virtual Roundtable

What's Immigration Status Got to Do with It? Successfully Prosecuting Cases Involving Undocumented Victims

February 26, 2026

Faculty

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The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Who has joined us for today's Roundtable, and from what city?

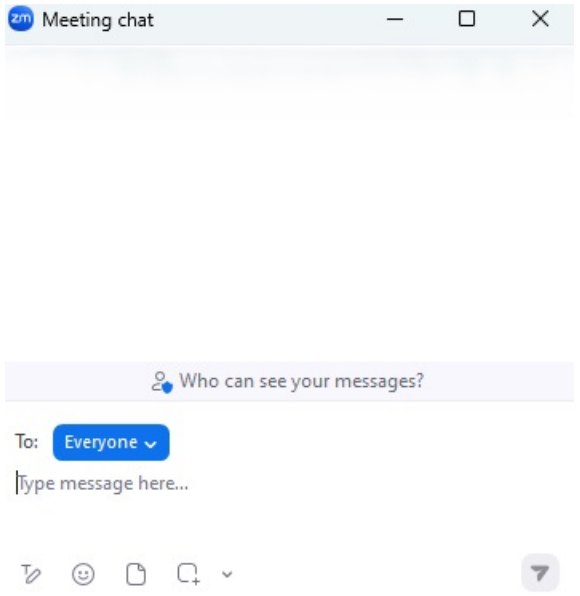
A. Prosecutor

B. Law Enforcement

C. Victim Witness Staff - Law enforcement

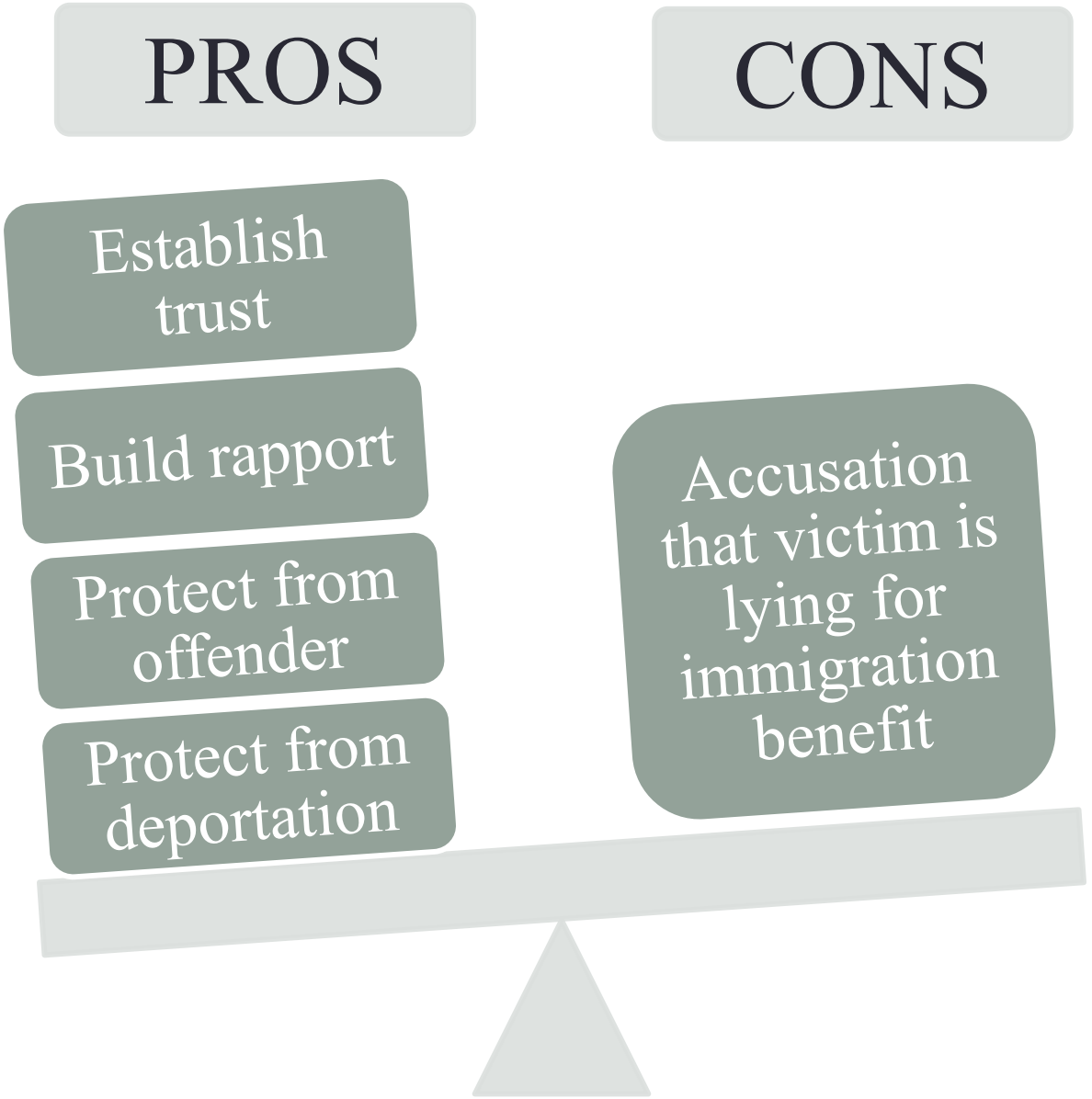
D. Victim Witness Staff - Prosecutor

E. Other – type in the chat



The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.



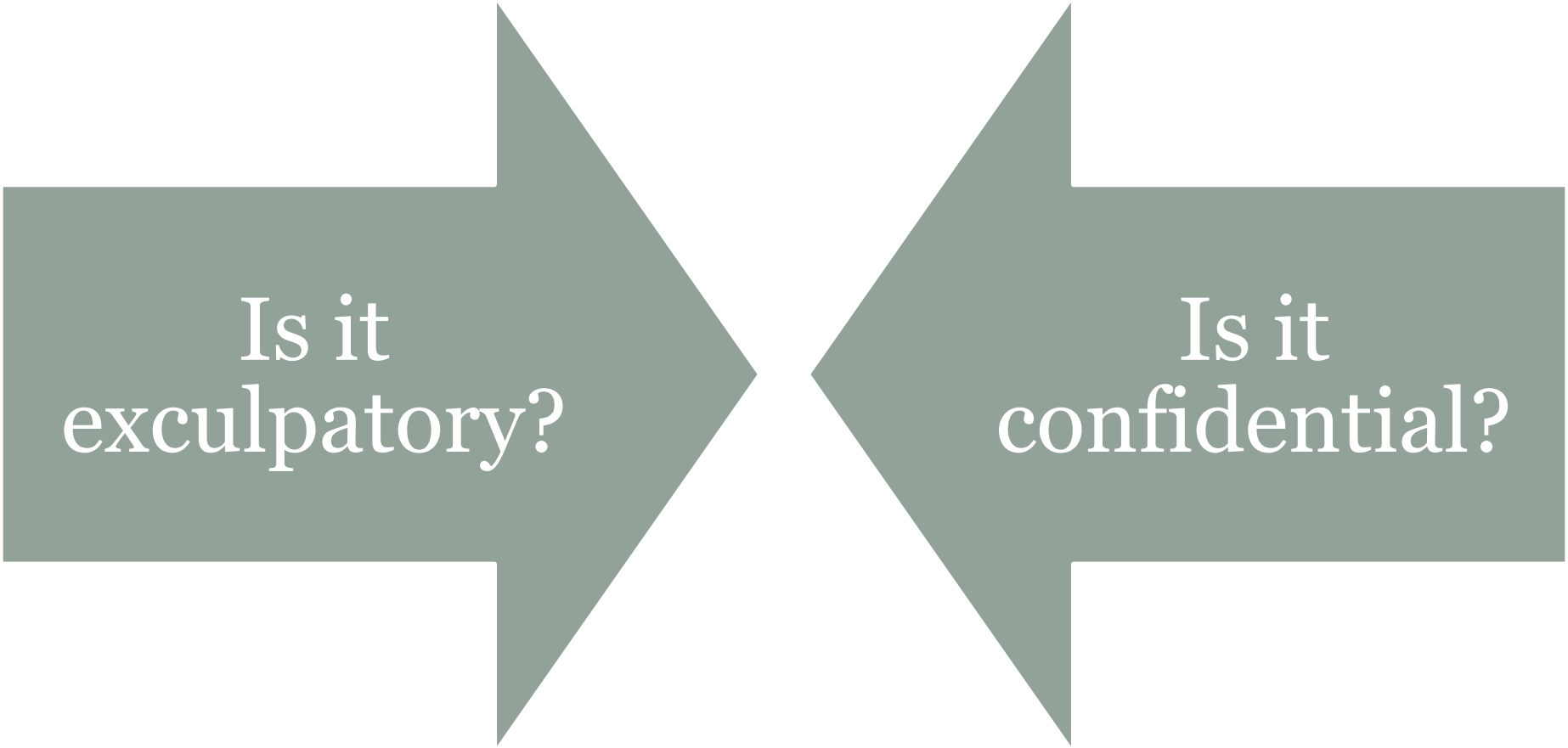

PROS
CONS
Establish trust
Build rapport
Protect from offender
Protect from deportation
Accusation that victim is lying for immigration benefit

Discussion Points

- Discovery
- Pretrial Motions
- Trial Strategies

What do prosecutors have to turn over to the defense?

Ethical Duties and Due Process Prosecutor Obligations



Turn over…

- Request for a U Visa certification
  - Even if not signed
- Signed U Visa certification
  - By law enforcement
  - By prosecutor's office
- Any attachments
- Any communications

How do you respond to request for more information?

Senate Congressional Record

"The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision" Ensuring abusers "are brought to justice and the battered immigrants also escape abuse without being subject to other penalties."

Senator Biden 10/11/2000

Disclosure of Information

"State and local prosecutors are not constitutionally required under the Brady line of cases to seek out, obtain or disclose the existence of or any information contained in an immigration case that is maintained in federal immigration case files"

U Visa Certification and T Visa Declaration Toolkit for Law Enforcement Agencies and Prosecutors (August 30, 2021).

Ramirez v. Marsh,

No. S-1-SC-39966, 2025 WL 1409073 (N.M. May 15, 2025)

- Visa applications and related materials fall under attorney-client privilege
- VAWA Confidentiality (8 U.S.C. 1367) applies to legal service organization
- Criminal Court judges cannot circumvent by compelling from victim or family
- Defense has a right to cross-examine based on fact of application

People v. Jun Du

NY Sup Ct Kings County 2024 (Sept. 27, 2024)

- Judge reversed their own decision grating an in camera review of the T-visa application.
- Party seeking disclosure must show that the application is so relevant or material that it outweighs VAWA confidentiality.
- The Court determined applications are protected and confidential. No exceptions are permitted.

Pretrial Strategies

- Preview evidence for judge.
- Brief complex legal issues.
- Establish evidence that will and will not be admitted at trial.
- Requires thoughtful consideration of case well in advance of trial date.

Excluding Evidence

Arguments	Examples
• Irrelevant • Probative value is substantially outweighed by potential prejudice	• Child victims • Time lapse between reporting and applying

Hennepin County

Motion in Limine

COUNTY OF [X] [X] JUDICIAL DISTRICT

State of Minnesota,

PLAINTIFF,

vs.

[FIRST NAME] [LAST NAME],

DEFENDANT.

STATE'S MOTION *IN LIMINE*

Court File No. [X]
Prosecutor File No. [X]

TO: The Court; [FIRST NAME] [LAST NAME], Defendant; and [DEFENSE ATTORNEY], Defendant's Counsel.

PROCEDURAL POSTURE

[PROCEDURAL POSTURE]

MOTION

The State respectfully asks this Court to prohibit Defendant from cross examining and arguing at trial about the immigration status of the victim and their family, including information regarding U visas.

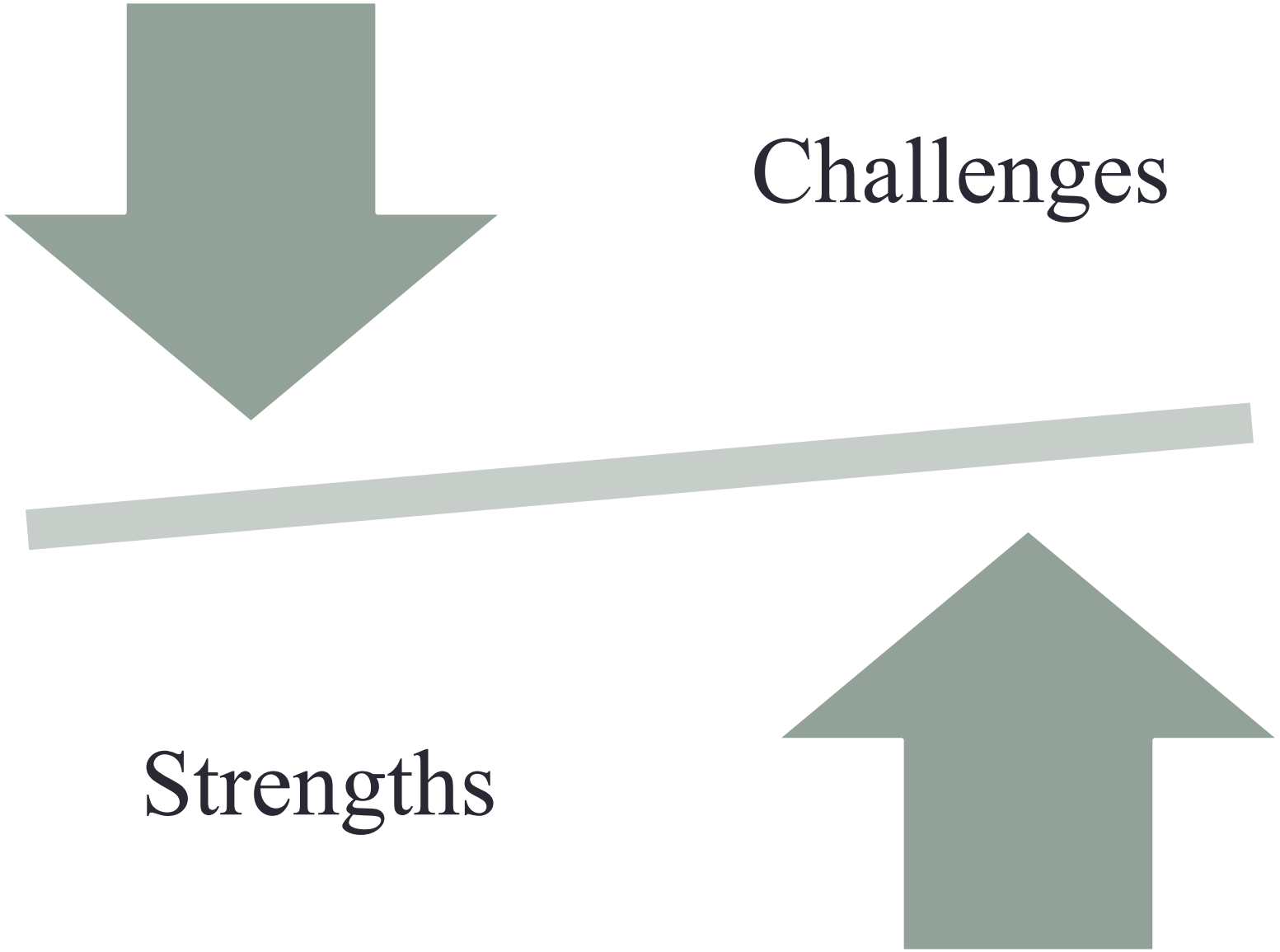
1. Did the State offer the victimized family a U visa or a signed U visa certification form as consideration in exchange for testimony?
2. Regardless of the State's actions, was the victimized family biased by the opportunity to obtain a U visa? To show that a victimized family was biased, Defendant must produce actual evidence as to each family member they would like to cross examine that proves:
    a. That family member knew about U visas *before* they first disclosed the facts to which they would testify and
    b. That family member would not have initially disclosed the facts to which they would testify but for the opportunity to obtain a U visa.

Here, Defendant has not produced actual evidence to prove either test in the affirmative. Until Defendant does, Defendant has not shown that the victimized family's immigration statuses or information regarding U visas is sufficiently relevant or probative to be allowed into evidence.

[A] witness's application for a U visa can, on its own, create a basis for cross-examination where the U visa application has been submitted on the witness's behalf on the ground that the witness is the victim of a crime that a defendant is on trial for. A U visa application submitted by a witness demonstrates that the witness is applying for a visa that confers a substantial benefit based on the requirement that the witness be helpful in the investigation or prosecution of criminal activity specified in the application.

Gonzalez v. State, 487 Md. 136, 178, 316 A.3d 484, 508–09 (2024).

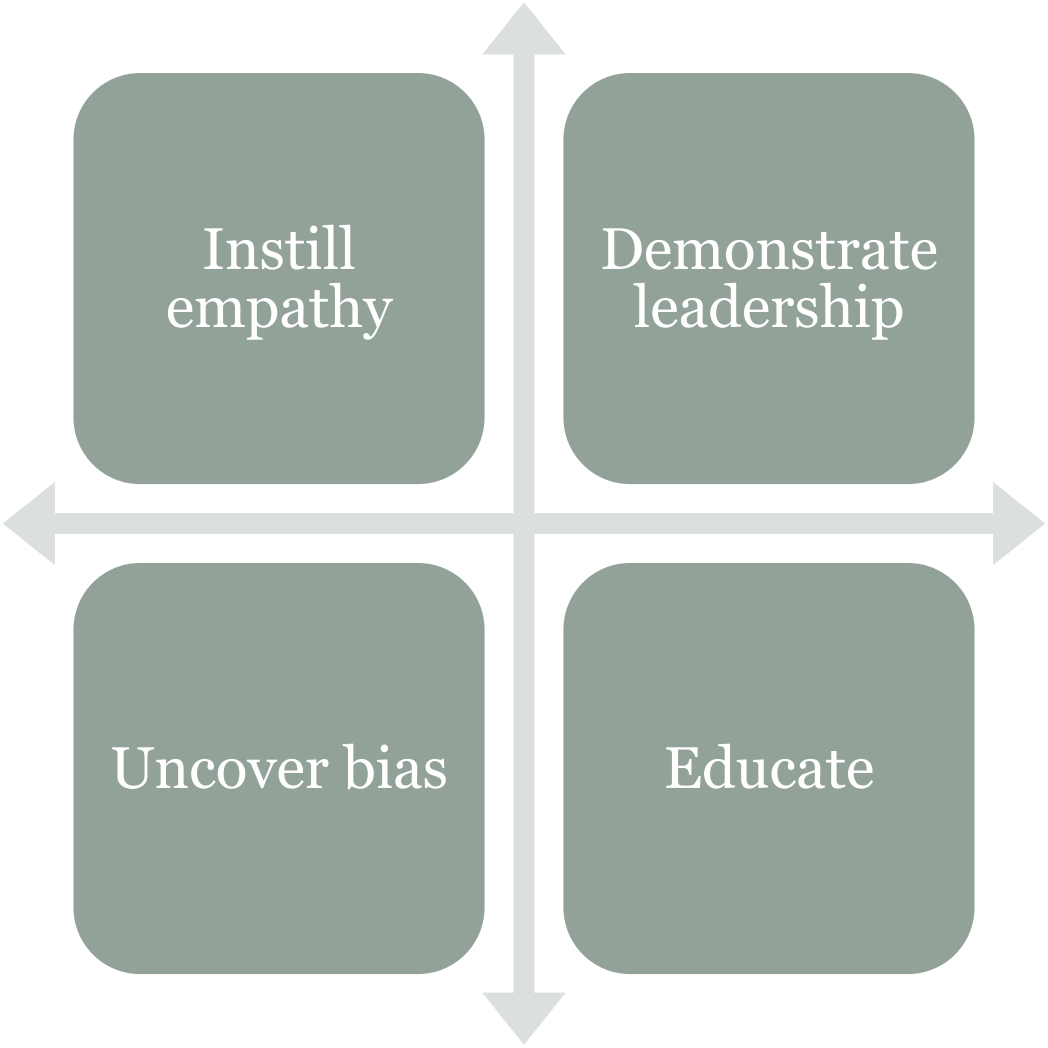
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Challenges
Strengths

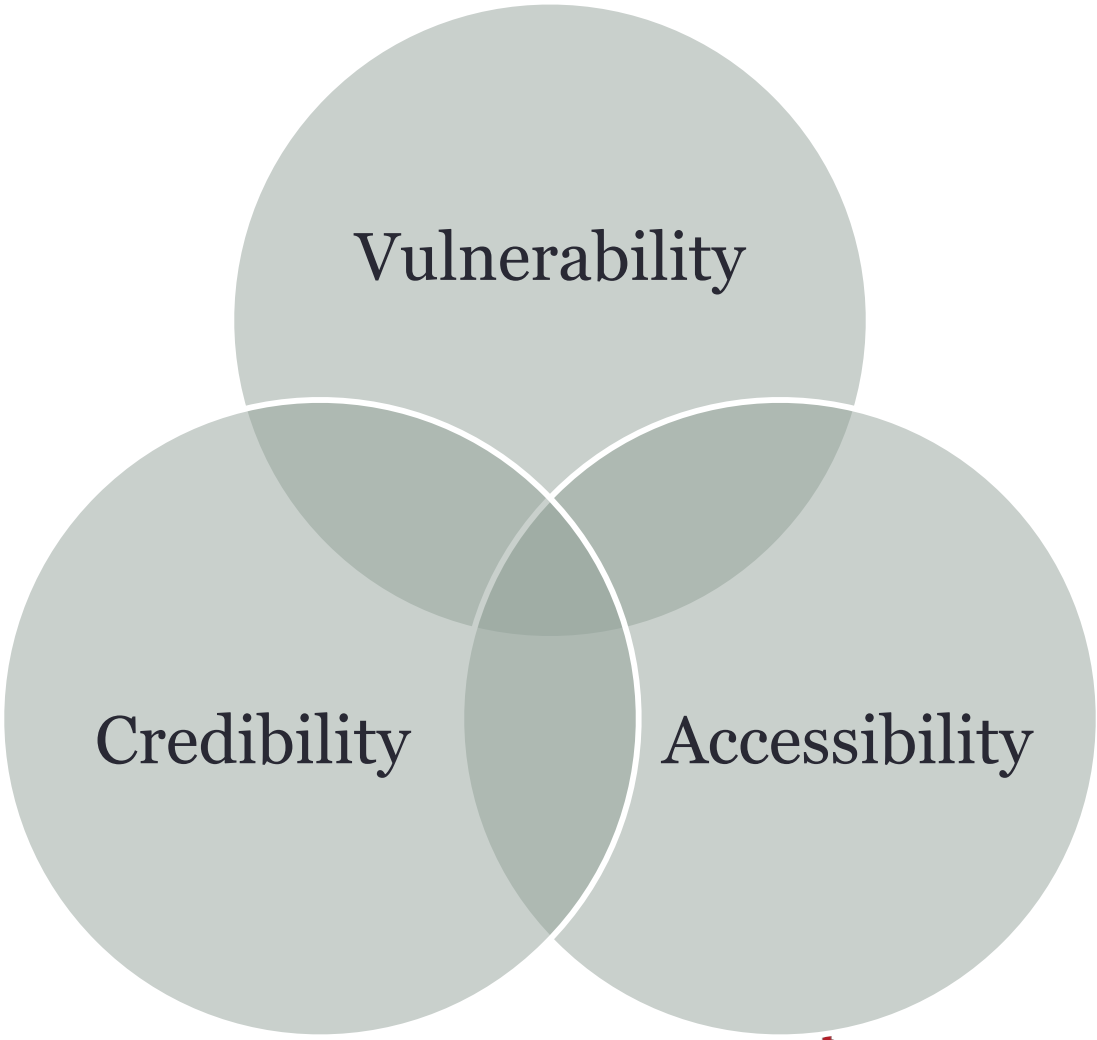
Analyze Case

Victim Selection	• Did the offender choose the victim because of a real or perceived vulnerability?
Criminal Act	• Did the offender use the victim's immigration status to commit a criminal act?
Escape Detection	• Was the victim prevented from reporting the crime to police because of their immigration status?

Jury Selection



The "Perfect Plan"



Offender-Focused Theme

Preying on the most vulnerable	Power over the powerless	American dream became a nightmare
Picked the perfect victim	Betrayal of trust, family, and the law	Knew there was nowhere to turn

Other Crimes, Wrongs, or Acts

Fed. R. Evid. 404(b)

- Immigration-related abuse
  - Threats
  - Intimidation
  - Abuse of the legal process
  - Manipulation of power dynamics
- Criminal or noncriminal acts
- Can have occurred before, during, or after the charged crime

Victim Testimony

- Introduce the victim to your jury.
- Recreate the reality of the crime.
- Illustrate fear and emphasize threats of
  - Deportation
  - Separation from family
  - Loss of employment or financial support
- Address immigration status and application for immigration relief.

Cross Examination



Listen for the defense to accuse the victim of lying for an immigration benefit.



Be prepared to introduce prior consistent statements.

Prior Consistent Statements

Fed. R. Evid. 801(d)(1)

Not Hearsay where the statement…

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

Establishing Timeline

Victim statements to officers, friends, and others

Motive to lie

Testimony consistent with statement

Introduce prior consistent statements

Example Questions on Rebuttal

- "Defense counsel asked you about your application for a U Visa, when did you first hear about the U Visa?"
  - "After speaking with detective, I spoke with an advocate at the police station"
- "Prior to speaking with the advocate, did you provide the detective with a recorded statement?"

Has anyone used expert witnesses to help educate the judge and jury?

Testimony by Experts
Fed. R. Evid. 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue…

Who can be an expert?

Expertise

- Common victim responses to trauma
- Dynamics of domestic violence experienced by immigrant victims
- Relationships between offenders and victims in human trafficking cases
- Victim protections under immigration law
- Other subjects that may be outside the common jurors understanding

Closing Arguments

- Focus on what the defendant did.
  - e.g., The Perfect Plan
- Do not apologize for the victim.
  - The victim qualified for legal immigration relief.
- Explain the evidence that corroborates the victim's disclosure.

The purpose of a U visa is for victims of violent crimes, or any crimes, there's 28 different ones, in the United States who are not here legally to obtain a potential deferment of deportation. Ultimately, the reason, the intent behind that law, is to protect the most vulnerable among us.

Coreas-Rodriguez v. State, No. 0629 Sept. Term 2015, 2016 WL 4126015, at *5 (Md. Ct. Spec. App. Aug. 3, 2016).

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Thank you!