

IMMIGRATION JUSTICE CAMPAIGN

Tips on Preparing for an Individual Hearing

*If you are handling a pro bono case from the Immigration Justice Campaign, please be sure to schedule a call with your mentor to prepare for the Individual Hearing after you read this guide.

In addition, we highly recommend that you watch [this Mock Asylum Individual Hearing](#) from the EOIR Model Hearing Program so that you can fully understand what to expect at an individual hearing. While this mock hearing is for an asylum case, it will give you an idea of what to expect for individual hearings in general.

What should I review with my client in advance of the Individual Hearing?

- Ask your client to review her declaration and application form for relief (i.e., I-589 for asylum, Withholding of Removal, or CAT; 42A or 42B for Cancellation of Removal; I-485 for Adjustment of Status, etc.) but not to “study” it extensively or memorize it. You do not want your client to sound too rehearsed, which can negatively impact the Immigration Judge’s assessment of her credibility.
- Practice mock direct and cross examination questions—it is important to give your client a sense of the types of questions she’ll be asked on the stand and how to respond.¹
- General advice on how she should answer questions, including:
 - Listen carefully and answer the specific question you are being asked, without providing additional detail outside the scope of the question
 - Don’t be surprised if the Immigration Judge (“IJ”) jumps in with her own questions during the direct examination
 - It is OK if you cry or show emotion during the hearing
 - Look at the IJ (if possible) when answering questions
 - If you don’t know the answer, say “I don’t know” or “I don’t remember” or “I am confused”; don’t make up an answer just to satisfy the person asking the question
 - You can ask for a question to be repeated or rephrased if you do not understand the question
 - If you are using an interpreter, you need to wait for the interpreter to finish interpreting the full statement, even if you understand the question in English
 - Try to remain calm at all times and try not to show frustration with anyone, including the IJ and DHS (government) Trial Attorney
- What will happen during the hearing, including:
 - Admission of evidence into the record and marking of exhibits

¹ For specific guidance on direct examinations as well as sample questions, the direct examination resources on the Immigration Court Practice page of our training website.

- Direct and cross examination of witnesses, including your client
- Closing arguments
- The Decision (maybe!)
- Remind your client of the roles of everyone who will be in the courtroom, including the DHS (government) Trial Attorney. Advise her that the Trial Attorney may be very rude or may be very friendly. Either way, it is important for her to know that the Trial Attorney is NOT on her side.
- Possible Outcomes—You’ll want to review all possible outcomes in advance of the individual hearing with your client, including:
 - *Positive Outcomes:* In the detained context, if your client wins asylum and DHS waives appeal, your client should be released imminently. Does she have a plan of where she’ll go and how she will leave the detention center? If the government reserves appeal on an asylum grant OR your client receives withholding of removal or Convention Against Torture relief, your client may continue to be detained for some time. Please discuss this possibility with your mentor. If your client is already released and on the non-detained docket and is granted relief, with DHS waiving appeal, the order is final, and your client can begin to rebuild her life and seek any benefits afforded with her new status.
 - *Negative Outcomes:* You should discuss whether your client would like to reserve the right to appeal should she lose her case. Reserving the right to appeal does not mean that she must actually appeal. Waiving the right to appeal, however, means that the respondent can’t change her mind later.

What do I need to Bring to or have on hand at the Individual Hearing?

- If you are appearing in-person:
 - A copy of your complete filing, and any other relevant documentation from your client’s immigration file
 - Copies of any key cases that you think you may rely on in your argument (make sure to have one for you, the IJ, and the DHS Trial Attorney)
 - Any original documents from your client or witnesses (if they are not already in the Court or DHS’s possession)
 - Envelopes that witnesses/your client’s family used to mail you documents in case authenticity/chain of custody issue arises
 - A notebook/notepad to take notes, along with pens and highlighters
 - If the Immigration Court where you are appearing allows for electronics, you may wish to bring a laptop/other device for notetaking and access to casefile records
 - A short written closing statement in case the IJ does not allow for one to be made orally at the hearing and is not rendering a decision on the case immediately
- If you are appearing virtually via Webex or by telephone:
 - A copy of your complete filing, and any other relevant documentation from your

- client's immigration file, for reference purposes
- An annotated list of any key cases that you think you may rely on in your argument
- A notebook/notepad to take notes, along with pens and highlighters
- Your computer/laptop, which you'll be using to attend the hearing virtually or otherwise for quick reference and notetaking purposes.
- Be mindful that your ability to submit documents on the spot in a virtual setting may be greatly limited. Please consult your mentor for guidance prior to your hearing.

What types of Objections Should I be Prepared to Make?

- *Objections to DHS Evidence*—The [Immigration Court Practice Manual](#) (ICPM) allows IJs to set filing deadlines in cases. However, the ICPM contains an exception to the filing deadline for evidence intended solely to rebut and/or impeach. Practically speaking, it is not uncommon for DHS to wait until the day of the hearing to file its evidence. Where possible, you should argue that the late filed evidence is not truly impeachment or rebuttal evidence, and that DHS has not provided adequate reasons to support its late filing. If the IJ allows the evidence despite its tardiness, you should ask the IJ for a short break so that you have an opportunity to review DHS's newly submitted evidence with your client.
 - *Objections to DHS's Cross Examination*—If the Trial Attorney's questions are inappropriate or badgering, you should be prepared to make the following objections before your client answers the question:
 - Speculation—for example, questions like: "It's possible, right?" or "Couldn't it be true?"
 - Lack of Foundation
 - Asked and Answered
 - Badgering the witness
 - Relevance
- **If your client is doing well on the stand with challenging questions, you may choose not to object and to just let it go. Objections are much less common in Immigration Court than they are in other types of trials.

What Should I Include in My Closing Argument?

- Closing arguments present an opportunity for you to summarize evidence that has been presented to the Court in a cohesive way that demonstrates your client's eligibility for relief. During your closing, you'll want to balance a recitation of facts, the evidentiary record, and relevant case law in a manner that will lead the IJ to make legal conclusions in your client's favor. Closings also provide you with an opportunity to address any potentially negative or conflicting testimony that came out during the hearing as well as any issues that seemed to be of particular concern to the Judge. Your closing argument is your last opportunity to convince the IJ that your client qualifies for and merits relief.

- Sometimes, IJs will not provide an opportunity to make an oral closing argument, in which case you can ask to submit a pre-prepared written closing argument to the court for the IJ's consideration in deciding the case
- For detailed guidance on preparing a closing argument, please consult IJC's guide on closing arguments, available on our website.

After your hearing on the merits, please notify your Immigration Justice Campaign mentor of the outcome as soon as possible! Good luck!