

# IMMIGRATION JUSTICE CAMPAIGN

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## Closing Arguments in Immigration Court

### ***The Role of Closing Arguments***

While formal opening statements are rarely used in Immigration Court<sup>1</sup>, Immigration Judges (“IJ”) typically welcome closing arguments. 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.

### ***Preparing for your Closing Argument***

Prior to the individual hearing, it is a good idea to think about how you are going to use your closing argument. Having drafted a legal brief, interviewed and prepared witnesses, gathered documentary evidence, and researched country conditions, are there any particular issues you and your mentor think might be problematic for your client? What are the weaknesses of your case? Here are some sample topics you should be prepared to argue *if* they are likely to arise in your case:

- ***Inconsistencies***: Are there inconsistencies between your client’s I-589, credible fear interview notes, declaration, and court testimony that may trouble the IJ? If you weren’t able to clearly resolve the inconsistencies on direct or re-direct, the closing statement might be a good time to explain the genesis of the inconsistencies and to argue that they are immaterial and/or minor.
- ***Country Conditions***: Is your client’s persecutor a non-governmental actor? If so, you should be ready for DHS to argue that your client could safely relocate to another part of the country or that the government is taking steps to combat the persecutor. This can be done by pointing to specific country conditions documents and expert reports.

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<sup>1</sup> Although opening statements are not generally used in Immigration Court, it can be helpful to have a high-level overview of your case prepared, similar to an “elevator pitch.” Some Judges ask Respondent’s counsel: “What is this case about?” You should be prepared to describe why your client is eligible for relief in a couple of sentences.

- *Asylum Bar*: If there's an argument that your client is subject to an asylum bar, you should definitely be prepared to argue why the bar doesn't apply in your closing statement.
- *Articulation of Particular Social Group*: If your client's persecution was based on membership in a particular social group (PSG), it is very important that you stand ready to articulate the specific social group during your closing. You should be ready to explain to the IJ why the PSG is viable and to cite supporting case law.
- *Expert Declarations*: Did you submit a declaration from an expert who will not testify at the individual hearing? The closing may be a good time to bring attention to their statement, especially if they will help bolster a weakness in your case. For example, if you submitted a psychological evaluation in which your client was diagnosed with PTSD and she had a hard time recalling details on the stand, you may want to point to a helpful quote from the psychological expert about the impact of trauma on memory.

This list is by no means exhaustive. Please be sure to discuss the potential hurdles in your client's case with your mentor!

### ***Creating a "Living" Closing***

While it is important to think about your closing prior to the hearing, it is best not to have an entirely "canned" statement that simply summarizes the documents you submitted prior to the hearing. Canned closings prevent you from incorporating witness testimony, DHS concerns and objections, and any concerns the IJ raised during the hearing. As a result, they may not be useful to the IJ in her/his decision making.

### ***"Roadmap" for Closing***

You should think of your closing as an outline that you want the IJ to follow in her decision. It is helpful to address—at least briefly—each element of the claim, before turning to any contested issues. We recommend this format:

- (1) Argument re: Eligibility for Relief
- (2) Deal with weaknesses/DHS's best argument/IJ's concerns
- (3) Repeat that Client is eligible for and entitled to relief—make ask that IJ grant relief

### ***How Long Should Your Closing Be?***

Unlike in other court proceedings, closing arguments in Immigration Court are quite short. In general, you should plan on taking no more than five minutes to deliver your closing argument. Consequently, you'll want to zero in on your best arguments and not dedicate time to summarizing the facts of the case or arguing minor issues that are not in dispute.

### ***Do You Always Need a Closing?***

Almost always. In Immigration Court, IJs frequently signal whether they have concerns about a case and will ask DHS Trial Attorneys to do the same. You may hear the IJ ask DHS, for example: “Do you have any concerns about this case?” In rare instances, DHS may only ask your client security and background questions, rather than asking substantive questions about her claim. This is generally a very good sign for your client.

If the IJ and DHS Trial Attorney have not expressed any specific concerns during the individual hearing, you should ask the IJ if there are any issues or topics for which the IJ would like additional clarification. If the IJ identifies such a concern, you should start with that issue and proceed to explain why the facts and law show that your client should prevail and receive the relief requested.

### ***Responding to DHS’s Closing Argument***

The DHS Trial Attorney will also be given an opportunity to provide a closing statement. You may request the opportunity to respond to DHS’s closing, though IJs often do not allow such rebuttals. If the DHS Trial Attorney’s argument did not sound persuasive and/or you sense that the IJ is inclined to rule in your favor, it may not be advisable to ask for a rebuttal.

### ***Looking for a Sample?***

[The Mock Asylum Hearing](#) posted on the Immigration Justice Campaign’s website includes closing arguments by both DHS and the Respondent’s counsel.

### ***Additional Tips:***

1. If there’s case law directly on point for an issue that may arise in your case (i.e. a ruling recognizing the exact same particular social group you are proposing), *bring copies of it with you* and be ready to hand it to the IJ and DHS.
2. *Know your country conditions documents!* Be ready to cite to specific text from the country conditions materials you submitted. Physically highlighting and tabbing your appendix prior to the hearing may make this easier to do.
3. Don’t waste time citing the definition of “refugee” or other basic legal definitions during your closing, unless there’s a dispute about them. The IJ should be familiar with the basic asylum standard and this information should already be in your legal brief.

**As with other aspects of your preparation for the Individual Hearing, please be sure to discuss your closing argument with your Immigration Justice Campaign mentor!**