



TRAUMA-INFORMED REPRESENTATION IN ASYLUM CASES

Asylum Interview & Asylum Merits Hearing Checklists¹

The following checklists were created to help advocates representing asylum seekers prepare their cases for adjudication in a trauma-informed way. The first checklist relates to interviews before the asylum office, while the second is intended as a guide for those facing a hearing at the immigration court.

Realizing that you may be handling your very first case, and therefore do not know what to expect to best prepare yourself and your client, we have included some preliminary general information on each process in the chart below. In addition, it is helpful to check with practitioners in your area to understand how things operate locally.

Asylum Interview at USCIS Asylum Office	Asylum Merits Hearing at Immigration Court
<p>Asylum interviews are conducted by the U.S. Citizenship and Immigration Services (USCIS) asylum office in affirmative cases or in the cases of unaccompanied children. At an asylum interview, there is no opposing counsel. The asylum officer is the adjudicator.</p> <p>When appearing for an asylum interview, you will arrive at the asylum office and check in, as will your client and any interpreter you have brought with you. You will wait in a waiting area before being called into an office for the interview.²</p> <p>Interviews are conducted by a single asylum officer and often last one hour to several hours. The officer</p>	<p>Asylum merits hearings or individual calendar hearings (ICHs) are a type of hearing in immigration court. This is the immigration judge's opportunity to assess an asylum claim. Unlike the asylum interview, this process is adversarial. The Department of Homeland Security (DHS) will be represented at the hearing by an attorney from the Office of the Principal Legal Advisor (OPLA).</p> <p>When appearing at the immigration court, you will arrive and go through security before heading to the assigned judge's courtroom. If another hearing is</p>

¹ This resource was originally created in collaboration with Natalie Cadwalader-Schultheis, Staff Attorney at ProBAR in 2021. The CILA legal and social services teams further expanded upon this resource and updated it in June 2022. This is not legal advice. This resource is for informational purposes only and should not substitute your own research and analysis. This is not comprehensive. We simply wanted to highlight some information and resources to help get you started and support you in your work.

² While interviews are held in person, attorneys or accredited representatives can sometimes appear remotely. During the COVID-19 pandemic, the physical setup of the interview varied. For example, sometimes the attorney and client were in one room at the USCIS office, and the adjudicator was located in another room connected via tablets and conference call, or everyone was in separate rooms connected via tablets and conference call. Some aspects were conducted via video, or the office could use a plexiglass barrier between the officer and the client and representative. The structure has changed over time and depends on the particularities of the local office, asylum officer, client, and/or representative. Read more about the effects of COVID-19 on the setup of asylum office interviews and related tips for advocates on how to navigate remote/hybrid proceedings in CILA's resource, [Tips for Working with Children and Youth Remotely in a Hearing or USCIS Asylum Office Interview](#). If you need the password to access this resource, email us at cila@abacila.org.

<p>may or may not be an attorney. Other than the officer, there will be no one from USCIS in the room, unless a newer officer is shadowing and observing.</p> <p>Previously, it was necessary for all individuals to bring their own interpreter to asylum office interviews. During the COVID-19 pandemic, a temporary rule was issued, which has been extended through September 12, 2023. The rule requires using USCIS contract telephonic interpreters for the interview for 47 languages.³</p> <p>Keep in mind that the interview is not recorded or transcribed, so you must be certain to take good notes. You may do this by hand or bring your laptop so long as you fill out a form.</p> <p>The file will include the asylum application and any supporting documents you have submitted, such as your client's declaration, other declarations/reports (from witnesses, experts), case documents (medical records, death certificates, news articles) and country conditions reports.</p> <p>The officer may ask you some preliminary questions about the file. Frequently officers will go through each of the biographical questions in the I-589 application to confirm that all of the information is correct and to ensure that there are no updates. If there are updates/edits to the application, the officer will make those changes in red pen and ask the applicant to sign confirming that the changes are correct. This can be helpful since it gives the child an opportunity to make edits if an amended form was not submitted. The officer then will get started asking your client more substantive questions.</p> <p>Once the officer is done, you can request some time to ask some follow-up questions of your client as well. This is an opportunity to elicit critical</p>	<p>underway, you may be asked to wait in the waiting area until the judge is ready for your case.</p> <p>Keep in mind that the use of remote hearings via video teleconference increased during the COVID-19 pandemic. There are several considerations involved when deciding how to appear remotely and navigate remote proceedings.⁴</p> <p>Merits hearings may last hours or require completion over more than one day in court. Your client has the burden of proof to establish their eligibility for asylum. You will seek to do this through information contained in the asylum application (Form I-589) and evidence, such as your client's declaration, other declarations/reports (from witnesses, experts), case documents (medical records, death certificates, news articles) and country conditions reports, along with any other relevant documents and testimony.</p> <p>Often, a great deal of the merits hearing consists of your direct examination of your client. They may also have to answer questions from the judge and will be subject to cross examination by the DHS OPLA attorney. You can request the opportunity for re-direct as well.</p> <p>At the merits hearing, you may also seek to offer testimony from expert(s) who have evaluated your client's physical or mental health, or their situation given circumstances in their home country. If the expert(s) cannot appear in person, you may need to request that they be allowed to testify telephonically by a motion filed</p>
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³ See USCIS, *Temporary Final Rule: Asylum Interview Interpreter Requirement Modification Due to COVID-19*, <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/temporary-final-rule-asylum-interview-interpreter-requirement-modification-due-to-covid-19> (last reviewed/updated Mar. 15, 2023).

⁴ See CILA's resource, [Tips for Working with Children and Youth Remotely in a Hearing or USCIS Asylum Office Interview](#). If you need the password to access this resource, email us at cila@abacila.org.



<p>information from your client that may not have come out during the interview or to clarify/contextualize any inconsistencies. Officers typically allow attorneys to provide a closing statement if they request it. Either after you are done with your questions or after a brief closing statement, the interview will conclude. Some officers will ask for the submission of a written closing statement in lieu of an oral one.</p> <p>It is unlikely that you will receive a decision immediately. Instead, it will be available for you to pick up in the future, or it may be mailed to you.</p> <p>If the asylum officer is unable to approve the asylum claim, they will generally refer the case to the immigration court for an immigration judge's review. The immigration judge will evaluate the asylum claim independently.</p>	<p>in advance of the hearing. The same is true of any fact witnesses. Like your client, these individuals will be subject to possible questioning by the judge, as well as cross examination.</p> <p>You should be prepared to offer a closing statement, and if the judge will allow one, an opening statement as well.</p> <p>The judge may issue a decision at the conclusion of the hearing or indicate that one will be issued in the future. The decision could be delivered orally or in writing.</p> <p>If the judge issues a decision at the hearing, you must be prepared to indicate whether your client reserves the right to appeal. The DHS attorney will also indicate whether DHS reserves the right to appeal or not as well. Reserving the right does not mean the right must be exercised or that it has been exercised. DHS sometimes reserves the right to appeal and then does not follow through with filing the appeal. There is a separate process to initiate an appeal to the Board of Immigration Appeals (BIA).</p>
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We next want to provide some general tips to encourage trauma-informed lawyering.

General Trauma-Informed Representation Tips

- Remember that offering transparency, predictability, reliability, and client control are all central to trauma-informed representation.
- It helps to always keep these themes in mind for preparation and at all stages of the process:
 - Inform and prepare;
 - Offer choices as much and as often as you can;
 - Offer praise and gratitude; and
 - Check in to see how the child is doing.
- It is important to build trust with your client, communicate clearly, and empower your client.



- Be transparent and honest with the child as you provide information and explain the process. Let them know that sensitive questions will be asked in the asylum proceeding.
- Give clients the time and space necessary to process the information you provide. Also build in time for going over information in different ways, which may be necessary depending on what works for the child. This approach may be particularly important when the child needs to make a difficult decision and for discussing tough subjects.
- Remember that trauma can affect memory. Get to know your client and how well they do with timelines, details, and recall. Do your best to help them navigate this process while limiting opportunities for inconsistencies. It is often useful and sometimes necessary to document the trauma by including expert evidence. That evidence may be specific to your case and/or general evidence about how trauma can affect memory.
- Remember the need for breaks, even during prep sessions. Being interviewed and testifying in court are stressful and difficult circumstances for anyone, especially for a child. Empower the child to ask for breaks. If they do not ask, then ask for them as the advocate helping them. Many adults even need advocates to step in to assist in this way.
- It can be helpful to document certain tough case decisions or guidance in writing, especially in cases that last over a long duration. Tough questions may arise in a case (such as, “Does winning asylum mean I can never go back to my country?”), and the child may forget some of the impacts discussed or change developmentally as they get older. It is helpful to be somewhat formulaic—via a checklist, file notes, or a letter—when tracking and documenting these conversations. You may also want to refer the client to that writing from time to time. For instance, the documentation of these tough conversations can be used as the case progresses to remind the child about what was previously covered and assist them when making informed decisions.
- Additional tips can be found in Section II.B of the [CILA Pro Bono Guide: Working with Children and Youth in Immigration Cases](#), which covers Trauma-Informed Lawyering.

With this foundational information and general tips in mind, we turn to checklists for the asylum office interview and asylum merits hearing. These checklists are meant to guide you as you prepare your clients and yourself for the proceedings.

ASYLUM INTERVIEW CHECKLIST

Working with an Interpreter:⁵

- If your client’s best language is not English, you may need to obtain the services of an interpreter for the interview. The government currently provides a telephonic interpreter for certain languages.⁶
- If you are working with a nonprofit organization who referred you the case, check with them regarding finding an interpreter. It is likely best to try and secure pro bono

⁵ Read Section II.D of the [CILA Pro Bono Guide: Working with Children and Youth in Immigration Cases](#) for more tips regarding working with interpreters and translators. Additionally, review CILA’s resource, [Practical and Ethical Considerations and Reminders when Working with Translators and Interpreters](#).

⁶ See *supra* note 3.



interpretation whenever possible. It is also best to use the same interpreter throughout the life of the case.

- If you are having trouble finding an interpreter, you might also consider reaching out to law school immigration clinics to see if a student would be able to volunteer interpret for you.
- Be a bridge for your client to the interpreter. Explain confidentiality to both your client and the interpreter to help develop a trusting relationship.
- Explain the interpreter's role to them so that they understand they must be impartial and not add new information to the case. They are not there to provide testimony.
- Make eye contact with your client even when speaking through an interpreter. Learn to rely more heavily on non-verbal communication.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person.
- Practice with the interpreter prior to the interview, and make sure the applicant can communicate effectively with them.
- Let the interpreter know that the government may have someone on the phone listening for correct interpretation at the interview.
- Keep in mind that any notes the interpreter takes on their notepad during the interview will be collected by the asylum officer and added to the file. For this reason, they should be careful of what they memorialize.

Supplementing Documents/Correction to Asylum Application:

- Take an original and two copies of any supplemental documents to the interview and provide them to the asylum officer. If you submitted any supplemental documents in advance of the interview, take an extra copy to the interview in case the submitted copy did not make it into the file. Also bring any proof of mailing for mailed documents.
- If there are numerous documents, make an index, tab the documents, and highlight relevant portions of documents for the asylum officer.
- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- Review all case documents for consistency. This includes ensuring that all forms submitted to USCIS and/or the immigration court along with supporting documentation are consistent. For example, cross-check the information contained in the I-360 and I-589 to ensure consistency and to avoid a potentially negative credibility finding.
- If you need to make corrections to the application, take a letter documenting the changes and two copies for the asylum officer, and provide this before the interview begins. Be sure that your client has signed and dated any supplement to the application.

Preparing Your Client for the Interview:

- When beginning interview prep, it can be helpful to remind your client of their case status (e.g., asylum, employment authorization document (EAD) status, special immigrant juvenile status (SIJS), immigration court). It will likely also help to review the date they submitted their I-589 and with whom (if a different attorney), as well as where they are at in the asylum process. Explain the goals and purpose of the asylum interview, and frame the interview within the bigger picture of their case strategy to help ease the stress of the interview and empower your client to focus better.



- Remind your client of the legal requirements for the case and what you are trying to prove, as well as your case theory and strategy. This information may help your client have a full understanding of the proceedings and their desired outcomes.
- Review the application and declaration with your client and note any changes.
- Depending on their age and skillsets, provide your client with a copy of the application and their declaration. Provide the declaration in your client's best language, if possible, so that they can review it easily. Ask your client to review dates/events if they can do so. Keep in mind that your strategy and how much emphasis to put on re-review of the declaration will depend on the child's age, abilities, and personality. For example, you do not want a very studious client to study the materials so much that they seem robotic during the interview. For some clients, it might be best to recommend reviewing a timeline so that they can review those details in advance instead of the full declaration. For a younger child, it may help to use drawings or a series of drawings that guide them through their story.
- If you are including any expert evidence, be sure your client is aware of what information is included in that evidence. It also helps to briefly review the other supplemental evidence submitted.
- Talk to your client about the initial questions an asylum officer will commonly ask at the beginning of an interview such as: "What is your name?", "Do you want this individual (full name of representative) to assist you today, to represent you?", "Have you seen this Form I-589 before?", and "Did someone review this form with you?". If your client only calls you by your first name, be sure that they know your full name, so they are not thrown off hearing your last name. Additionally, some time may have passed since the child last saw the I-589, especially if there was a delay between the time of filing the I-589 and the interview being scheduled. It is important to refresh the child's memory in advance of the interview regarding the form and its contents. Other common questions about the form that child should be prepared to answer are: "Did someone help you fill out this form?", and "If so, who?" Many children think that the correct answer is "no," when in most situations they received assistance. If a prior attorney worked with them on the application, they might need a reminder of that person's name. Another common question is: "Are you aware of the entire contents of your application?" Many times, youth may forget or be unaware of the full contents. It helps to review the contents beforehand in case this is asked. The youth can at least let the officer know then that their attorney reviewed the file's documents with them recently. Reviewing how to answer these frequently asked questions will help the child begin the interview with more confidence.
- Talk to your client about telling their story through their interview. Ask them whether there are any aspects of their story that they really do not want to have to discuss. Discuss options for how you can go about making sure that the necessary information is still available for the asylum officer, such as referencing their declaration. Clearly set expectations for your client so they understand that you and the asylum officer will have the opportunity to ask questions.
- Conduct mock interviews with your client, with someone playing the role of the interpreter and someone playing the role of the asylum officer, if possible.
- For children with past trauma, going through the asylum interview process can be stressful when there are many unknown variables on the day of. To the extent possible, walk them through the process of the entire day during your prep sessions. This includes providing



step by step information: from showing them the asylum office building on Google Maps so they know what it looks like, reviewing the COVID-19 screening questions prior to entering the building, wearing a mask (if applicable), walking through the X-ray machine at security, checking in at the window, getting a picture and fingerprints taken, to waiting sometimes for hours and expecting this to take the entire day. Providing this level of detail can minimize surprises and thereby empower them to navigate the stress of the asylum interview with more confidence.

- Explain the setup of the desk and other furniture in the office of an asylum officer so that your client knows what to expect. It may help to share visuals or to create a drawing, so the child has a better understanding.
- Explain your role and the role of others who will be at the interview.
- Explain that both you and the asylum officer will take notes during the interview.
- Remind your client to tell the truth, to listen carefully to the asylum officer's questions, and only answer the questions asked. Emphasize that the most important thing is that they answer truthfully.
- Practice reviewing questions including "yes" and "no" questions, so they can practice and be more comfortable with giving both answers.
- Empower your client. Let them know it is okay to ask for a break to go to the bathroom or rest a moment. It is okay to show emotion. It is also okay to ask the officer to repeat a question, let the officer know when they do not understand a question, and respond with "I do not know" or "I do not remember." It often helps to practice this in prep sessions. Ask your client to practice asking for a break or asking to repeat a question when practicing. This will help empower them to do so the day of the interview.
- Instruct your client to wait for the interpreter to finish talking before responding. Help your client practice taking pauses while they speak, even mid-sentence, so that there is not too much information to be interpreted at any one time. Let them know that if they are asked to stop speaking by the interpreter or asylum officer, it is not a bad thing, it simply means they need a pause to catch up in the interpretation. It can be helpful to take a deep breath occasionally while speaking to allow for a natural pause for interpretation, and to help your client stay grounded in the moment.
- If your client has children included in the application, they will also need to attend. If your client does not have someone who can babysit, try to find a volunteer to come and agree to stay with the kids in the waiting room. Consider being prepared with activities and snacks for the kids. Depending on the children's ages, if they are very young and are not able to be interviewed (for example, if they are nonverbal), you can ask the officer at the beginning of the interview to ask questions of the child first (which your client can answer on their behalf as their parent). The child may then be able to go back to the waiting room with the volunteer caretaker.
- Let your client know what they can and cannot bring into the USCIS office and discuss appropriate attire. You may want to suggest bringing a sweater to have on hand in case the office is cold.
- Explain to your client what will happen after the interview. The asylum officer may approve the case or refer the case to the immigration court. They may wait to issue a decision until a later date, and then you will most likely have to pick up the decision from USCIS at a later date or wait for the decision by mail. Explain that even if the asylum



officer does not approve the case, the case will be referred to an immigration judge to consider fresh.

- o Ensure that your client is aware of the location of the asylum office and has a plan in place to get there that day. You may want to consider meeting your client somewhere else besides USCIS to enter together. It will be important to arrive early as timeliness is critical. Express to them the importance of eating in advance of arriving at the interview in case you are there all day.
- o Ask your client if they have any questions or if there is anything you can do to better support them that day.

Attorney Preparation/Conduct for Interview:

- o Bring a couple of copies of your representation document (Form G-28), asylum application (Form I-589), and client's declaration.
- o Bring any original documents to the interview for inspection by the officer.
- o Bring your identification and, if applicable, your bar card.
- o Bring sealed pre-packaged water and snacks for you and your client in a bag. The ability to bring these in may depend on the office, but it is helpful to have these on hand in case it is a long day.
- o If you are coordinating with an interpreter to attend, ask the interpreter to bring their identification as well.
- o Make a list of key points. If the asylum officer does not cover this information in their questioning, ask your client these questions related to these points when you are given time to do so at the end of the interview.
- o After the officer has completed questioning, ask to proceed with a few follow-up questions of your client if necessary. Try to address any real or perceived inconsistencies in your client's story. Ask the officer whether they see any outstanding issues or problem areas. Offer to address these with additional evidence if possible.
- o Take detailed notes of the interview as it will not be videotaped or recorded by the government.
- o Prepare an oral and, if possible, written closing statement. Summarize for the officer why the applicant is eligible for asylum and deserves to be granted asylum. Note that some but not all asylum officers are lawyers. Your summary is particularly helpful in cases where the officer would like to grant relief but needs your help in finding a legal basis for doing so.
- o Review guidance for asylum officers particular to children's claims, such as the [USCIS RAIO Directorate – Officer Training Children's Claims Training Module](#) (December 20, 2019).
- o Remember if an officer acts inappropriately, you should address the situation when it occurs and ask for a supervisor. Sometimes it may be necessary to make a complaint following an interview.

Post Interview:

- o Let your client know the interview has concluded and thank them for their strength.
- o In a private space—perhaps outside the USCIS building—ask your client if they have any questions or if anything was confusing to them.
- o It sometimes helps to provide an overview summary of what occurred before going over next steps.



- Then explain to your client what happens next, specifically, that the asylum officer will make a decision to either grant asylum or refer the case to an immigration judge.
- Ask your client how they are feeling. Encourage them to inform a family member, friend, and/or therapist if the interview experience has been especially traumatic. Consider whether to assist the child with deep breathing, stretching, a grounding technique like the 5-4-3-2-1 method,⁷ or any other methods that may help with processing their feelings.
- Remind the child that, if their claim is not approved, it is not the end of the road since the case will be referred to the immigration court where a judge will review their case.
- You may also wish to schedule a separate meeting to go over this information, but you would not want to wait too long so the information is fresh and to resolve any outstanding issues or questions quickly.

ASYLUM MERITS HEARING CHECKLIST

Working with an Interpreter:⁸

- For the merits hearing, the court will provide an interpreter if one is requested. But to prepare your case, you will need to find your own.
- If you are working with a nonprofit organization who referred you the case, check with them regarding finding an interpreter. It is likely best to try and secure pro bono interpretation whenever possible. It is also best to use the same interpreter throughout the life of the case.
- If you are having trouble finding an interpreter, you might also consider reaching out to law school immigration clinics to see if a student would be able to volunteer interpret for you.
- Be a bridge for your client to the interpreter. Explain confidentiality to both your client and the interpreter to help develop a trusting relationship.
- Make eye contact with your client even when speaking through an interpreter. Learn to rely more heavily on non-verbal communication.
- Remind a less-experienced interpreter to interpret verbatim and not in the third person.
- Practice with the interpreter prior to the hearing, and make sure the applicant can communicate effectively with them.
- Let your client know that they should say something if they have trouble understanding the court interpreter on the day of the hearing.
- Making objections to interpretation during court is a strategic move that is often necessary. If you do not speak your client's language, consider having a second-chair attorney or law student who does speak the language attend the hearing with you. They may be able to quickly assess discrepancies between your client's words and the interpretation to help you make objections when necessary.

⁷ See Sara Smith, BSW, *5-4-3-2-1 Coping Technique for Anxiety*, University of Rochester Medical Center's Behavioral Health Partners Blog (Apr. 2018), <https://www.urmc.rochester.edu/behavioral-health-partners/bhp-blog/april-2018/5-4-3-2-1-coping-technique-for-anxiety.aspx>.

⁸ See *supra* note 5.



Supplementing Documents/Correction to Asylum Application:

- Sometimes your opposing counsel's file is incomplete, or documents fail to make their way into the court file. Take two extra copies of all documents to the hearing and be prepared to provide them if needed. If you have file-stamped versions of your documents, have those handy in case you need to show proof of filing.
- Remember that all non-English documents must be translated into English, and you must include a certificate of translation.
- Review all case documents for consistency. If you need to make corrections to the application, be prepared to note those changes on the record for the court and trial attorney. You can also submit a written supplement to the application noting any changes and/or updates in advance of the hearing when you file your supplemental evidence. Ensure that this document is signed and dated by your client.
- Sometimes, you may find new evidence after your filing deadline that you want entered at the hearing. Be prepared to enter any new evidence into the record through testimony and making motions during direct examination in case the judge requires this for late filings.

Preparing Your Client for the Hearing:

- Remind your client of the legal requirements for the case and what you are trying to prove, as well as your case theory and strategy. This information may help your client have a full understanding of the proceeding, as well as help your client have a big picture understanding of the goals for the proceeding.
- Review the application and declaration with your client and note any changes.
- Depending on their age and skillset, provide your client with a copy of the application and their declaration. Provide the declaration in your client's best language so that they can review it easily. Ask your client to review dates/events if they are able to do so. Keep in mind that your strategy and how much emphasis to put on re-review of the declaration will likely depend on the child's age, abilities, and personality. For example, you do not want a very studious client to study the materials so much that they seem robotic during testimony. For some clients, it might be best to recommend reviewing a timeline so that they can review those details in advance instead of the full declaration. For a younger child, it may help to use drawings or a series of drawings that guide them through their story.
- If you are including any expert evidence, be sure your client is aware of what information is included in that evidence. It also helps to briefly review the other supplemental evidence submitted.
- Although you may not know, offer your client what information you do have about how long the hearing may last. If you plan to present other witnesses, let your client know that and in which order you expect to present them.
- Talk to your client about the initial questions an immigration judge will commonly ask at the beginning of an hearing, such as: "What is your name?", "Do you want this individual (full name of representative) to assist you today, to represent you?", "Have you seen this Form I-589 before?", and "Did someone review this form with you?". If your client only calls you by your first name, be sure that they know your full name, so they are not thrown off hearing your last name in court. Additionally, it may have been some time since they



saw the I-589, especially if there was delay between the time of filing the I-589 and the hearing date. It is important to refresh the child's memory in advance regarding the form and its contents. Reviewing how to answer some of the common questions that arise at the start of the proceeding will help the child begin the hearing with more confidence.

- Talk to your client about testifying. Ask them whether there are any aspects of their story that they really do not want to have to discuss in court. Discuss options for how you can go about making sure that the necessary information is still in the record.
- Let your client know that hearings in immigration court are typically open to the public. Although the courtroom is often empty for merits hearings because other hearings may not be scheduled at the same time, there is the possibility that another case will be set at a nearby time or that someone may try to observe the hearing. If your client prefers that their hearing be closed, request closure with the court.
- Conduct a mock direct examination and cross examination with your client. It is most helpful to use an interpreter and have a colleague play the role of opposing counsel during this practice exercise. It is also helpful to have someone play the role of the judge and ask your client some questions. Ideally, you can stay focused during the mock examination on the role you will play on the day of the hearing as counsel to your client.
- Explain the setup of the courtroom, including who will sit where and each person's role so that your client knows what to expect. It may help to share visuals or to create a drawing, so the child has a better understanding.
- Ensure that your client knows that they will likely be asked questions by you and the judge and cross examined by the DHS attorney. Explain that you can ask questions, but that you cannot answer them.
- Explain that the hearing will be recorded, and that both you and the opposing counsel will likely be taking notes, as may the judge.
- Remind your client to tell the truth, to listen carefully to all questions, and to only answer the questions asked.
- Empower your client. Let them know it is okay to ask for a break to go to the bathroom or rest a moment. It is okay to show emotion. It is also okay to ask that a question be repeated, let the judge know when they do not understand a question, and respond with "I do not know" or "I do not remember." It often helps to practice this in prep sessions. Ask your client to practice asking for a break or asking to repeat a question. Practicing these scenarios will help empower them to respond or act this way during the hearing.
- Instruct your client to wait for the interpreter to finish talking before responding to best allow for an accurate record of the hearing.
- If you know of distinct ways that your client's trauma may manifest itself during testimony (e.g., complete stoicism, crying, stumbling over words, etc.) be prepared to refer to evidence you have hopefully admitted about how trauma has affected your client.
- Empower your client to notify you regarding any difficulties that they are having understanding or hearing the interpreter. Let them know that it is essential that this issue is raised to you as soon as possible during the hearing, not afterward. You want to be able to help resolve the issue during the hearing.
- Let your client know what they can and cannot bring into the courtroom and discuss appropriate attire. You may want to suggest bringing a sweater to have on hand in case the courtroom is cold.



- o Explain to your client that both parties will have the option to reserve the right to appeal at the end of the hearing. Discuss the potential need to appeal the case and the process for an appeal. Explain that if you reserve the right to appeal, this does not mean you have appealed the case. You have simply preserved that option for them. There is a separate process and steps needed to appeal. This can be confusing to clients, so it is best to go over this information in advance.
- o If there is information you know regarding the particularities of the judge who is assigned or the DHS attorney, it may help to share this information with your client to provide them with local insights into what to expect. For example, if you know a DHS attorney is quite reasonable and respectful even on cross-examination, this can be comforting to a client. Additionally, if you know a judge is stern, quick to anger, and has a pet-peeve for storytelling and not getting to the point, it is important to inform your client of this and practice to ensure that you can present the best case during the hearing.
- o Ensure that your client is aware of the location of the immigration court and has a plan in place to get there that day. You may want to consider meeting your client somewhere else besides the immigration court to enter together. It will be important to arrive early as timeliness is critical.

Attorney Preparation/Conduct for the Hearing:

- o Make sure you have an E-28 on file with the immigration court.
- o Bring your case file and any preparation notes that you need. It is important to have a copy of your representation document (E-28) handy, along with the asylum application (Form I-589), client's declaration, and any supporting exhibits already filed with the court.
- o Bring any original documents to the hearing for potential inspection.
- o Bring your identification and, if applicable, your bar card.
- o Bring sealed pre-packaged water and snacks for you and your client in a bag. The ability to bring these in may depend on the immigration court or judge, but it is helpful to have these on hand in case it is a long day.
- o Prior to the hearing, you should discuss the potential outcomes with your client. You should also discuss in advance whether they would want to reserve the right to appeal under different circumstances. You will want to ask about this again at the conclusion of the hearing, but discussing in advance will help you prepare and give the client more time to consider their options.
- o Try to communicate with the DHS attorney in advance of the hearing to get their thoughts on the case. Local practice may be that it is best to reach out to the attorney via e-mail or phone, or to discuss at the hearing itself before the case is called. Find out if they are willing to stipulate that your client has met any of the eligibility requirements for asylum. It is also good to discuss in advance whether they have any specific concerns regarding your client's case and if there is any way to narrow the issues.
- o Prepare yourself for any key arguments in advance of the hearing. Make a list of key points as well as known challenges and issues and note how you plan to make any counter arguments. Anticipate any negative decisions you may receive from the judge regarding pre-hearing motions or issues relating to experts. For example, if you filed a motion for telephonic testimony or a motion for late filing, be sure you have arguments prepared why the witness or evidence is necessary. If you are working with an expert and plan to present



expert testimony, be sure you are prepared to argue why they should be allowed to speak on the issues as an expert witness.

- Take detailed notes during the hearing and be ready to address any inconsistencies, real or perceived, that arise. Utilize re-direct of your client if needed to clear up any issues. If your client is not opposed to observers, this could be a good opportunity for a law student to attend and assist with notetaking.
- If you notice that your client is having trouble with the interpreter, take a break to discuss any issues with your client and/or point out the issues on the record.
- If you see that your client needs a break, ask the court for a short recess on your client's behalf.
- Prepare an oral and, if possible, written closing statement. Summarize for the court why the applicant is eligible for asylum and deserves to be granted asylum.
- Review guidance from the Executive Office for Immigration Review (EOIR) for immigration judges particular to children's claims, such as EOIR [OPPM 17-03: Guidelines for Immigration Court Cases Involving Juveniles](#), Including Unaccompanied Alien Children, EOIR [DM 22-01: Encouraging and Facilitating Pro Bono Legal Services](#) (III.F. Child Respondents), and EOIR Policy Manual, Part II – Immigration Court Practice Manual, [Ch. 4.22 Juveniles](#).
- It may also help to review CILA's resource, [How to Prepare for an Individual Hearing: Different Practitioners' Perspectives](#), if you are new to representing someone in a merits hearing or if you are seeking additional guidance and tips for preparation and what to expect.⁹

Post Hearing:

- Let your client know the hearing has concluded and thank them for their strength.
- In a private space—perhaps in the private pro bono room at the court—ask your client if they have any questions or if anything was confusing to them. It sometimes helps to provide an overview summary of what occurred before going over next steps.
- Explain to your client what happens next. The judge may make a decision to either grant or deny asylum and any other relief you have sought at the conclusion of the hearing, or the judge may schedule another hearing to give the decision. The judge may or may not issue a written opinion. Remind your client of the possibility of either party filing an appeal regardless of what the judge decides.
- If the judge makes a decision during the hearing, explain the outcome to your client to ensure they understand it. If either party reserved the right to appeal, go over what this means and the next steps.
- If an appeal is necessary, set up another time for a meeting soon after the hearing to discuss that further.
- Ask your client how they are feeling. Encourage them to inform a family member, friend and/or therapist if the court experience has been especially traumatic. Consider whether to assist the child with deep breathing, stretching, or a grounding technique like the 5-4-3-2-1 method,¹⁰ or otherwise to offer help processing their feelings.

⁹ If you need the password to access this resource, email us at cila@abacila.org.

¹⁰ See *supra* note 7.



- You may also wish to schedule a separate meeting to go over this information, but you do not want to wait too long. It is best to discuss when the information is fresh and to resolve any outstanding issues or questions quickly, especially as there may be upcoming deadlines to appeal.

Additional Trauma-Informed Representation Practical Tips

- Use a person/child centered, strength-based-perspective approach. Focus on their strengths and allow them to tell you what they need. One is the expert of oneself.
- They are being brave to show vulnerability. It is not easy, so let them know that you care, and they are in a safe space, physically and emotionally.
- To help ensure understanding, ask the child to repeat what you said to make sure they understand.
- It is very possible for the child to get overly stressed or overwhelmed. It is helpful to plan for this type of situation to come up, rather than be surprised by it—being proactive is key. Make a plan.
- Tell the child that their emotions and feelings are important and that they should be respected. It is ok to allow yourself to feel, even when the feeling is not a pleasant one, but it is also important to learn how to navigate and understand what is that you are feeling—to identify the emotion/or feeling and possibly the reason for it.
- Sometimes a person can feel overwhelmed in the moment and struggle to be able to say exactly what they need. If this is the case, then you can try to focus on specific ways you might be able help in the moment. For instance, you can say, “When I’m upset, it really helps me to close my eyes and take deep breaths. I’m wondering what positive coping skill has helped you in the past.” Another approach might be to say, “I can see this has upset you, please let me know if there is anything I can do in this current moment and place to help you, like do you need alone time, do you need a glass of water, I am here to listen.” Make sure that you make your request clear and identify what you can do to help in the current moment and place. If you say in general terms, “How can I help you?”, they might make a request that you cannot grant in that moment. Do not set yourself and the client/child up for disappointment. The priority in this type of moment is to de-escalate the situation. You can always discuss other ways you can help later.
- Do NOT overwhelm them with questions either but DO read their non-verbal cues. Allow them to have the space and time to self-regulate. Do not try to rush the situation.
- Remember that one of the top predictive factors for resiliency is having a meaningful relationship with a caregiver (of course) but also with an adult outside the home (e.g., teacher, social worker, clergy, child attorney, etc.). You can be that for this child!



Additional Resources on Trauma-Informed Representation

- Webinar series by the Houston Immigration Legal Service Collaborative (HILSC) and partnering organizations: *Mental Health Evaluations for Immigrant Clients: From Your First Interview to the Merits Hearing*
 - [*From Trauma to Resilience: Learning Client's Stories with a Trauma-Informed Lens*](#)
 - [*Resilience for Youth: Working with Traumatized Immigrant Children*](#)
 - [*Setting-up Forensic Evaluations*](#)
 - Additional information is available on HILSC's [website](#)
- CILA resource, [*Tips for Working with Migrant Children and Trauma-Informed Lawyering*](#)
- CILA resource, [*Tips for Working with Children and Youth Remotely in a Hearing or USCIS Asylum Office Interview*](#) – If you need the password to access this webpage, email us at cila@abacila.org
- CILA webinar, [*Child Interviewing Techniques*](#)
- CILA webinar, [*Secondary Traumatic Stress and Self-Care*](#)
- CILA resource, [*CILA Pro Bono Guide: Working with Children and Youth in Immigration Cases*](#) – Section II.B. covers Trauma-Informed Lawyering and II.C. covers Interviewing Tips and Strategies

