The importance of signposting — and following through

Signposting is easy to illustrate. Not this: "The defendant claims . . . . The defendant also claims . . . . Finally, the defendant claims . . . ." But this: "The defendant makes three claims: (1) . . . , (2) . . . , and (3) . . . ." Or "The defendant makes three claims." And then use sentences beginning with "First," "Second," "Third" (or "Finally"). Signposting is a great convenience to readers. And it serves to check the writer's own organization, as the example below illustrates dramatically.

After having signposted, the writer must, of course, follow through in the same order, unless the shift is signaled with something like this: "To take them in reverse order." But if that's a better order, why not use it to begin with?

ORIGINAL

[Three sentences of facts and procedure omitted.] Garcia claims that the ~~BIA's~~ Board's ["*Board of Immigration Appeals" was spelled out in the previous sentence; make the same change throughout*] decision upholding the ~~I~~J's judge's [*likewise with "Immigration Judge"; again, the same change throughout*] denial of relief was erroneous ~~because~~ [**signpost here: "for three reasons"**] the IJ failed to ask her to articulate her proposed social group. [**That was reason one: social group.**] She further asserts that the BIA erred in upholding the IJ's finding that the threats she experienced in El Salvador did not rise to the level of persecution. [**Second reason: not persecution.**] Finally, she claims that the BIA erred in upholding the IJ's conclusion that she had failed to prove that it was more likely than not she would be tortured if returned to El Salvador. [**Third reason: torture not probable.**]

[Standard of review omitted.]

According to Garcia, she fled El Salvador with her youngest son because the gangs would not "leave [her] alone and in peace". [**What reason are we on?**] She explained: . . . . [Five sentences of facts omitted.]

Garcia has proven that, at most, she suffered two incidents of harassment unaccompanied by physical harm or a significant deprivation of liberty. [Definition of "persecution" omitted.] ~~As such~~ Thus, the evidence does not compel reversing the IJ's determination that Garcia did not establish harm rising to the level of persecution warranting withholding of removal. [**So at last we find out that we were on reason two.**]

According to Garcia, it was erroneous for the IJ not to ask her to identify a particular social group ~~(PSG)~~. [**And now we're backing up to reason one.**] She contends: the proposed social groups of gender and family were raised in her testimony; and the IJ erred in failing to consider and make factual findings on those groups.

Before the BIA, Garcia asserted that she was a member of two ~~PSGs~~ particular social groups: "people in fear of violence in El Salvador"; and "Salvadorian Women Seen as Vulnerable and Unprotected by [a] Criminal Gang Organization". . . .

Because Garcia did not raise these proposed social groups in her appeal to the BIA, or otherwise challenge the IJ's purported error in failing to ask her to articulate a ~~PSG~~ particular social group, she has failed to exhaust her available remedies, and we lack jurisdiction to consider such claims.

Finally, [**tell us what reason we're on**] the IJ reasonably denied Garcia's request for protection under ~~CAT~~ the Convention on Torture. [*The name appeared eight paragraphs ago; the reader will probably have to look back.*] In seeking to establish one of the conditions that must be satisfied for such relief, although Garcia testified that she would be killed by her daughter's ex-boyfriend and his gang if she returned to El Salvador, as noted *supra*, there is no evidence in the record that she was ever physically harmed by the ex-boyfriend or his gang. Garcia identified only a single instance where the ex-boyfriend possibly threatened her, when she was on her way home from work.

Garcia claims that mental suffering can constitute the requisite torture under BIA precedent and that the ex-boyfriend's persistent text messages to her daughter threatening the family satisfy the definition of torture. As Garcia acknowledges, however, to constitute torture, mental pain and suffering must be . . . . [Definition omitted.] The ex-boyfriend's conduct would not cause the sort of mental pain and suffering protected against by ~~CAT~~ the Convention on Torture.

Garcia's testimony regarding the murder of her cousin by gang members likewise does not establish . . . .

I used boldface to note the lack of signposting in the original opinion and its use in the revised version. You'll see that in the original, the writer did not follow through on the order of the claims given in the first paragraph.

Also in the original opinion, I redlined a couple of repeated items: missing *that*s, and unnecessary acronyms and initialisms (never mind the technical difference). After most verbs, *that* provides a helpful joint and often prevents miscues. And let me say it again: a pox on unnecessary acronyms. (See the Summer 2021 column.)

Last note: I omitted citations.

REDLINE

[Three sentences of facts and procedure omitted.] Garcia claims that the Board's decision upholding the judge's denial of relief was erroneous **for three reasons**: (1) the judge failed to ask her to articulate her proposed social group; (2) the Board erred in upholding the judge's finding that the threats she experienced in El Salvador did not rise to the level of persecution; and (3) the Board also erred in upholding the judge's conclusion that she had failed to prove that it was more likely than not she would be tortured if returned to El Salvador.

[Standard of review omitted.]

On Garcia's first claim—that she wasn't asked to name a particular social group—she contends that she raised the proposed groups of gender and family in her testimony and that the judge erred in failing to consider and make factual findings on them. Before the Board, she asserted that she was a member of two such groups: "people in fear of violence in El Salvador" and "Salvadorian Women Seen as Vulnerable and Unprotected by [a] Criminal Gang Organization". . . .

But Garcia did not raise these proposed groups in her appeal to the Board or otherwise challenge the judge's purported error in failing to ask her to articulate a social group. So she has failed to exhaust her available remedies, and we lack jurisdiction to consider her claims.

On Garcia's second claim—that threats against her rose to the level of persecution—she has proved that, at most, she suffered two incidents of harassment unaccompanied by physical harm or a significant deprivation of liberty. She said she fled El Salvador with her son because the gangs would not "leave [her] alone and in peace." She explained . . . . [Five sentences of facts omitted.]

These incidents of harassment do not rise to the level of persecution. [Definition of "persecution" omitted.] The evidence does not, therefore, warrant withholding her removal.

Finally, **on proving a likelihood of torture if Garcia were returned**, the judge reasonably denied her request for protection under the Convention on Torture. Although she testified that she would be killed by her daughter's ex-boyfriend and his gang if she returned to El Salvador, as noted above there is no evidence in the record that she was ever physically harmed by any of them. She identified only a single instance of the ex-boyfriend's possibly threatening her, once when she was on her way home from work.

Garcia also claims that mental suffering can constitute the requisite torture under Board precedent and that the ex-boyfriend's persistent text messages to her daughter threatening the family satisfy the definitional test. As she acknowledges, however, to constitute torture, mental pain and suffering must be . . . . [Definition omitted.] The ex-boyfriend's conduct would not cause that degree of mental pain and suffering.

Garcia's testimony about her cousin's murder by gang members likewise does not establish . . . .

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