

## Introduction

Legal writing is a craft defined by strict expectations and parameters. All litigators—including those who represent survivors of gender-based violence and other severe persecution in immigration proceedings—must generally adhere to those expectations. If we do not do so, we serve our clients poorly.

The representation of immigrant survivors, however, also entails unique responsibilities. Most fundamentally, we must center our clients. Survivors of severe persecution have endured dehumanizing trauma. Building trust with our clients therefore requires us to consciously view them, and describe them, as full people. Moving one step outward, we must also emphasize the humanity of every person in a client's story. After all, immigration court is a forum in which the client and their friends and relatives are seen as literally "alien." And we must also account for the broader environment by remembering both that the choices we make in the current case can affect the ability of future clients and other people to receive protection from persecution and that the policies and even the language of the U.S. immigration system are rooted in deep inhumanity toward other people.

The implementation of these principles is not always straightforward. To be sure, in many cases doing so happily coincides with the general principles of good legal writing. But in others, the need to center the survivor, to center the humanity of all involved in the story, and to navigate the charged context of immigration proceedings—all while maintaining the respect of adjudicators that range from open-minded to unabashedly hostile—requires nuanced departures from standard legal writing.

This guide does not replace, or displace, the overarching principles of legal writing. Every lawyer who writes briefs should—indeed, must—know the basic principles of style and be able to construct coherent, logical, and persuasive arguments. We presume familiarity with those basics.

## Center the Client

1. **Call clients by their names.** “Respondent” is not a particularly human term. It’s also clunky and potentially confusing, given that a “respondent” in immigration court can become a “petitioner” in a federal court of appeals.
2. **Use the name the client prefers.**
  - a. Names vary by culture. A client from Honduras named Catalina Estefania Perez Ordoñez, for example, might well wish to be called Ms. (or Miss, or Mrs.) Perez (or Perez Ordoñez) rather than Ms. Ordoñez. Ask which she prefers. And if she would like Ordoñez to be included, do not forget the tilde over the second “n.” That’s part of the client’s name, too.
  - b. Clients who are trans, and others, might have changed their names. Use the client’s current name whenever referring to them. If the case caption uses a prior name, use the court’s caption but include a brief explanatory footnote. (The same procedure can be followed in the unfortunately common situation in which a caption misstates a client’s name.)
3. **Use the client’s correct pronouns and gender.** As with the client’s name, this is a matter of basic respect. It is, of course, an unfortunate fact that some adjudicators might be put off by seeing an individual referred to as “they.” But if a decision is made to bow to that mindset and use pronouns that correspond to a person’s sex at birth, it must be the client’s decision, not yours.
4. **Correctly refer to, and spell, the client’s country of origin, community of origin, and language.** This is another matter of basic respect. In the case of language, using the correct language also maximizes

- the possibility that the government will provide an appropriate interpreter and/or translator—and will help tee up arguments on appeal if it does not.
5. **Remember that survivors should not be defined solely by their experience of violence.** They have family relationships and friends, (often) held jobs, are and were community members, and have a wealth of experiences beyond being the targets of violence. Always highlight at least some of these other relationships and experiences, and always highlight the client's positive attributes beyond courage. Doing so not only humanizes the client but also makes for a more persuasive story.
  6. **Do not include gratuitous characterizations of the client.** Unless a characteristic—race, ethnicity, religion, gender identity, etc.—is relevant to your case or important to your client, there is no need to mention it. Avoiding gratuitous characterizations gives less room for adjudicator bias and also prevents you from making mistaken assumptions about a client's identity.

## Center People

1. **Put people first.** Doing so figuratively means doing so literally by leading with the fact that a person is a person rather than with status, trauma, violence, or the like. So, use "a person who is undocumented" rather than "an undocumented person." Similarly, use "a survivor of sexual assault" rather than "a sexual assault survivor" and "person seeking asylum" rather than "asylum seeker."
2. **People are people, not aliens.** Avoid use of the term "alien" in all contexts. When quoting a statute, regulation, or other authority that uses "alien," replace it with "[noncitizen]." But even "noncitizen" reduces a person to their nationality. Outside of quotes, use more specific person-centered

- phrases—such as “people who are undocumented,” “people who have applied for U nonimmigrant status,” etc.—wherever possible.
3. **People are not “illegal.”** Saying they are is a category error. Only actions can be illegal. But even there, be careful how you use “illegal.” Crossing the border between ports of entry is technically illegal. There is, however, nothing to be gained by emphasizing that fact. Also relevant is the fact that crossing between ports of entry has been the only way for people to exercise their statutory right to apply for asylum in the United States for the last several years. Consider instead language such as “entering without inspection” or “entering between ports of entry.”
  4. **People who have experienced gender-based violence or other persecution are survivors, not victims.** The word “victims” has connotations of passivity and helplessness. Save it for victims of homicide, to whom those connotations can apply. People who have experienced sexual assault, female genital mutilation/cutting (FGM/C), severe gang violence, and the like continue to have agency. They are survivors and should (unless a particular client wishes otherwise) be called survivors.
  5. **People who commit violence are people, too.** Calling someone an “abuser,” a “criminal,” or a “gang member” has the same effect as calling someone a “victim”: it reduces them to a set of violent interactions. To be clear, the violence that the person committed should not be downplayed or hidden in a brief. We can, however, recognize that the person committing violence is a person—and a person situated in a specific time and place—without minimizing the moral wrongness or negative effects of their actions. There is good reason to do so. Violence has two sides, and reducing the person who perpetrates violent actions to those actions also reduces survivors to victims of those actions. So center people and the client by referring to a person who committed violence either by name or by their relationship to the client (“ex-partner,” “father-in-law,” and so forth)—whichever is more appropriate in a given context.

## Be Sensitive to the Policy Environment

1. **Never denigrate other marginalized groups.** Using animus against one marginalized group in an attempt to improve the fortunes of another marginalized group is a tactic as old as time—and only strengthens the control of (in the United States, cis het White male Christian) elites. What’s more, survivors of severe violence often belong to numerous marginalized groups on account of factors including their race or ethnicity, gender identity, language, and income. And meaningful improvement in the lives of all survivors and meaningful systems change both require the reduction of prejudice against all marginalized groups.
2. **Avoid cultural stereotypes.** For example, when discussing violence against women in Guatemala, do not rest on broad assertions about *machismo* culture. Doing so paints the entire country as “other” and will cut against any Guatemalan man who seeks asylum before the same adjudicator your client faces. Instead, wherever possible, focus on specific and verifiable facts: persistently high femicide rates, low conviction and investigation rates for gender-based crimes, instances in which police or government officials refused to assist survivors, and so forth. Such facts are also more persuasive than sweeping cultural characterizations, which are more difficult to connect to a client’s experiences.
3. **Educate with cultural sensitivity.** Not even well-meaning adjudicators have an encyclopedic knowledge of every country, much less every client. Take the time to educate them. For instance, in a country in which aunts, uncles, and grandparents are considered close family—or for a client who views particular relatives as close—do not assume that the adjudicator will understand absent explanation.

4. **Do not endorse punitive immigration measures.** Punitive immigration policies do not serve survivors. They always have, and always will, be applied to your client as well as to the person who abused your client. And there is no need to endorse punitive immigration policy in order to obtain relief for your client. This is true even of U nonimmigrant status. People who apply for U status are eligible whether or not the person who committed a crime against them ultimately goes to prison—or is deported.
5. **Eliminate euphemisms.** We have become inured to, but must push back against, language that minimizes the harm the United States inflicts on immigrant survivors—and, indeed, on all immigrants.
6. **Refer to punitive measures in accurate, non-euphemistic ways.**
  - a. “Detention,” for instance, does not sound terrible. It is, after all, something children serve after school. The conditions encountered by people seeking asylum, on the other hand, are deplorable. So do not say they are “detained.” Say that they are imprisoned by DHS even though they committed no crime (or for minor immigration violations). Similarly, tracking devices affixed to a person’s ankle are “shackles,” not “monitors.”
  - b. Refer to policies by their effects, not by inaccurate official titles. For example, do not use the phrase “Migrant Protection Protocols” in an unironic way. You will have to cite that official title—but do so only once. Otherwise make clear that it is a policy that forces survivors and others to run a severe risk of kidnapping and other violence while waiting in tent camps in northern Mexico. To take another example, the executive branch blandly refers to the 2020 regulations that would have dramatically narrowed eligibility for asylum as the “Global Asylum Rule.” That’s anodyne and obscures the fact that the rule would have effectively ended asylum. “Anti-Asylum Rule” is far more accurate.

7. **Do not insist on the perfect client.** People seeking asylum are people, and they are thus imperfect. Placing stress on the absence of visible imperfections in the record of a given case therefore disserves all people seeking asylum by creating unrealistic expectations in the mind of adjudicators. Doing so also reinforces structural racism. Because people who are Black, Indigenous, or people of color (BIPOC) are disproportionately targeted by law enforcement, the presence, absence, or relative of a criminal history in a given case reflects a person's background—not just their actions.
  
8. **Do not insist on the perfect case.** As part of their zealous advocacy, good lawyers tend to produce voluminous records on behalf of their clients. But a system in which only voluminous evidence will lead to a grant of relief is not a viable system for immigration cases. After all, many people who find themselves in immigration court have no choice but to proceed *pro se*, and most do not have the benefit of high-quality counsel. Make clear in your arguments, then, that your mountains of evidence are not merely sufficient—they are *far more* than is needed. And vigorously resist claims by the government that would further increase the necessary quantum of evidence.

## Conclusion

The guidelines above should result in a brief that conveys the full humanity of survivors and that recognizes the patriarchal, White supremacist roots of our immigration system without implicitly endorsing those roots. Of course, these guidelines do not, and cannot, cover every conceivable circumstance. But the basic principles underlying them—centering the client; centering people; and remaining sensitive to the policy environment—serve as guideposts even in novel, difficult cases.

If you have any questions about the guide or survivor-centered legal writing more broadly or have suggestion for additions to the guide, please contact Richard Caldarone, Senior Litigation Counsel, at [RichardC@tahirih.org](mailto:RichardC@tahirih.org).

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