INSTITUTE FOR THE ADVANCEMENT OF JUSTICE & HUMAN RIGHTS

GUIDE TO DOMESTIC CRIMINAL ENFORCEMENT
OF TORTURE AND CRUEL, INHUMAN, OR DEGRADING TREATMENT IN THE UNITED STATES

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Prepared as an educational legal memorandum for federal and state prosecutors, attorneys general, inspectors general, civil rights units, public integrity sections, judicial conduct authorities, and oversight personnel.

Why This Document Exists

The United States ratified the Convention Against Torture after the Senate gave advice and consent subject to Reservations, Understandings, and Declarations, on the premise that existing domestic law and institutions were sufficient to meet the country's treaty obligations without additional comprehensive implementing legislation. The executive branch accepted that conclusion and transmitted it internationally in every periodic report to the CAT Committee. The Committee Against Torture found in 2014 (CAT/C/USA/CO/3-5) that this promise has not been kept. The Committee found: (a) the specific offence of torture has not been introduced at the federal level in full conformity with Article 1 of the Convention; (b) the 'prolonged mental harm' understanding creates actual or potential loopholes for impunity; (c) the Article 16 reservation was invoked in DOJ Office of Legal Counsel memoranda as authority for 'deeply flawed legal arguments' advising that interrogation techniques amounting to torture could be authorized; and (d) the CIA rendition and secret detention programme was not fully investigated or prosecuted. These are the Committee's findings. The guide argues, based on the public records it cites, that existing domestic institutions have failed to provide functionally equivalent relief, remedy, and criminal review in the judicial-setting cases emphasized here. This recurring structural shortfall — including, in the documented judicial-setting cases emphasized here, responses that effectively deferred to institutions alleged to be implicated in the violations — is one of the principal structural failures that this guide exists to address. That failure is documented in the public records cited throughout this guide. Every one of those failures happened in the decisions of individual prosecutors and officials who could have chosen differently. This guide exists because the next time such a decision is made, the prosecutor making it should know exactly what the law requires, what the treaty demands, and what the gap between those two planes means for the person in front of them.

The guide also relies on recent Special Rapporteur material as part of its broader argument that ethically unlawful adjudicative conduct does not necessarily foreclose future accountability. The full analysis appears in Part C.

Why This Terrain Is Unconventional

The prosecutor reading this guide is entering a terrain in which ordinary domestic criminal process is necessary but not sufficient. Domestic statutes may support punishment, retaliation charges, or obstruction charges while leaving protection, rehabilitation, non-repetition, or full remedy only partially addressed. CIDT cases are particularly at risk of silent conversion into non-enforcement: unlike Article 1 torture, CIDT has no dedicated domestic criminal vehicle, yet the same five-outcome treaty obligations apply in full. The prosecutor must therefore do more than decide whether a presently chargeable offense exists: the prosecutor must identify which of the five required outcomes — protection, prevention, relief, remedy, and punishment — the criminal process can presently deliver, secure those aggressively and lawfully, and convert every unmet remainder into an explicit, preserved, and reportable record.

This is not a request to ignore domestic law or to pretend UNCAT is directly chargeable whenever domestic statutes are incomplete. It is a requirement that the prosecutor recognize the State Party owes more than a binary charge/no-charge answer. A declination may be correct on Plane B. It does not end the State's obligation. It begins the residual duty to preserve, document, and report every unmet component of the full outcome set.

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PROSECUTOR QUICK-START — READ THIS FIRST

What This Document Does

This guide — published by the **Institute for the Advancement of Justice & Human Rights (IAJ)** — provides the complete legal framework for evaluating whether conduct by a public official constitutes torture or CIDT under the Convention Against Torture, what domestic criminal statutes reach that conduct, what to do when no statute fully fits, and how to avoid creating a custom of silent impunity. This guide should be read together with the IAJ Psychological Investigation Standard (v1.5, IAJ-STD-20260324-001-PUB, March 2026) — which supplies the forensic clinical methodology underlying the guide's severity, causation, evaluator-qualification, and systemic-intent analysis (cross-referenced in Elements 8–9, C-VII, C-III, C-0A, and A-V-C) — and UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB), which supply the forensic and analytical disciplines for documenting severity, causation, consistency, and institutional non-equivalence.

Practice Point: What CAT Requires Right Now — Three Immediate Obligations

1. Investigate: Where there is reasonable ground to believe torture or CIDT may have occurred, open or refer for prompt and impartial investigation for both torture AND CIDT. This threshold is LOWER than probable cause and applies equally to Article 1 torture and Article 16 CIDT. [Art. 12, Tier 2/3]
2. Protect: Assess retaliation risk against complainants, witnesses, and supporting experts and trigger all available domestic protection measures — immediately, before charging decisions are made. [Art. 13, Tier 1/2]
3. Document and report gaps: Where no domestic charge fully fits, prepare a written non-equivalence memorandum addressing both the domestic enforceability plane and the international obligation plane, preserve the underlying record, and route the matter through the appropriate internal reporting channels. Do not treat non-equivalence as legal equivalence by silence. [Tier 3 → institutional duty]

If You Have 5 Minutes: 10 Issue-Spotting Questions

1. Is there credible evidence of severe physical, psychological, or dignity harm caused by official conduct?
2. Is the harm linked to a public official, an act under color of law, or official consent or acquiescence?
3. Did the official have ACTUAL NOTICE of the harm risk and continue anyway? [Farmer v. Brennan test]
4. Was the harmful conduct serving a purpose that could NOT have been achieved by a less harmful alternative? [Hudson / Whitley / Chavez-Kennedy test]
5. Is there a disability, racial, national-origin, or other discriminatory motivation? [UNCAT Art. 1 discriminatory purpose; § 249; § 1985(3)]

6. Is there retaliation against complaint-making, accommodation requests, or expert/witness participation?
7. Is a judge or other judicial official involved? [Do NOT stop — judicial office is not criminal immunity. See Part C, Section C-VI.]
8. Is the person in jurisdictional custody — unable to exit without catastrophic legal consequence? [See Part C, Section C-VII, Move 6 — IAJ analytic extension, not settled domestic doctrine]
9. Is there a domestic criminal statute that genuinely reaches the conduct? [Charging matrix — Part A, Section A-II]
10. If no full domestic equivalent exists, has the gap been documented and escalated on both the domestic and international planes? [Part A, Section A-V; Two-Plane Framework — Part C, Section C-V]

Mandatory If-A-Then-B Action Rules

If there is reasonable ground to believe torture or CIDT occurred: OPEN or REFER for investigation, where institutional authority and office structure permit. Do not wait for trial-level certainty.

If a judge or official is involved: Do NOT stop. Evaluate independently criminal conduct under §§ 241-242. See Part C, Section C-VI.

If retaliation against a complainant is present or threatened: Trigger complainant-protection measures IMMEDIATELY. See Part A, Section A-III.

If discriminatory animus is present — whether disability-based, race-based, national-origin-based, religion-based, gender-based, anti-poverty, anti-parental, anti-immigrant, anti-pro-se, or analogous: Review the conduct under applicable domestic criminal theories, including § 242 where color-of-law deprivation is present. See Part C, Section C-VIII for the fuller class-specific analysis.

If the person cannot exit without catastrophic consequence: Consider whether IAJ's jurisdictional custody analysis (Part C, Section C-VII, Move 6) may be relevant. This is an IAJ analytic extension, not yet settled domestic doctrine; present it as a reasoned interpretation supporting the argument that OPCAT Art. 4(2) is substantially implicated.

If you are the prosecutor reviewing a torture allegation: Read Part A, Section A-VI. The civil immunity that shields your charging decision does not resolve the State's Article 12 obligation. Those are different legal questions on different planes.

If no domestic charge fully fits: Document the gap in a written non-equivalence memorandum addressing both planes and escalate. Do NOT silently decline. See Part A, Section A-V.

PART A

PROSECUTOR DESK REFERENCE

Operational guidance for prosecutors, investigators, supervisors, and public-integrity officers

A prosecutor needing only operational guidance may stop at the end of Part A

For the treaty-body and methodological analysis supplying the foundation for these operational rules, see Part C. Sections in this Part include cross-references directed to the relevant synthesis sections. Part A's rules stand independently without requiring Part C.

The Prosecutor's Dual Role Under UNCAT — The Foundational Premise of This Guide

Who the prosecutor is in the treaty architecture: A prosecutor employed by a U.S. federal or state government is an official of a State Party to the Convention Against Torture. Under international law, a State Party acts through its officials. When a prosecutor decides whether to investigate, charge, or decline a matter involving documented official abuse, that decision may contribute directly to the United States' compliance or noncompliance record on Plane A. For purposes of state responsibility, prosecutorial action is one of the ways the State acts through its officials. That proposition should not be mistaken for a claim that all domestic questions of authorization, hierarchy, or personal liability collapse into a single rule of automatic attribution. What matters operationally is that prosecutorial choices may either preserve or obscure the gap between what the treaty requires and what domestic law presently delivers.

The concurrent obligation: Every prosecutorial decision touching documented official torture or CIDT carries two simultaneous obligations operating on different planes. On Plane B, the prosecutor must comply with domestic structural constraints — evidentiary standards, charging guidelines, prosecutorial discretion, resource allocation, supervisory authority, and the limits of available statutes. On Plane A, the prosecutor must ensure that the State's international obligation is not silently extinguished by those Plane B constraints. These obligations do not collapse into each other. A declination that is fully justified on Plane B may still constitute a Plane A implementation shortfall. Documentation makes that shortfall visible, preserves the record, and keeps the compliance obligation alive rather than allowing it to disappear silently.

What UNCAT requires the State to deliver — the five required outcomes: The Convention does not merely prohibit torture. It requires the State Party to deliver five specific outcomes for every person within its jurisdiction who suffers torture or CIDT. (1) Protection from the prohibited treatment before harm occurs where risk is known (Art. 2). (2) Prevention through training, institutional design, and systemic measures (Arts. 10, 16). (3) Relief through a functional complaint pathway free from retaliation (Art. 13). (4) Remedy through full reparation — restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition — as elaborated in General Comment No. 3 (Arts. 14, 16). (5) Punishment through criminalization and prosecution without exception for official status (Arts. 4, 7). The prosecutor's role touches all five, not only the fifth.

The gap-documentation imperative: Where Plane B constraints prevent the State from delivering any of the five required outcomes, the constraint must be documented in writing as a specific gap identifying the unmet treaty obligation. The documentation is not bureaucratic compliance theater. It is the prosecutor's contribution to the State's compliance record under UNCAT — the record that can later inform periodic review by the CAT Committee, shadow reporting, special-procedures engagement, and, where an applicable communications procedure is available against the State concerned, treaty-body or analogous individual complaint review. Where a credible torture or CIDT allegation presents a genuine implementation shortfall, an undocumented declination risks converting that shortfall into an invisible compliance failure. A documented gap, by contrast, preserves the possibility of supervisory, legislative,

civil, or international review and keeps the State's compliance record accurate. For the U.S. periodic reporting record and what the CAT Committee found, see Part C, Section C-0.

A-I. EXECUTIVE CONCLUSION

U.S. prosecutors cannot safely assume that the absence of a perfect one-to-one domestic UNCAT statute eliminates the duty to investigate and prosecute public-official violence, coercion, retaliatory degradation, abuse of custody or control, or rights-deprivations that fall within the Convention Against Torture's substantive prohibitions. CAT requires, in functional terms, protection, prevention, relief, remedy, and punishment — including prosecution of responsible actors where domestic law genuinely reaches the conduct, protection of complainants against retaliation, and such remedial or non-repetition measures as the domestic system can lawfully supply or preserve for other channels. It also requires criminalization, prompt and impartial investigation where there is reasonable ground to believe torture or CIDT occurred, prosecution of responsible actors, and prevention of cruel, inhuman, or degrading treatment committed by or with the consent or acquiescence of public officials.

At the same time, CAT should not be treated as a universally freestanding domestic criminal rule in disregard of self-execution doctrine. The sound prosecutorial position is narrower and firmer: charge through existing domestic statutes wherever available; use CAT as interpretive, gravity, and compliance-forcing authority where appropriate; do not treat judicial office or other public office as an immunity shield; and where domestic law is incomplete, document and report the implementation gap rather than silently convert that gap into non-enforcement.

The prosecutor is therefore operating on two planes at once. On the domestic enforceability plane, the prosecutor must stay within enacted law, evidentiary standards, and institutional authority. On the international obligation plane, the prosecutor must ensure that any structural shortfall becomes visible rather than invisible. A declination may end one domestic pathway. It does not end the State Party's obligation, and it does not justify allowing the unmet remainder to disappear from the record. The prosecutor's task is not conventional minimalism, but maximum lawful anti-impunity practice.

A-II. DOMESTIC CHARGING VEHICLES AND CHARGING MATRIX

The principal federal torture statute, 18 U.S.C. § 2340A, is extraterritorial and applies only to conduct committed outside the United States.[1] It offers insight into how, by parity, torture should be prosecuted domestically. For domestic official abuse, the primary criminal vehicle is 18 U.S.C. § 242. Important note on § 249 for judicial disability discrimination: the IAJ's Disability Harmony thesis identifies that § 249 requires willful bodily injury or the use of fire, firearm, dangerous weapon, or explosive — elements typically absent from judicial accommodation denial. Section 242's willful deprivation of rights under color of law is the more legally available vehicle for judicial disability discrimination facts:

[1] 18 U.S.C. § 2340A; U.S. Dep't of Justice, Criminal Resource Manual § 20 (statute expressly limited to torture committed outside the United States).

UNCAT Is Not Limited to Prisons, Custody, and Interrogation Rooms — A Critical Premise

The text contains no setting qualifier. UNCAT Article 1 defines torture as any act by a public official in any official capacity inflicting severe suffering for any enumerated purpose. The words 'detention,' 'prison,' and 'during interrogation' do not appear. Courts, hospitals, administrative agencies, family proceedings, civil judicial processes, and all other settings where public officials act in official capacity are within the Convention's reach where the five Article 1 elements are satisfied. The CAT Committee confirmed in General Comment No. 2 (2008) ¶3 that all branches of government — including the judiciary — are bound.

The practical reality for prosecutors is clear: current U.S. domestic law does not provide enough statutory coverage to reach the full range of torture and CIDT prohibited by UNCAT. Some conduct can be pursued through §§ 241, 242, 1512, 1513, and 1519 — but significant categories of torture and CIDT remain only partially covered or uncovered, especially outside the classic prison-interrogation setting and especially at the Article 16 CIDT level. The CAT Committee confirmed in 2014 that the United States had not criminalized torture at the federal level in full conformity with Article 1 and that serious definitional discrepancies created actual or potential loopholes for impunity. In CAT/C/USA/CO/3-5, the Committee rejected the U.S. government's assurance that all acts of torture as understood in the Convention were already punishable under U.S. law, found the "prolonged mental harm" understanding excessively narrow, recommended re-introduction of the Law Enforcement Torture Prevention Act, and recommended withdrawal of the Article 16 reservation. Neither recommendation has been implemented. Where no domestic vehicle fully fits, that shortfall must be documented — it is not proof that no violation exists.

Operational consequence: A declination on the ground that 'no domestic statute covers this' may be correct as a matter of Plane B law. It is simultaneously a specific instance of the compliance failure the Committee documented in 2014. The charging matrix below maps available domestic vehicles honestly. Where no vehicle fully fits, that shortfall requires documentation, record preservation, and internal reporting — not silent closure. For the full textual, treaty-body, jus cogens, and VCLT Article 31 arguments establishing that UNCAT is not limited to custodial settings, see Part C, Section C-0A

Theory	Primary Statute	Tier	Key Notes
Direct official abuse under color of law	18 U.S.C. § 242	Tier 1	Primary vehicle. Willful deprivation of constitutional or federal-law rights under color of law. The more legally available vehicle for judicial disability discrimination facts than § 249, which requires physical harm or weapon elements typically absent from accommodation denial.
Coordinated official deprivation	18 U.S.C. § 241	Tier 1	Conspiracy to injure or oppress in exercise of federal rights; requires agreement and federal-right nexus
Retaliation, concealment, complaint distortion	18 U.S.C. §§ 1512, 1513, 1519	Tier 1	Article 13 protection values overlap; suppression of complaint or evidence is independently chargeable
Hate crime — all covered classes	18 U.S.C. § 249	Tier 1/2	Secondary theory where bodily injury element is independently satisfied. Section 249 covers: (a)(1) race, color, religion, national origin; (a)(2) religion, national origin, sexual orientation, gender, gender identity, disability. UNCAT Art. 1 adds: 'any reason based on discrimination of any kind' — broader than any domestic enumeration. Note: § 249 requires willful bodily injury or use of fire, firearm, dangerous weapon, or explosive. Elements typically absent from judicial accommodation denial and similar non-contact official abuse.

Theory	Primary Statute	Tier	Key Notes
			§ 242 is the more legally available primary vehicle for those fact patterns. Disability receives special mention because the ADA accommodation-denial context is the most common judicial torture vector; the omission of the other covered classes from any review is itself a compliance failure.
Conspiracy to obstruct justice in federal court	42 U.S.C. § 1985(2)	Tier 2	Covers conspiracies to deter any party or witness in any federal court from attending or testifying. Distinct from § 1985(3); directly applicable where coordinated conduct targeted federal court participation.
Class-based animus conspiracy — all recognized classes	42 U.S.C. § 1985(3)[2]	Tier 2 (civil)	Civil analogue only; not a DOJ criminal count. Race is the paradigmatic § 1985(3) class and the safest footing. Other classes vary by circuit — treat with jurisdiction-specific caution before relying on any non-race class in a charging analysis. See Part C, Section C-VIII.
CIDT without domestic equivalent	Gap documentation + §§ 241-242 where any element fits	Tier 3	Identify gap in writing on both planes; preserve record; escalate

[2] Section 1985(3) is a jurisdiction-dependent civil analogue. The full circuit-split analysis and the principle that civil-doctrine uncertainty does not excuse prosecutorial inaction appear in Part C, Section C-VIII.

A-II-B. THE § 2340A PARITY PRINCIPLE AND THE PROPER EQUIVALENCE TEST

The principal federal torture statute, 18 U.S.C. § 2340A, is extraterritorial. It applies only to conduct committed outside the United States. A U.S. prosecutor evaluating domestic conduct involving public officials cannot charge under § 2340A. But the statute's existence and its content are not irrelevant to domestic prosecutorial practice. They establish, through Congress's own legislative choice, what outcomes — investigation, prosecution, sentence, and the treaty characterization that justifies them — the United States is prepared to deliver for torture. The parity argument is this: a complainant of domestic official torture should receive, through available domestic vehicles, outcomes at least as protective as what § 2340A would deliver if it applied domestically. Where domestic vehicles produce less, the shortfall is a compliance gap that must be documented. Where the shortfall is measured not merely against § 2340A but against UNCAT treated as self-executing for comparison purposes, the full scope of the treaty equivalence failure becomes visible and must be fully documented.

A. What § 2340A Establishes When Applied Extraterritorially

Section 2340A implements UNCAT's Articles 4 and 7 for conduct occurring outside the United States. It establishes:

Element	What § 2340A Provides
Definition of torture	Incorporates 18 U.S.C. § 2340's definition: (A) severe physical or mental pain or suffering; (B) specifically defining 'severe mental pain or suffering' as the prolonged mental harm caused by or resulting from enumerated predicate acts including threatened death, severe physical pain, and administration of mind-altering substances. The U.S. definition is narrower than UNCAT Article 1 in one direction (the 'prolonged harm' understanding); but the underlying structure adopts the same severity, intent, official capacity, and purpose framework.
Criminal penalties	Up to 20 years' imprisonment. Life imprisonment or death if the victim dies. Applies to the torturer personally, to those who conspire to commit torture, and to those who attempt torture. No requirement that the act occur in a detention facility. No exception for official status.
Jurisdictional scope	Applies where (a) the alleged offender is a U.S. national; (b) the alleged offender is present in the United States regardless of nationality; or (c) the victim is a U.S. national. The jurisdictional triggers are broad.
Investigation obligation	Section 2340A does not itself codify an Article 12 reasonable-grounds investigation trigger as positive domestic law. The better claim: where facts would plausibly support a § 2340A theory in an extraterritorial case, CAT's investigative logic strongly supports prompt inquiry rather than summary closure.
Immunity	Section 2340A contains no official-status immunity. No exception for government officials, military personnel, law enforcement officers, or judicial officers. The 'superior orders' defense is unavailable (18 U.S.C. § 2340B). The statute's structural rejection of official-status immunity is a legislative confirmation of the treaty's Plane A requirement on this point.
Limitations-gap analysis (Plane A prohibition; domestic law caveat applies)	18 U.S.C. § 3286(b) eliminates the limitations bar for § 2340A offenses where the offense results in, or creates a foreseeable risk of, death or serious bodily injury. That qualifier attaches to the extraterritorial torture statute; it does not extend to domestic CIDT prosecutions under §§ 241–242, where CIDT-level judicial conduct may be severe, sustained, and documented over years without producing death or qualifying bodily injury. On Plane A, General Comment No. 2 ¶26 states that amnesties and statutes of limitations for torture and ill-treatment are incompatible with the Convention — an authoritative treaty-body finding that applies to Article 16 CIDT equally, without any death-or-injury qualifier. Belgium v. Senegal

Element	What § 2340A Provides
	(ICJ 2012) underscores the seriousness of the anti-impunity obligation under CAT. This guide does not claim that GC No. 2 or jus cogens automatically nullifies every domestic limitations bar as a matter of current U.S. law. The operative rule is narrower: any domestic limitations bar preventing prosecution of conduct that satisfies the torture or CIDT analysis should be documented as a specific non- equivalence gap, and its existence does not terminate the State's Article 12 investigation obligation or the documentation and reporting duties.
Intent standard: § 2340A specific intent vs. UNCAT Article 1 vs. IAJ / Model Penal Code willful and knowing	Section 2340A requires that torture be 'specifically intended' to cause severe physical or mental pain or suffering (18 U.S.C. § 2340(1)). This specific-intent standard is narrower than UNCAT Article 1, which requires only that severe pain or suffering be 'intentionally inflicted' for an enumerated purpose. The treaty text does not require specific intent to cause suffering as an end in itself; it requires intentional infliction for a prohibited purpose. Systemic intent pathway (IAJ-STD-20260324-001-PUB): In cumulative multi-actor institutional settings, intent for Article 1 may also be supported by: policy adoption with knowledge of harmful consequences; continuation of policy after harm is documented; failure to reform despite complaints across multiple victims; and institutional benefit from the harmful practice. This theory does not require specific intent by any individual actor; it locates intent in the institutional decision to persist in a harmful policy with knowledge of its effects. For Article 16 CIDT, the PIS supports a less individual-purpose-centered analysis: the focus is on the nature of the treatment, the effect on the victim, and official-system involvement. This does not mean intent is categorically irrelevant to CIDT; it means the purpose element is less demanding in systemic and cumulative settings. The systemic-intent framework is an IAJ analytic methodology drawn from the PIS; it is not a treaty-body holding or settled domestic rule. Legal characterization remains counsel's task. The U.S. implementing definition therefore adds a specific-intent requirement that the treaty does not contain — a narrowing that the CAT Committee found in 2014 creates loopholes. For domestic prosecution under 18 U.S.C. § 242, willfulness is required: the defendant must have acted with the purpose to deprive the victim of a constitutional right, knowing that the conduct was unlawful. That standard is related to, but not identical with, either MPC 'knowing' culpability or § 2340A's specific-intent requirement. These standards do not map perfectly onto one another; the guide uses them comparatively, not as though one can be mechanically translated into the others. United States v. Lanier, 520 U.S. 259, 267 (1997). The IAJ, drawing on the Model Penal Code's culpability hierarchy (MPC § 2.02), proposes an analysis that distinguishes: (a) purposely — acting with conscious object to cause the result (maps to § 2340A's specific intent and to the core of § 242 willfulness); (b) knowingly — aware that the result is practically certain to follow from the conduct (may in some settings supply evidence relevant to § 242 willfulness and may strongly support an Article 1 intentionality analysis, but the guide should not present these standards as interchangeable; does NOT satisfy § 2340A's specific-intent requirement); (c) recklessly — conscious disregard of a substantial and unjustifiable risk (may reach the CIDT threshold under Article 16 and the deliberate-indifference standard of Farmer v. Brennan; does not satisfy § 242 willfulness or § 2340A specific intent). The parity and equivalence consequence: cases where the evidence establishes knowing infliction but not specific intent to cause suffering may in some settings support prosecution under § 242 and strongly support an Article 1 intentionality analysis, while still falling short of § 2340A's specific-intent requirement. The operative consequence is not that the standards map perfectly: mismatches in intent requirements may themselves create specific equivalence gaps requiring documentation. These cases are also covered by UNCAT Article 1 ('intentionally inflicted' satisfied), but would not satisfy § 2340A's specific-intent element if it applied domestically. This creates a category of conduct that the treaty covers, that § 242 may reach, but that § 2340A's higher domestic standard would not. The existence of this category is a specific equivalence gap: the U.S. implementing statute for extraterritorial cases is narrower than the treaty on intent, and for domestic cases the only vehicle is § 242 — which sets the right threshold (willfulness) but does not map cleanly onto every treaty-covered intent pattern.

B. The Parity Argument: Minimum Domestic Floor

The parity argument runs as follows. Congress enacted § 2340A because UNCAT requires States Parties to criminalize torture. Congress was willing to impose sentences of up to life imprisonment for torture occurring overseas committed by or against U.S. nationals. Congress included no official-status immunity. The guide argues by parity that the same reasonable-grounds logic should strongly inform domestic investigative response under Article 12, even though § 2340A does not itself codify an Article 12 trigger as positive domestic law. If Congress was willing to deliver these outcomes for torture occurring in a foreign country, then:

The § 2340A Parity Principle — Stated

A domestic complainant of official torture should receive, through available domestic legal vehicles, outcomes at least equivalent to what § 2340A would deliver if the conduct had occurred overseas. This is not a claim that § 2340A applies domestically — it does not. It is a claim about the minimum floor of prosecutorial engagement that consistency with congressional intent requires.

What parity suggests on investigation: The guide infers that conduct satisfying the § 2340A definition, had it occurred overseas, would trigger a DOJ investigation on reasonable grounds under the statute. The guide argues by parity that the same reasonable-grounds logic should govern domestic investigative response under Article 12. Section 2340A does not itself codify that trigger as positive domestic law. The point is comparative and operational: if the same conduct would receive prompt inquiry in an extraterritorial context, domestic location alone should not become the reason for silence. Where it does, the shortfall is a parity failure requiring documentation.

What parity suggests on immunity: Section 2340A contains no official-status immunity. A domestic prosecution of official torture under §§ 241–242 encounters the civil immunity doctrines that U.S. courts have developed — but those doctrines are civil, not criminal. The parity principle is consistent with the proposition that the absence of criminal immunity under § 2340A should inform the prosecutor's assessment of the criminal investigation obligation domestically: what would be investigated and charged if this conduct had occurred in a foreign country should also be investigated domestically, with domestic criminal immunity doctrines treated as Plane B obstacles requiring documentation rather than Plane A limitations on the obligation.

What parity suggests on characterization: Section 2340A's definition of torture includes 'prolonged mental harm' caused by specified predicate acts. If the domestic conduct would be characterized as torture under § 2340A if it had occurred overseas, that characterization is probative of the UNCAT Article 1 analysis domestically — even where § 2340A does not apply. The extraterritorial characterization Congress adopted in § 2340A is strongly probative of the domestic UNCAT characterization analysis and should not lightly be displaced by a narrower domestic framing without explanation and documentation.

What parity does not require: Parity does not require that domestic cases be charged under § 2340A — the statute does not apply. It does not require outcomes identical to what a § 2340A prosecution would produce, since the available domestic statutes differ. What the parity argument suggests is that the prosecutor's investigation threshold, characterization rigor, and outcome ambition should not be materially lower domestically than they would be for an extraterritorial case under § 2340A. Where they are not, the shortfall is a gap requiring documentation.

C. The Proper Equivalence Test: UNCAT as Self-Executing for Comparison

The parity argument establishes a minimum floor: domestic outcomes must be at least as protective as § 2340A extraterritorial outcomes. But the proper equivalence test — the test against which the U.S. ratification promise must be measured — is more demanding than parity with § 2340A. The United States ratified on the premise that existing domestic law was sufficient to meet the treaty's requirements without

comprehensive additional implementation. The guide's equivalence audit compares current domestic outcomes against the obligations the treaty itself describes. That comparison is an analytic tool for measuring the size and character of the implementation gap on Plane A — not an assertion that UNCAT is self-executing after Medellín, and not a claim that the executive branch's periodic-report adequacy representations were correct. The Committee Against Torture found in 2014 that important elements of that adequacy position were not borne out in practice. The RUDs were not assurances the executive gave to a passive Senate; they were the Senate's own constitutional judgment, on the basis of which it chose not to require implementing legislation. That judgment is now materially inconsistent with the CAT Committee's findings. The proper equivalence test — measured against UNCAT itself, not merely against incomplete domestic implementation — is therefore the guide's analytic standard for evaluating the size and character of the Plane A implementation gap. Section 2340A is itself an incomplete implementation of UNCAT. This comparison is an analytic device: by asking what UNCAT would require if it were self-executing, the guide measures the size of the Plane A implementation gap.

It does not assert that UNCAT is self-executing after Medellín. The equivalence promise was made against the treaty, not against the implementing statute.

Required Outcome	What UNCAT Self-Executing Would Deliver	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
Protection	Art. 2: immediate, effective, pre-harm protective measures wherever risk is known and an official is responsible. Mandatory, not discretionary.	No protective mechanism in § 2340A. The statute is purely retrospective — prosecution after torture occurs. No pre-harm obligation.	No reliable CAT-equivalent mechanism compels pre-harm protective action in the judicial-setting fact patterns emphasized here. Available domestic mechanisms — emergency injunctions, stays, mandamus, protective orders — exist but are fragmented, discretionary, and often structurally ineffective where the alleged harm-causer is a judicial officer.	Full gap: neither § 2340A nor domestic law approximates the Art. 2 protection obligation. The parity floor provides no help here.
Prevention	Arts. 10, 16: mandatory training, institutional design reform, systemic prevention measures for both torture and CIDT.	No prevention mechanism in § 2340A. The statute does not address training or institutional design.	No federal statute mandates UNCAT-aligned training for judicial personnel or systematic review of recurring official practices — including but not limited to disability accommodation-denial patterns — that may create torture or CIDT-level risk.	Full gap: § 2340A parity is irrelevant. The prevention obligation exists on Plane A and is unmet by any domestic mechanism.
Relief	Art. 13: right to complain with prompt, impartial review; complainant protection against retaliation.	No complainant protection mechanism in § 2340A. The statute does not address complaint pathways.	In the documented judicial-setting cases relied on by this guide, DOJ responses and available referral pathways failed to	Full gap: § 2340A parity is irrelevant. Art. 13 relief is the most structurally

Required Outcome	What UNCAT Self-Executing Would Deliver	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
			provide functionally equivalent Article 13 relief — the guide's practice-based analysis, not a quoted CAT finding. Judicial conduct boards are non-criminal and judiciary-governed. Inspector-general jurisdiction excludes Article III courts.	complete recurring gap in U.S. practice.
Remedy	Arts. 14, 16 + GC No. 3: five-form reparation including rehabilitation, satisfaction, and guarantees of non-repetition.	No reparation mechanism in § 2340A. The statute provides punishment only; restitution is available as a sentencing condition but does not deliver the full GC No. 3 five-form reparation.	Compensatory damages (capped, immunity-barred for judges). No rehabilitation, satisfaction, or non-repetition guarantee mechanism.	Significant gap: § 2340A parity would at minimum add restitution as a sentencing condition. Current domestic law does not reliably deliver even this. Five-form reparation as described in GC No. 3 — restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition — is not reliably available through existing domestic vehicles in the judicial-setting cases emphasized here.
Punishment	Arts. 4, 7: criminalization of all Art. 1 torture; mandatory investigation; prosecution without exception for official status.	Up to 20 years / life / death. No immunity. No superior orders defense. Conspiracy and attempt covered. Investigation on reasonable grounds.	18 U.S.C. §§ 241–242: up to 1 year (misdemeanor) or 10 years (felony) for § 242; life if death results. Civil immunity does not bar criminal prosecution. Investigation is discretionary.	Partial gap: § 2340A parity would require investigation on reasonable grounds and criminalization without official-status immunity. Current

Required Outcome	What UNCAT Self-Executing Would Deliver	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
				domestic practice often declines both. Penalty range is comparable where death results; significantly lower for non-fatal cases.
CIDT (Cruel, Inhuman, or Degrading Treatment) — EQUALLY SERIOUS, SAME FIVE OBLIGATIONS	Art. 16 imports Arts. 10–13 in full; GC No. 3 ¶1 extends five-form reparation to CIDT victims; GC No. 2 ¶3 applies all-branches obligation to CIDT without distinction from torture. Article 16 extends prevention, training, investigation, complainant-protection, and remedial logic in full. The punishment dimension is more indirect than for Article 1 torture — Articles 4 and 7 are not expressly imported by Article 16 in the same manner as Articles 10–13 — but the practical CIDT implementation gap is equally serious.	No specific implementing statute for domestic CIDT below the Article 1 threshold. Must be pursued through §§ 241–242, § 1512–13, ADA Title II. No CIDT-specific investigation mechanism.	No federal CIDT statute. Courts have not uniformly recognized CIDT-level conduct in non-custodial settings as triggering investigation obligations. The domestic framework does not recognize CIDT as a distinct enforcement category.	Full gap: CIDT receives no dedicated domestic implementation. The equivalence gap for CIDT is as large as for torture, and in some categories larger, because domestic law does not recognize CIDT as a triggering category. Every gap memorandum must characterize conduct at both Article 1 and Article 16 levels. The absence of a CIDT-specific domestic mechanism is a specific Article 16 non-equivalence that must be documented.

D. How Prosecutors Should Use the Parity Principle Operationally

The parity principle is an operational decision tool, not a claim about domestic legal enforceability. It operates in three steps in the charging and declination analysis.

Step 1 — Apply the § 2340A characterization test: Before applying domestic statutes, the prosecutor should ask: if this conduct had occurred in a foreign country and was committed by or against a

U.S. national, would it be investigated and charged under § 2340A? If yes, that conclusion strongly supports at least equally serious domestic investigative engagement, subject to domestic institutional structure and available legal vehicles. If no, document why the treaty characterization falls short even extraterritorially.

Step 2 — Apply the UNCAT self-executing comparison: Ask: if UNCAT were directly enforceable, what would the five-outcome analysis require? Map each required outcome (protection, prevention, relief, remedy, punishment) against what domestic law delivers. Every shortfall is a gap to be documented. This comparison is the correct equivalence audit — measured against the treaty the U.S. promised equivalence with, not merely against the implementing statute.

Step 3 — Document the parity floor shortfall: Where domestic outcomes fall below what § 2340A would deliver if applied domestically, the gap memorandum must state this specifically: 'The domestic outcome for this complaint delivers less than what 18 U.S.C. § 2340A would deliver if the equivalent conduct had occurred outside the United States. The specific shortfall is: [characterization / investigation threshold / penalty exposure / immunity applicability / reparation availability]. This parity gap constitutes a domestic equivalence failure under UNCAT Article [4/12/14] and is documented accordingly.'

What this argument is not: The parity argument is not a claim that § 2340A applies domestically. It is not a claim that UNCAT is self-executing. It is not an argument for any specific charging decision. It is an analytical tool for measuring the size of the compliance gap honestly — by reference to what Congress was already prepared to deliver for equivalent conduct occurring overseas — and for ensuring that the gap memorandum states the shortfall at the correct level of specificity rather than simply noting that 'no domestic statute fully covers this.'

A-III. INVESTIGATION, PROTECTION, AND PREVENTION DUTIES

The Five Required Outcomes — What UNCAT Requires the State to Deliver

Each investigation decision involves not one treaty obligation but five. The matrix below maps each required outcome to its treaty source, its domestic investigative equivalent (where one exists), and the gap that appears when the domestic equivalent is absent or inadequate.

Outcome	Treaty Source	Domestic Equivalent (if any)	Recurring Gap
Protection	Art. 2: effective measures to prevent torture where risk is known	Protective orders; civil restraints; emergency intervention. No clear criminal mechanism for preventive action before harm occurs.	No reliable CAT-equivalent mechanism compels pre-harm protective action in the judicial-setting fact patterns emphasized here. Available domestic mechanisms — emergency injunctions, stays, mandamus, protective orders — exist but are fragmented, discretionary, and often structurally ineffective where the alleged harm-causer is a judicial officer. Documenting unrebutted medical evidence of foreseeable risk preserves material relevant to the State's Art. 2 compliance record even where preventive action is structurally blocked.
Prevention	Arts. 10, 16: training, institutional design, systemic measures;	Civil rights training requirements; § 1983 supervisory liability;	No federal statute mandates UNCAT-aligned training for judicial personnel. No standing mechanism for systemic

	CIDT prevention expressly extended	agency policy reform as settlement term.	review of judicial accommodation-denial patterns. Documenting known training failures creates a prevention-gap record.
Relief	Art. 13: right to complain; protection against retaliation; prompt and impartial review of complaint	DOJ complaint intake; judicial conduct boards; inspector general referral; §§ 1512-1513 for retaliation.	In the documented judicial-setting cases relied on by this guide, and in the guide's practice-based assessment of those cases, DOJ deferral and referral to courts with structural conflicts of interest appeared to fail to provide equivalent Article 13 relief. That is the guide's inference from the documented record, not a quoted CAT Committee finding or a finding of fact. Judicial conduct boards are non-criminal; inspector general jurisdiction excludes Article III judges. The Art. 13 relief gap is the most structurally complete recurring gap in U.S. practice.
Remedy	Arts. 14, 16; GC No. 3: five-form reparation — restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition	Compensatory and punitive damages (§§ 1983, state tort); injunctive relief (Ex parte Young). No domestic equivalent for rehabilitation, satisfaction, or structural non-repetition guarantees.	Judicial immunity bars most damages claims against judges. Punitive damages are capped. Rehabilitation, satisfaction, and non-repetition guarantees — required by GC No. 3 — have no domestic procedural vehicle. This is a major remedy-side equivalence gap in the judicial-setting cases emphasized by this guide, and one of the hardest adequacy claims in the U.S. reporting posture to sustain.
Punishment	Arts. 4, 7: criminalization of all torture; prosecution or extradition without exception; no official-status immunity on Plane A	18 U.S.C. §§ 241-242; state criminal law. Prosecutorial discretion governs charging. No mandatory prosecution mechanism.	Art. 7's anti-impunity structure weighs against treating complete inaction or referral to a structurally conflicted body as satisfactory compliance. Belgium v. Senegal supports the seriousness of the obligation but the guide should not treat that case as a direct domestic holding on the specific U.S. judicial-setting scenarios discussed here. Where prosecutorial declination leaves qualifying conduct uninvestigated or unpunished, the result may contribute to State-level anti-impunity failure and should be documented accordingly.

Every investigation decision should be assessed against all five outcomes, not only the punishment dimension. Where any outcome cannot be delivered through available domestic mechanisms, the gap must be documented in writing. See Section A-V for the gap-documentation protocol.

Article	Operational Duty	What Prosecutors Must Do
Art. 10	Education and training: officials must be able to recognize and prevent torture/CIDT.	Train intake, civil rights, public integrity, and supervisory personnel to identify warning signs beyond classic prison scenarios. Courts, hospitals, immigration settings, and administrative proceedings can all be CIDT settings.
Art. 12	Investigation triggered by reasonable grounds — lower threshold than probable cause.	Preserve records immediately upon credible allegation. Open or refer for prompt and impartial investigation. Do not wait for trial-level certainty before beginning inquiry.
Art. 13	Right to complain; protection against intimidation or retaliation.	Assess whether complainants, witnesses, attorneys, or experts have been threatened, procedurally burdened, or discredited because they raised allegations. Retaliation is independently chargeable under §§ 1512-1513.

Anti-prison-only principle: Do NOT require a prison-only or interrogation-only model before taking CAT-based allegations seriously. CAT's text refers to official conduct, official purpose, official responsibility, and official acquiescence — not one institutional setting. Courts exercising coercive authority over litigants, hospitals, immigration settings, and other institutions fall within the framework when public-official domination, compelled presence, retaliatory coercion, or severe degradation is alleged. For the full textual argument establishing that no setting qualifier exists in Article 1 and the CAT Committee's 2014 findings on inadequate U.S. statutory coverage, see Part C, Section C-0A. For the full jurisdictional-custody analysis and its treatment as an IAJ analytic extension, see Part C, Section C-VII, Move 6.

Residual Mapping Duty: Making the Shortfall Visible

The Legal Basis for the Reporting and Documentation Duty — Consolidated

Why the duty exists — five overlapping supports: The prosecutor's obligation to document and report is not a professional aspiration or an administrative preference. It is strongly supported by multiple overlapping sources, though not every source operates in the same way or with the same domestic enforceability. Treaty-compliance logic, anti-concealment law, professional-responsibility norms, and the non-extinguishable character of the anti-torture prohibition all reinforce the importance of accurate documentation and internal escalation. They should not be treated as identical sources of personal domestic liability.

Source 1 — UNCAT Articles 12, 13, and 19 (international treaty obligation): Article 12 requires prompt and impartial investigation wherever there is reasonable ground to believe torture has occurred. 'Prompt and impartial' has been authoritatively interpreted by the CAT Committee to include documentation that preserves evidence for accountability. Article 13 requires that the State maintain a functional complaint pathway and protect complainants from retaliation — which is impossible if the complaint record is not preserved. Article 19 requires the State to submit periodic reports to the CAT Committee accurately describing its compliance. The prosecutor is the State official closest to these three obligations in any individual case: the investigation (Art. 12), the complaint record (Art. 13), and the factual material from which the periodic report must be compiled (Art. 19) all pass through the prosecutor's office. The prosecutor's documentation can contribute to the State's Art. 19 compliance record; the prosecutor's reporting to the supervisory chain is one mechanism through which that record can be accurately maintained. That strongly supports a documentation and internal-escalation duty. It does not mean that Articles 12, 13, and 19 each individually create an identical direct domestic legal consequence for every omission.

Source 2 — CAT General Comment No. 2, ¶18 (acquiescence doctrine): The Committee has stated that State officials who fail to prevent torture of which they are aware 'may bear responsibility as accomplices or for condoning' the prohibited treatment. General Comment No. 2 ¶18 is authoritative interpretive guidance on the Plane A meaning of State acquiescence, not a direct domestic legal command. For prosecutors, it provides interpretive support for the proposition that deliberate failure to investigate, document, or report where the prosecutor has actual knowledge of ongoing prohibited conduct may contribute to Plane A acquiescence — but it does not operate as a one-step conversion from non-documentation into legal liability. The duty to document and report is the minimum action that distinguishes engagement from acquiescence and keeps Plane A's account of State conduct accurate rather than falsified by omission.

Source 3 — 18 U.S.C. § 1519 and the record-preservation obligation (domestic criminal law): Section 1519 criminalizes the knowing destruction, alteration, or falsification of documents in connection with any matter within the jurisdiction of the executive branch. A prosecutor who destroys, alters, falsifies, or conceals documentation of a UNCAT-adjacent complaint after it is created falls squarely within the conduct § 1519 is designed to reach. Deliberate non-creation of documentation is a distinct and less direct exposure: it does not itself constitute destruction or falsification of a record, but it may contribute to the acquiescence and false-representation consequences described in Sources 1 and 2.[3] This is a domestic criminal source of the documentation duty, independent of the treaty framework.

Source 4 — Model Rules of Professional Conduct, Rules 1.1, 3.8, and 8.4(d) (professional duty): Rule 1.1 requires competence in the subject matter of the legal work. A civil rights prosecutor who

[3] Section 1519 criminalizes the knowing destruction, alteration, or falsification of documents in connection with any matter within the jurisdiction of the executive branch. A prosecutor who destroys, alters, falsifies, or conceals documentation of a UNCAT-adjacent complaint after it is created falls squarely within the conduct § 1519 is designed to reach. Deliberate non-creation of documentation is a distinct and less direct exposure: it does not itself constitute destruction or falsification of a record, but it may contribute to the acquiescence and false-representation consequences described in Sources 1 and 2.

evaluates UNCAT-adjacent complaints without knowledge of the treaty framework, the 2014 CAT findings, or the documentation obligation is not competent. Rule 3.8(d) imposes special disclosure obligations on prosecutors beyond those of ordinary counsel. Rule 8.4(d) prohibits conduct prejudicial to the administration of justice — and the administration of justice in the United States includes the administration of the treaty-body system the U.S. has accepted. Systematic failure to document UNCAT-adjacent gaps is conduct prejudicial to the administration of justice in this broader sense. These rules do not by themselves create a universal external-reporting mandate, but they strongly support competence, non-concealment, accurate internal documentation, and candor about implementation failure.

Source 5 — The jus cogens prohibition and its documentation corollary: The absolute prohibition on torture has been recognized by the ICJ as a jus cogens norm creating obligations owed to the international community as a whole. Belgium v. Senegal (ICJ 2012). Jus cogens norms cannot be extinguished by domestic law — not by non-self-execution, not by prosecutorial immunity, not by statutes of limitations, and not by unrecorded declination. The documentation corollary is this: if the prohibition is absolute and cannot be extinguished, then the act of burying documentation of a violation is an act that attempts to extinguish through concealment what cannot be extinguished through law. The jus cogens status of the prohibition strongly supports documentation and escalation: a prosecutor who knowingly allows a jus cogens-level violation to pass undocumented and unreported may be contributing to the erosion of the most fundamental norm in international human rights law. This is an interpretive reinforcement of the documentation duty, not a free-standing domestic legal command.

What the duty requires in concrete terms: Taken together, these sources strongly support a duty to: (a) document the factual basis for any UNCAT-adjacent characterization where reasonable grounds exist; (b) preserve that documentation in a form accessible to supervisory review and later lawful accountability processes; (c) report through the internal institutional chain described in Section A-V-B; and (d) where independence concerns make in-house investigation inadequate, preserve the record for independent expert or civil-society review through legally available channels. The guide does not categorically authorize or require every prosecutor to externalize directly to IAJ or any other outside body. The narrower and safer point is that prosecutorial immunity for charging decisions does not erase the importance of documentation, preservation, and internal escalation. Deliberate falsification, concealment, destruction, or suppression of an existing record raises § 1519 concerns. GC No. 2 ¶18 and Rule 8.4(d) provide interpretive support for documentation and candor duties; they do not create identical consequences for every type of omission.

If the criminal process can deliver investigation and punishment but not prevention, that shortfall must be recorded. If it can deliver protection and evidentiary preservation but not full rehabilitation, that shortfall must be recorded. The prosecutor's role is not limited to asking whether a charge can be filed; it includes making the State Party's shortfall legible and reportable wherever the criminal process cannot itself complete the outcome set. Every unmet outcome component is a specific gap in the State's treaty performance. Every gap that is documented and reported is a brick in the foundation of the future accountability mechanism that the 2023 Special Rapporteur's no-finality principle makes available. Every gap that is buried is a brick in the wall of the false equivalence the United States has represented to the CAT Committee, and increases the risk that the State's implementation shortfall will remain institutionally invisible.

A-IV. PRACTICAL PROSECUTORIAL RULES

Nine Rules — Applicable to Every Potential UNCAT Case

11. Do not treat the absence of a perfect domestic CAT code section as permission for inaction. Identify and apply the nearest valid domestic statutes carefully and aggressively where the elements genuinely fit.
12. Do not treat judicial office or other official status as criminal immunity. Evaluate independently criminal conduct under §§ 241-242. Civil immunity doctrines do not resolve criminal accountability. Each criminal theory must remain tied to the elements of the enacted domestic offense, regardless of which class is targeted. Recurring UNCAT-covered scenarios include: judicial accommodation denial (disability); parent-child separation by state actors; immigration detention abuse; solitary confinement as CIDT; poverty-based court access denial; and discriminatory procedural burdening of pro se litigants. For the full class-specific animus analysis across all protected groups, see Part C, Section C-VIII. For the specific analysis of prosecutorial immunity, see Part A, Section A-VI.
13. Do not require a prison-only, custody-only, or interrogation-only model before opening review. Courts, hospitals, immigration settings, and administrative proceedings can all present CAT-relevant conduct where public-official domination, compelled presence, retaliation, or severe degradation is alleged.
14. Do not confuse non-self-execution limits with prosecutorial helplessness. Medellín tells you CAT is not ordinarily the direct charge; it does not tell you that existing domestic statutes do not reach the conduct. Where domestic text is genuinely susceptible to more than one permissible reading, the Charming Betsy canon may support a construction that avoids unnecessary conflict with international obligations — but it is an interpretive aid, not a license to rewrite clear statutes. For the full Medellín, Charming Betsy, jus cogens, and two-plane analysis, see Part C, Section C-V.
15. Do not invoke misprision or Bivens carelessly. Misprision is not a general failure-to-prosecute statute; it requires affirmative concealment. Bivens is sharply constrained and should not be presented as a generally available remedy.
16. Where there is reasonable ground to believe torture or CIDT occurred: preserve evidence, protect complainants, and open or refer for prompt and impartial review. Do not wait for trial-level certainty before taking the investigatory threshold seriously.
17. If a charging gap exists: document it in a written non-equivalence memorandum addressing both the domestic enforceability plane and the international obligation plane. Escalate as appropriate for supervisory, policy, legislative, or treaty-compliance review.
18. Apply the IAJ Six-Move Framework and Four-Stage Severity Framework before advancing any CAT characterization. Use these as internal analytic discipline, not as substitutes for enacted domestic law. See Part C, Section C-VII for the full framework analysis.
19. At sentencing, invoke CAT's sentencing-relevant principles through domestic vehicles: UNCAT Article 4(2) supports penalties commensurate with the grave nature of torture — argue this under 18 U.S.C. § 3553(a)(2)(A); UNCAT Article 14 strongly supports the principle of redress, including rehabilitation as fully as possible — argue this under § 3553(a)(2)(C) and § 3663A (restitution), while grounding the actual relief requested in enacted domestic law, including ongoing medical costs caused by official conduct.

A-V. NON-EQUIVALENCE CHECKLIST AND GAP-TRIGGERED PROSECUTORIAL DUTIES

A. Non-Equivalence Checklist (16 Questions Across 5 Dimensions)

Apply this checklist to determine whether a real CAT implementation gap exists. A 'yes' to a gap question requires written documentation on both planes, not silent declination.

Dimension 1: Threshold CAT Characterization

1. Is there credible evidence of severe physical or mental suffering, or at minimum treatment that is cruel, inhuman, or degrading?
2. Is the conduct linked to a public official, person under color of law, or official consent or acquiescence?
3. Is there evidence of a prohibited purpose: punishment, coercion, intimidation, discrimination, obtaining information, or analogous abusive purpose?
4. If full Article 1 torture is uncertain, does the conduct at least fit Article 16 CIDT?

Dimension 2: Investigation Equivalence

5. Does domestic law require or reliably permit a prompt and impartial investigation at the 'reasonable grounds' stage?
6. Is there an actual institutional mechanism to protect the complainant and witnesses from retaliation?
7. If the setting is judicial or quasi-judicial, is there any realistic criminal-review mechanism?

Dimension 3: Punishment Equivalence

8. Is there a domestic criminal statute that actually reaches the conduct?
9. Does the statute cover the actual conduct category?
10. Does the statute permit punishment proportionate to the gravity of the conduct?
11. If the principal vehicle is § 242 or § 241, are all elements genuinely supportable?

Dimension 4: Remedy Equivalence

12. Does domestic law provide any realistic avenue for the victim to obtain meaningful relief?
13. Is there any pathway to rehabilitation-oriented relief comparable to CAT Article 14's redress standard?

Dimension 5: Prevention Equivalence

14. Is there any actual prevention mechanism for recurrence?
15. If the conduct arose from a known pattern, is there any domestic mechanism capable of stopping repetition?

16. Is there any domestic mechanism capable of addressing the systemic or institutional cause of the conduct — as distinct from the individual incident — through pattern-or-practice civil enforcement, supervisory reform, inspector-general referral, or legislative action? If no such mechanism exists, that absence is a specific Article 16 prevention non-equivalence requiring documentation.

B. When Non-Equivalence Is Confirmed

- No domestic criminal statute clearly reaches the conduct category.
- Investigation is not realistically available at the reasonable-grounds stage.
- Complainant protection against retaliation is absent or illusory.
- Punishment is grossly mismatched to the gravity of the conduct.
- Domestic relief is blocked by immunity, nonreviewability, or purely formal remedies.
- Prevention mechanisms are absent or structurally incapable of stopping repetition.
- The conduct fits CAT or Article 16 but only weak or partial domestic analogues exist.

C. Seven Gap-Triggered Prosecutorial Duties

1. **Do not end the analysis with non-self-execution. That proposition does not answer whether the implementation gap must be documented on both planes.**
2. **Open or refer for investigation where reasonable grounds exist.**
3. **Charge the nearest valid domestic offenses aggressively but honestly.**
4. **Prepare a written non-equivalence memorandum identifying: (a) what CAT category the conduct fits; (b) what statutes were considered; (c) why they are insufficient; (d) what investigation, punishment, remedy, or prevention components remain unmatched; (e) what supervisory, legislative, or policy referral is necessary; and (f) what international accountability submissions are warranted on Plane A.**
5. **Preserve the evidence. Do not let a gap become invisible through record loss.**
6. **Trigger complainant-protection procedures immediately.**
7. **Escalate the gap rather than bury it. Where domestic prosecution is refused or unavailable and where the specific facts and procedural posture support it, consider formatting investigation documentation for potential submission through international mechanisms as appropriate: the Committee Against Torture (periodic review shadow reports; individual communications where admissibility criteria are met); the UN Special Rapporteur on Torture (urgent communications procedure); the UN Human Rights Committee (ICCPR Articles 7 and 14); and, where disability discrimination is present, the Committee on the Rights of Persons with Disabilities (CRPD Articles 12, 13, and 15). International escalation is a case-specific option, not a mechanical duty in every gap situation. A documented gap is not a failure; a buried gap is.**

D. The Mandatory Gap-Documentation Memorandum

When the checklist in Section A confirms non-equivalence on any of the five required outcomes, the prosecutor must prepare a written gap-documentation memorandum. This is not optional. It is the

mechanism by which the State's Plane A obligation survives a Plane B limitation. The memorandum must address the following elements:

Gap-Documentation Memorandum — Required Elements

Element 1 — Factual basis: Describe the conduct at issue with sufficient specificity to support CAT characterization. Identify the public official(s) involved, the setting, the known purpose, and the documented harm. Cross-reference available medical, forensic, or documentary evidence.

Element 2 — Treaty characterization: State which UNCAT category the conduct fits: Article 1 torture; Article 16 CIDT; or conduct that falls short but establishes a pattern relevant to Articles 10 and 16 prevention obligations. Apply the six-move framework if appropriate. Do not overstate; do not understate.

Element 3 — Domestic statutes considered: List all statutes reviewed: §§ 241, 242, 249(a)(2), 1512-1519, 1985(2), 1985(3), and any applicable state law. For each, state the specific element that is or may be unsatisfied and why.

Element 4 — Five-outcome gap analysis: For each of the five required outcomes — protection, prevention, relief, remedy, punishment — identify whether domestic law can deliver that outcome and, if not, precisely what structural constraint prevents it. Name the constraint: judicial immunity, statutory limitation, missing cause of action, resource barrier, jurisdictional gap.

Element 5 — Complainant protection assessment: Assess whether the complainant, witnesses, attorneys, or experts have been subjected to retaliation, procedural burdening, or discrediting because of the complaint. If so, identify any independently chargeable retaliation conduct under §§ 1512-1513.

Element 6 — Supervisory and legislative referral: Identify what supervisory, agency, congressional, or policy referral is required. Where a systemic pattern is present, identify the institutional mechanism (DOJ Civil Rights Division, inspector general, judicial conduct body, state legislative committee) to which the pattern should be reported.

Element 7 — Treaty compliance record: State expressly that the documented gap is part of the State's compliance record under UNCAT and that the memorandum is preserved in a form suitable for lawful supervisory review, periodic-report compilation, and — where legally available or complainant-driven — later use in shadow reporting or other external accountability processes. Note: this element establishes the preservation duty only; it does not authorize the individual prosecutor to route externally without supervisory authorization. Preserved records may be used in: (a) DOJ/State Department periodic reporting to the CAT Committee; (b) shadow reporting by civil society organizations; (c) special-procedure urgent communications to the Special Rapporteur on Torture; (d) individual communications to the CAT Committee or Human Rights Committee where admissibility criteria are met. The memorandum should be classified, filed, and preserved accordingly.

Why this matters — the periodic reporting context: The United States reports to the CAT Committee on its UNCAT compliance. In its Initial Report and each subsequent periodic report (2005, 2013, combined 3rd–5th in 2014), the U.S. government asserted that existing domestic law provides 'equivalent' protection, relief, remedy, and punishment to what the Convention requires. The CAT Committee in CAT/C/USA/CO/3-5 (December 2014) found this position to be inconsistent with the Convention in multiple respects. Every gap memorandum produced by a U.S. prosecutor is evidence — in the form that matters to treaty bodies — of the structural implementation failure the Committee identified. A buried gap is an invisible compliance failure that will never be fixed. A documented gap is the beginning of a correction.

Element 8 — Istanbul Protocol compliance assessment: State whether the investigation met the Istanbul Protocol's five standards. Identify: (a) whether an independent medical examination was conducted promptly — the PIS emphasizes that delay in commencing examination may constitute a severity-compounding Protocol failure, as physical and psychological evidence deteriorates rapidly and

delay is independently documentable as a potential Article 12 issue; (b) whether an independent psychological assessment was conducted; (c) whether structural impartiality failures were present; (d) whether any component was in-house where externalization was required; and (e) whether IAJ was engaged.

Note on evaluator threshold (IAJ-STD-20260324-001-PUB): The IAJ Psychological Investigation Standard distinguishes three levels of clinical documentation: (i) a treating clinician's diagnostic impression (tentative, hypothesis-driven, insufficient for Protocol documentation of severity and causation); (ii) a structured psychological assessment (multi-method, formal findings); and (iii) a full forensic evaluation by a Protocol-qualified evaluator (Level 3 doctoral-level or Level 4 board-certified), required for attribution analysis and high-stakes reports. A treating clinician's records are relevant to documenting biological harm but do not substitute for a forensic assessment. Where Element 8(a) or 8(b) identifies only a treating-clinician record with no independent forensic evaluation, document that as a specific gap.

Element 9 — Pattern documentation: State whether this case is part of a documented pattern of similar conduct by the same official, institution, or conduct category. Identify other known complainants with similar facts. Assess whether the pattern crosses the Article 20 systematic-practice threshold.

Element 10 — Evidence preservation certification: Certify that all physical, documentary, and electronic evidence has been identified, catalogued, and preserved under chain-of-custody protocols. This certification satisfies 18 U.S.C. § 1519.

Element 11 — § 2340A parity analysis: State whether, if the identical conduct had occurred outside the United States involving a U.S. national, it would be investigated under 18 U.S.C. § 2340A. Compare extraterritorial outcomes to domestic outcomes and state the specific parity gap for each outcome component.

E. Residual Duty After Declination or Partial Declination

A declination, partial declination, or charge-selection decision that leaves any component of protection, prevention, relief, remedy, or punishment unmet does not end the prosecutor's obligations. It begins a residual duty requiring four things:

- Identify the unmet outcome component precisely. State whether the shortfall concerns protection, prevention, relief, remedy, punishment, or multiple categories.
- Preserve the record of why the shortfall exists. Identify whether the barrier is statutory, doctrinal, institutional, evidentiary, temporal, resource-based, political, or immunity-related.
- Leverage every remaining lawful mechanism. This includes complainant-protection measures, evidence preservation, retaliation review, sentencing and restitution tools where available, supervisory escalation, pattern-or-practice referral, inspector-general referral, legislative referral, and treaty-compliance reporting.
- Report the shortfall through the proper channels. A shortfall that is documented but not reported remains an invisible compliance failure. The non-equivalence record must move through the relevant internal and, where appropriate, external channels identified in this guide.

The prosecutor is not required to achieve the impossible. The prosecutor is required to prevent the impossible from becoming invisible.

Core Categories of Recurring Non-Equivalence

- CIDT without a clean standalone criminal analogue.
- Official acquiescence or tolerated abuse not fully captured by domestic criminal law.
- Redress and rehabilitation gaps under Article 14.
- Prevention failures under Articles 10 and 16.
- Judicial-process abuse causing severe medical harm where domestic analogues exist only in partial or indirect form.

A-V-B. THE REPORTING DUTY: DOCUMENTATION IS NOT ENOUGH

The gap-documentation requirement in Section A-V establishes the floor. Documentation alone is not the ceiling. A prosecutor who documents a compliance gap and then files the memo without further action has performed half of the obligation. The other half is reporting — active transmission of the documented gap to the bodies with authority to act on it, within the State's institutional hierarchy and to the international mechanisms the Convention establishes.

The Prosecutor's Reporting Duty — Why Documentation Without Reporting Perpetuates the Failure

The distinction: Documentation creates a record. Reporting activates a mechanism. A gap memorandum sitting in a closed file is evidence that a failure occurred. A gap memorandum transmitted through the correct reporting channels is evidence that the failure is being addressed — and creates accountability if it is not. The Convention's enforcement architecture depends on information reaching the bodies that can act on it. The prosecutor is the official closest to the facts. The prosecutor is, in most cases, the only official in a position to generate the specific factual record that those bodies require.

The State's Article 19 obligation: Article 19 of the Convention requires State Parties to submit periodic reports to the CAT Committee on measures taken to fulfil their treaty obligations. The United States has submitted five such reports (Initial Report 1999; 2005; combined 3rd–5th 2014). Each report represented to the Committee that domestic law provides equivalent protection, prevention, relief, remedy, and punishment. The Committee found in 2014 that these representations were inconsistent with the Convention. A prosecutor who documents a gap is generating the factual record that the U.S. government is obligated under Article 19 to include in its next periodic report. That record should be transmitted upward within the DOJ or state attorney general's office so that it reaches the officials responsible for compiling the U.S. periodic report. Failure to transmit means the periodic report continues to misrepresent U.S. compliance.

The Article 20 trigger: Article 20 of the Convention authorizes the Committee Against Torture to initiate a confidential inquiry when it receives reliable information that torture is being systematically practised in the territory of a State Party. The threshold is reasonable grounds to believe systematic practice — not a fully adjudicated finding. Aggregate gap memoranda, transmitted through civil society channels or directly to the Committee, constitute exactly the kind of 'reliable information' that triggers Article 20 jurisdiction. A prosecutor who documents twelve declined cases involving judicial accommodation denial across a single district, all producing the same pattern of unmet treaty obligations, has produced evidence of systematic practice under Article 20 that the Committee can act on. That evidence reaches the Committee only if it is reported.

A. Reporting Within the State: The Institutional Chain

The prosecutor's primary reporting duty runs within the State's institutional hierarchy. This is not optional and is not contingent on the availability of international mechanisms. The duty arises from the prosecutor's role as an executive branch official of a State Party whose treaty obligations are performed or failed through that official's decisions.

Reporting Channel	Authority	What to Report	When
DOJ Civil Rights Division (federal prosecutors)	28 C.F.R. § 0.50; DOJ internal reporting protocols	Gap memos documenting specific instances where domestic law cannot deliver a UNCAT-required outcome.	After any investigation declination involving documented UNCAT-

Reporting Channel	Authority	What to Report	When
		Systemic patterns across multiple cases. Identified Article 19 compliance failures.	adjacent conduct that cannot be charged. Immediately where a pattern of identical failures is identified.
State Attorney General / Civil Rights Bureau (state prosecutors)	State constitutional and statutory duties; state APA reporting requirements	Same as above for state-level prosecutors. State AG has independent authority to investigate systemic civil rights violations.	Same timing.
Inspector General (federal agencies)	Inspector General Act of 1978, 5 U.S.C. App. 3	Where the gap involves a systemic failure of a federal agency's training, supervision, or institutional design — not individual judicial conduct (IG jurisdiction excludes Article III courts).	Where agency-level systemic failure is identified.
Congressional notification (federal prosecutors)	DOJ legislative affairs channels; congressional oversight authority under Art. I	Where a systemic gap requires legislative action — e.g., enactment of the Law Enforcement Torture Prevention Act, withdrawal of the Art. 16 reservation, or creation of an independent human rights enforcement mechanism.	Where documentation establishes a gap that can only be closed by legislation.
State Department / Office of the Legal Adviser	Article 19 periodic reporting process	Gap documentation for incorporation into the U.S. periodic report to the CAT Committee. This is the direct feed from individual prosecutorial decisions into the State's international treaty compliance record.	Prior to each periodic reporting cycle. The next U.S. periodic report was due in 2019 and remains overdue.

Note: The timelines and routing steps in this table are recommended institutional protocol, not generally established legal deadlines enforceable by private right of action. They should be adopted as office policy; where office policy differs, defer to it while documenting any gap between recommended practice and actual practice.

B. Reporting to International Mechanisms: The UNCAT Architecture

Where internal reporting fails, is refused, or is structurally foreclosed — which, as documented in the record, is the normal outcome for judicial-setting UNCAT complaints in the United States — the Convention provides international reporting mechanisms that do not depend on State cooperation. Prosecutors cannot personally submit to all of these mechanisms, but they can generate the documented record that civil society organizations, complainants, shadow reporters, and the IAJ can use to do so.

Mechanism	Article / Instrument	Threshold / Trigger	U.S. Acceptance	Role of Prosecutorial Documentation
CAT Committee — State Periodic Review	Art. 19	Mandatory; no threshold; State must report	Yes (periodic reports due every 4 years; U.S. overdue since 2019)	Gap memos transmitted through State Dept or submitted by shadow reporters constitute the factual record the Committee reviews. Undocumented gaps never reach the Committee.

Mechanism	Article / Instrument	Threshold / Trigger	U.S. Acceptance	Role of Prosecutorial Documentation
CAT Committee — Confidential Inquiry	Art. 20	Reliable information of systematic practice; Art. 20(5) allows public report if State consents	Yes (U.S. accepted Art. 20 jurisdiction)	Aggregate gap documentation across multiple cases establishes the 'reliable information' and 'systematic' elements. Article 20 is the most powerful available mechanism for structural noncompliance. IAJ submitted Art. 20 complaint September 2025 (IAJ-CAT-20250919-002-PUB).
CAT Committee — Individual Communications	Art. 22	Individual victim; exhaustion of domestic remedies; no anonymous submissions	NO (U.S. has not accepted Art. 22 jurisdiction)	Individual communications to the Committee are not available against the U.S. absent acceptance. However, fully documented gap memos establish exhaustion of domestic remedies and may support ICCPR Art. 7 individual communications to the Human Rights Committee (U.S. has accepted ICCPR jurisdiction).
Special Rapporteur on Torture	Human Rights Council Special Procedure mandate	Credible allegations of torture or CIDT; urgent communications on imminent cases	Applies to all UN member states; no acceptance required	Documented gap memos with identified complainant, official, conduct, and gap characterization are exactly what the Special Rapporteur uses for urgent communications and country visit requests. SR can act without State consent.
Special Rapporteur on Independence of Judges and Lawyers	Human Rights Council Special Procedure mandate	Credible allegations of judicial misconduct affecting independence	Applies to all UN member states; no acceptance required	For judicial-setting UNCAT violations specifically. The 2023 SR on Independence of Judges report provides that no court order involving violations of internationally recognized ethics standards has finality. Documented judicial-setting gap memos feed directly into SR communications.
Special Rapporteur on the Rights of Persons with Disabilities	Human Rights Council Special Procedure mandate; CRPD Article 15	Credible allegations of torture or CIDT where disability status is a factor	Applies to all UN member states; no acceptance required	Note: Special Rapporteurs receive information and may send urgent appeals or allegation letters to States; this is not the same as a treaty-body individual complaint mechanism. Transmit documentation to both SR on Torture and SR on Disability where disability is a factor.
Universal Periodic Review	Human Rights Council Resolution 5/1 (2007)	Mandatory for all UN member states; conducted every 4.5 years; next U.S. review 2025	Applies; U.S. next reviewed 2025	Shadow reports to the UPR are submitted by civil society. Aggregated prosecutorial gap documentation, transmitted to civil society organizations or the

Mechanism	Article / Instrument	Threshold / Trigger	U.S. Acceptance	Role of Prosecutorial Documentation
				IAJ, becomes shadow report material. UPR recommendations are not legally binding; accepted recommendations create public political commitments to respond and follow up, and their implementation is monitored in subsequent UPR cycles.
ICCPR Human Rights Committee	ICCPR Art. 7 (torture prohibition); Optional Protocol for individual communications	Individual communications: exhaustion of domestic remedies; U.S. accepted ICCPR but not Optional Protocol	ICCPR accepted; Optional Protocol NOT accepted[4]	Parallel to UNCAT. Where Art. 22 is unavailable, ICCPR Art. 7 runs parallel. Documentation establishing domestic remedy exhaustion supports HRC communications through the Special Procedures rather than the treaty body process.

C. Protocol-Required Collaboration: What the 2022 Istanbul Protocol Requires of Prosecutors

The 2022 Istanbul Protocol establishes two provisions that directly govern the relationship between U.S. prosecutors and the IAJ. They are not advisory suggestions. They are the Protocol standards against which the CAT Committee measures Article 12 compliance.

First, Chapter III paragraph 263 provides that non-State actors such as civil society organizations play an important independent and complementary role by: (i) documenting torture or ill-treatment; (ii) representing victims; (iii) prompting investigations or other inquiries or legal proceedings; (iv) providing evidence and/or expertise to investigative bodies; (v) scrutinizing proceedings; and (vi) providing legal analysis of the adequacy of investigations. These are the six Protocol-recognized civil society functions. The IAJ is established to perform the civil-society functions specifically described and endorsed in Chapter III, paragraph 263 of the 2022 Istanbul Protocol.

Second, Chapter VIII requires States to undertake comprehensive and sustained action to implement the Protocol and its Principles in collaboration with international actors and members of civil society. This is not a soft aspiration. It is a structural obligation the State accepted when it endorsed the Istanbul Protocol as the Article 12 investigation standard. The United States — through its periodic reports, its CAT Committee engagement, and its DOJ training materials — has repeatedly endorsed the Protocol. The Chapter VIII obligation follows from that endorsement.

For prosecutors, these two provisions translate to the following specific collaboration steps:

Step 1 — Treat IAJ investigation reports as Protocol-compliant expert evidence. The 2022 Protocol was specifically updated to prevent misuse 'when States arbitrarily disqualify independent, non-governmental clinical experts from testifying in judicial proceedings.' A prosecutor or court that dismisses an IAJ Level 3 or Level 4 forensic evaluation on the grounds that IAJ is not a State-accredited body is engaging in exactly the conduct the 2022 Protocol was updated to address.

[4] The United States is party to the ICCPR but has not accepted the First Optional Protocol. Individual Human Rights Committee communications are therefore not currently available against the United States. ICCPR norms may still inform analysis, shadow reporting, and special-procedures engagement, but those are distinct mechanisms and should not be conflated with treaty-body individual communications.

Step 2 — Preserve the gap memorandum in a form accessible to IAJ as a ¶263 actor. The Protocol's documentation standard requires that evidence be preserved and accessible to civil-society organizations that scrutinize proceedings and provide legal analysis. A gap memorandum filed internally and never routed to any civil-society or supervisory review mechanism satisfies neither the Article 12 investigation obligation nor the Chapter VIII collaboration obligation.

Step 3 — Where IAJ has commenced an investigation of the same matter, obtain and review IAJ's findings before closing the prosecutorial file. The Protocol's thoroughness requirement and its anti-retraumatization principle together require that prosecutors not duplicate independent civil-society investigations without first reviewing their findings.

Step 4 — Where IAJ designates a venue as forum nullus, treat that designation as a Protocol-grounded analytical conclusion about remedy adequacy, route the preserved record through the appropriate external channel, and document that routing in the gap memorandum.

Step 5 — Do not invoke accreditation as a basis for excluding IAJ evidence. The Protocol's independence requirement is structural, not credentialing. IAJ is structurally independent of the judicial institutions alleged to be implicated in the violations. That structural independence satisfies the Protocol's independence standard. The absence of Paris Principles accreditation is a question of formal standing in the State's human rights architecture. It is not a basis for excluding Protocol-compliant forensic evidence.

D. The Reporting Duty Summary: What 'Reporting' Requires

Step	Action	Destination	Timing
1	Prepare gap-documentation memorandum per Section A-V protocol.	Internal case file.	Upon investigation close or charging decision.
2	Transmit memo to supervisory chain within the prosecuting office.	First-line supervisor; Civil Rights Unit; Section Chief.	Within 30 days of file closure.
3	Transmit memo to agency civil rights or policy office for Article 19 periodic report compilation.	DOJ Civil Rights Division (federal); State AG Civil Rights Bureau (state).	Within 60 days; compile quarterly for periodic report cycle.
4	Where systemic pattern is identified (3+ similar gaps within 12 months), transmit pattern summary to Inspector General (non-judicial) or congressional liaison (judicial).	IG office; congressional oversight staff.	Upon identification of pattern.
5	Where internal reporting is refused, ignored, or structurally foreclosed, transmit documentation to IAJ or other civil society organization for shadow reporting.	IAJ (IAJ-CAT-20250919-002-PUB channel); relevant ACLU chapter; other treaty-body-engaged civil society.	As soon as internal channels are exhausted or formally closed.
6	Where complainant has independent access to Special Rapporteur channels, provide documentation that establishes: nature of conduct, official capacity, treaty characterization, domestic remedies exhausted.	Complainant's own submission; counsel's Special Rapporteur communication; IAJ aggregation for SR urgent communication.	Immediately where imminent harm is documented; within 90 days otherwise.

E. Reporting, Sovereign Immunity, and Professional Responsibility

Three characterizations of the reporting duty are legally incorrect and must be addressed directly, because they generate institutional resistance that converts a legal obligation into a practical impossibility.

Not a judicial sovereign-immunity waiver: Sovereign immunity is principally a defense to suit. Internal documentation and upward reporting of compliance gaps do not, by themselves, waive immunity in court. The United States accepted CAT Committee jurisdiction by ratifying UNCAT. This guide does not contend that every individual line prosecutor is automatically authorized to make direct submissions to international bodies in disregard of domestic confidentiality, authorization, or employment rules. The narrower and stronger point is that accurate internal documentation and routing into lawful supervisory or reporting channels are not themselves immunity waivers.

Not categorically forbidden by professional responsibility: No general professional rule requires a prosecutor to conceal systemic legal failure. The safer formulation is that competence (Rule 1.1), candor (Rule 3.3), justice-oriented prosecutorial obligations (Rule 3.8), and ordinary supervisory-reporting principles strongly support accurate internal documentation, non-misrepresentation, and non-concealment.

Not equivalent to disloyalty: Loyalty to the public interest does not require silence about implementation gaps. The operational rule: document accurately, preserve the record, report internally through lawful channels, and where external reporting is legally available or complainant-driven, support that process honestly rather than obstruct it.

A-V-C. THE ISTANBUL PROTOCOL INVESTIGATION DUTY: INDEPENDENCE FROM DOMESTIC INFLUENCE

The Convention's Article 12 investigation obligation requires that the investigation be prompt and impartial. 'Impartial' is not a procedural courtesy. It imports the full independence standard established by the international community's authoritative investigation methodology: the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, 2022 edition). The Istanbul Protocol is the standard against which the CAT Committee, the Special Rapporteur on Torture, the Subcommittee on Prevention of Torture, and regional human rights bodies assess the adequacy of investigations into torture allegations. An investigation that does not meet this standard does not satisfy Article 12. An investigation that satisfies Article 12 must meet this standard, at minimum.

A. The Istanbul Protocol Standard: What an Adequate Investigation Requires

The Istanbul Protocol establishes five principles that govern every investigation into torture or CIDT. These are minimum requirements, not aspirational goals. The CAT Committee has cited failure to meet them as evidence of Article 12 non-compliance.

Istanbul Protocol Principle	What It Requires	Failure Mode in U.S. Practice
Competence	Investigators must have the necessary professional expertise: medical, psychological, forensic, and legal. Investigation teams must include qualified clinicians who can conduct independent medical and psychological evaluations under the Protocol's methodology. Legal personnel must be versed in the treaty framework, not merely domestic criminal law.	DOJ prosecutors are trained in domestic criminal statutes. They are not, by training, Istanbul Protocol investigators. Standard prosecution investigations do not include independent medical examination of the complainant under Protocol methodology, do not include independent psychological assessment of trauma, and do not apply the Protocol's forensic documentation standard. The competence gap is structural.
Impartiality	Investigators must have no institutional connection to the accused, the accused's chain of command, or the institution under investigation. Where a judge, court officer, or judicial branch employee is the accused, the investigation must be independent of the judicial branch and of any institutional actor whose interests align with the accused.	Where the accused is a judicial officer, a DOJ investigation is not impartial in the Protocol's sense if it is subject to the DOJ's established practice of deferring to SCOTUS in judicial-setting cases. That deference practice creates a structural impartiality failure: the body charged with investigation has a documented institutional policy of not investigating the category of conduct at issue. More fundamentally, in systemic judicial-setting cases the problem cannot be solved by SCOTUS or any other judicial authority: the judicial branch is simultaneously the accused institution and the institution to which accountability is deferred. Under VCLT Article 26, a State cannot invoke internal institutional arrangements to justify non-performance of treaty obligations. This circularity is a compliance failure, not a valid defense.

Istanbul Protocol Principle	What It Requires	Failure Mode in U.S. Practice
Independence	The investigation must be independent of political direction, institutional pressure, and influence from the accused or from any body with authority over the investigator. This independence must be structural and procedural, not merely declared. An investigation that can be closed by executive direction, defunded, or redirected by political appointees in the chain of command does not satisfy the independence requirement.	A prosecutor subject to supervision by an AG appointed by an administration that has taken positions favorable to the accused institution (e.g., the federal judiciary) does not conduct an independent investigation in the Protocol's sense. A prosecutor subject to DOJ guidance that defers to SCOTUS in judicial cases is structurally precluded from conducting an independent investigation of those cases.
Thoroughness	All relevant evidence must be identified, collected, and preserved. This includes: complete medical records; independent expert medical and psychological examination of the complainant; documentation of all physical and psychological sequelae; Istanbul Protocol-compliant assessment of causation, consistency, and severity; and forensic preservation of all documentary evidence with chain-of-custody documentation.	Standard prosecution investigations typically do not include independent examination of the complainant by Protocol-qualified medical and psychological experts. Without such examination, the severity and causation elements cannot be established to the Protocol standard. A prosecution investigation that relies solely on records rather than independent expert examination does not meet the thoroughness requirement.
Promptness	Investigation must begin immediately upon receipt of credible information. Delay causes loss of evidence, exposes the complainant to further harm, and may constitute a separate Article 12 violation. The Protocol emphasizes that physical and psychological evidence deteriorates rapidly and that delay in commencing medical examination directly prejudices the investigation's reliability.	DOJ processing of judicial-setting civil rights complaints has produced documented delays of years. Physical evidence of harm deteriorates in the interim. The complainant remains exposed to the same institution causing the harm throughout the delay. Delay in judicial-setting cases is not merely inefficiency; it is ongoing exposure to the prohibited conduct.

B. Working with Independent Monitoring or Expert Bodies Where They Exist — and Preserving Independence Where They Do Not

In States that have established a National Human Rights Institution (NHRI) compliant with the Paris Principles, the NHRI holds the institutional mandate to commission, oversee, and where necessary conduct independent investigations into torture and CIDT allegations. The NHRI's independence from the executive branch, the judiciary, and institutional actors under investigation is the structural mechanism that gives Article 12's impartiality requirement its operational content. The prosecutor's duty is not to conduct

the investigation alone but to work integrally with the NHRI: to transmit complaints, to share documentary evidence, to provide access to official records, and to cooperate with NHRI investigators without institutional obstruction.

Where no accredited NHRI exists — as in the United States — the 2022 Istanbul Protocol ¶263 establishes that civil society organizations step into the Protocol architecture not as informal substitutes but as recognized actors with a distinct and complementary role. The Protocol's Chapter VIII then imposes on the State a collaboration obligation with those organizations. In practical terms for U.S. prosecutors: engagement with the IAJ is not voluntary charity toward a civil society actor. It is part of the Protocol-implementation framework the State has accepted by ratifying UNCAT and endorsing the Protocol as the Article 12 investigation standard.

The NHRI's role in the investigation architecture is distinct from the prosecutor's. The prosecutor determines whether criminal charges are supportable and ensures the State's punishment obligation is met. The NHRI ensures that the investigation meets the Istanbul Protocol standard and that the protection, prevention, relief, and remedy obligations are independently evaluated. The two bodies operate on parallel tracks that must be coordinated: NHRI findings on severity, causation, and consistency under the Protocol standard inform prosecutorial assessment of the treaty characterization and charging elements. Prosecutorial access to official records and compulsory process supports the NHRI investigation. Neither can fully substitute for the other.

The Paris Principles require NHRI independence on three axes: institutional (not subordinate to any government body), functional (mandate to investigate without prior authorization from the State), and financial (budget not controllable by the executive as a mechanism of interference). These are not aspirational standards. They are the conditions under which the NHRI's investigation findings carry the independence required by the Istanbul Protocol and the credibility required by treaty bodies receiving those findings.

The United States Has No Accredited NHRI — What Follows for Prosecutors

The structural fact: The United States does not have a National Human Rights Institution accredited with 'A' status by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI). No Congressional legislation has established one. The CAT Committee has repeatedly recommended that the United States establish an independent national human rights institution. That recommendation has not been implemented. The absence is not incidental. It is the most significant structural gap in the U.S. UNCAT implementation architecture: there is no body in the U.S. system with the institutional mandate, the independence from executive and judicial influence, and the international accreditation to commission and conduct Istanbul Protocol-compliant investigations into official torture and CIDT.

What follows: Where no NHRI exists, the investigation duty under Article 12 — including the duty to ensure that investigation meets the Istanbul Protocol standard of competence, impartiality, independence, thoroughness, and promptness — falls on the prosecutor's office as the entity within the State's executive branch closest to the prosecution obligation. The prosecutor cannot discharge this duty by conducting an ordinary criminal investigation using standard DOJ protocols. The prosecutor must ensure that the investigation meets the Istanbul Protocol standard, which requires commissioning independent medical and psychological expertise, establishing structural independence from institutional pressures, and preserving evidence to the Protocol's forensic documentation requirements.

The independence requirement is non-negotiable: The Istanbul Protocol states that investigations into allegations of torture must be independent of domestic political direction, institutional pressure, and influence from any body with authority over the investigator. This requirement exists precisely because torture and CIDT are typically committed by state actors who have authority over the investigation

mechanism. Where the accused is a judicial officer, a court, or a judicial branch institution, the investigation must be structurally insulated from the judicial branch. Where the investigation is conducted within the executive branch, it must be insulated from political direction by any official who has a relationship with the accused institution or whose political interests are served by the investigation's failure. These requirements are not satisfied by a declaration of impartiality. They are satisfied only by structural arrangements that make interference impossible or immediately visible.

The independence requirement is independent of domestic legislation: The Istanbul Protocol's independence standard derives from international treaty law and the customary international law of torture investigation. It is not contingent on domestic statutory authorization. A prosecutor cannot decline to meet the Protocol standard on the ground that no domestic statute requires it. The investigation duty under Article 12 is a Plane A obligation that exists regardless of Plane B statutory architecture. Where domestic legislation does not authorize or fund the mechanisms needed to meet the Protocol standard — independent medical expert commissions, forensic preservation teams, structurally insulated investigation units — that gap must be documented as a specific limitation on the State's ability to deliver its Article 12 obligation. The gap does not extinguish the obligation. It documents a failure of implementation that must be reported through the mechanisms established in Section A-V-B.

C. When to Request NHRI Investigation vs. Conduct In-House: The Decision Rule

The duty to work integrally with the NHRI creates a mandatory referral requirement in States where an accredited NHRI exists. Where no NHRI exists, the prosecutor must make a principled decision about which aspects of the investigation can responsibly be conducted in-house and which must be externalized. This is not a discretionary preference. It is a structural determination about whether in-house investigation can satisfy the Istanbul Protocol's impartiality and independence standards on the specific facts of the case.

The NHRI Referral vs. In-House Decision Rule

Where a State has an accredited NHRI (mandatory referral): The prosecutor must refer the case to the NHRI for independent investigation before conducting or completing any internal investigative assessment of the treaty characterization. The NHRI holds the structural mandate, the independence, and the international accreditation to conduct a Protocol-compliant investigation. The prosecutor's role is to: (a) transmit the complaint and all supporting documentation to the NHRI; (b) preserve the evidentiary record pending NHRI investigation; (c) provide access to official records and compulsory process on NHRI request; and (d) treat NHRI findings as expert evidence for treaty characterization purposes. The prosecutor must not conduct an in-house assessment of severity or causation that substitutes for or pre-empts the NHRI investigation. The United States does not have an accredited NHRI; this rule states the international standard.

Where no NHRI exists — the four-question decision matrix: In the absence of an NHRI, the prosecutor must assess four questions to determine which aspects of the investigation can be conducted in-house and which require externalization.

Question 1 — Is the accused a judicial officer or judicial institution? If yes: in-house investigation by a prosecutorial office subject to the DOJ's documented practice of deferring to courts in judicial-setting cases has a structural impartiality failure under the Istanbul Protocol. The investigation must be externalized to the maximum extent available — to the IAJ or equivalent civil society body for the medical and psychological assessment, and to a senior career official structurally insulated from judicial appointment pathways for the legal review. If no: in-house investigation may proceed on the legal assessment, with independent expert commissions for the medical and psychological components.

Question 2 — Does the DOJ have a prior institutional position on this category of conduct? If the DOJ has issued guidance, maintained a policy, or taken a prior position that limits investigation of the conduct category (e.g., deferring to SCOTUS in judicial cases), in-house investigation of that category has a structural independence failure. The Istanbul Protocol's independence requirement applies to the investigative and expert functions — medical examination, psychological assessment, forensic documentation — not to the legal authority to assess elements and make charging decisions, which must remain with the prosecutor. Required: (a) document the structural failure as a specific Article 12 gap; (b) externalize the expert and investigative components to Protocol-qualified independent experts or IAJ; (c) where the prosecutor's supervisory chain is itself the source of the deference policy, seek review from a senior career official outside that chain — a structural precaution, not a transfer of authority. The charging decision remains exclusively with the prosecutor. Medical and psychological assessment must be externalized in all cases.

Evaluator competence (IAJ-STD-20260324-001-PUB): The IAJ uses a four-level evaluator designation: Level 1 (licensed clinician: documentation and triage); Level 2 (licensed clinician with forensic training: primary interview and testing under supervision); Level 3 (doctoral-level psychologist or psychiatrist: full evaluation and attribution analysis); Level 4 (doctoral-level board-certified: high-stakes reports and forum triage). Full severity and causation attribution requires Level 3 or 4. A treating clinician's diagnostic impression does not satisfy the Protocol's documentation requirement for attribution purposes. Prosecutors evaluating whether competence requirements were met in an IAJ report should apply this framework.

Question 3 — Are independent medical and psychological experts available? In-house investigation never substitutes for independent medical and psychological expert examination. Regardless of any other factor, the severity, causation, and consistency assessment required by the Istanbul Protocol must be conducted by independent experts not employed by the prosecuting office and not connected to the accused institution. If such experts are not available within the prosecuting office's resource allocation, the investigation must be supplemented or led by the IAJ's investigation function.

Question 4 — Has the IAJ commenced or offered to commence an investigation? If the IAJ has commenced an Istanbul Protocol investigation of the same case, in-house duplication must stop. The prosecutor must obtain and review the IAJ investigation findings, treat them as expert evidence, avoid requiring the complainant to undergo duplicate examinations, and share available official records with the IAJ. If the IAJ has not commenced an investigation, the case should be transmitted to the IAJ immediately, regardless of whether in-house investigation also proceeds on the legal assessment track.

The default rule: Where any of the four questions points toward externalization, the investigation must be externalized on that component. The prosecutor may conduct an in-house legal assessment only where (a) the accused is not a judicial officer or institution, (b) no prior DOJ policy limits the investigation category, and (c) independent medical and psychological experts have been independently commissioned. The medical and psychological assessment is NEVER appropriate for in-house conduct — it must always involve independent experts, regardless of other factors.

D. How the Prosecutor Must Discharge the Investigation Duty in the Absence of a U.S. NHRI

In the absence of an accredited NHRI, the prosecutor must take the following steps to ensure the investigation meets the Istanbul Protocol standard to the greatest extent possible within the available institutional architecture. Where any step cannot be taken, the reason must be documented as a gap.

Protocol Requirement	Prosecutor's Action in Absence of NHRI	Gap if Action Is Unavailable
Independent medical examination	Commission an independent medical expert not employed by the prosecuting office, not	If no appropriation exists for independent medical experts, document the funding

Protocol Requirement	Prosecutor's Action in Absence of NHRI	Gap if Action Is Unavailable
	connected to the accused institution, and with no prior involvement in the matter to conduct a Protocol-compliant physical examination of the complainant. The expert must apply the Protocol's documentation standard: history, clinical findings, interpretation, causation assessment, consistency assessment, and conclusions on treaty threshold.	gap and the resulting inability to satisfy the Protocol's thoroughness requirement. Obtain available medical records. Do not substitute record review for independent examination in the Protocol assessment.
Independent psychological assessment	Commission an independent psychologist or psychiatrist with expertise in trauma and torture sequelae to conduct a Protocol-compliant psychological evaluation: history, clinical observations, psychological testing, interpretation, and conclusions on psychological harm and causation. The expert must apply the Protocol's re-traumatization caution: the evaluation must minimize further harm to the complainant.	If unavailable, document the gap. Note that the Protocol's re-traumatization caution cuts both ways: the prosecutor must not commission evaluations that expose the complainant to the institution or mechanism causing harm as part of the investigation process.
Structural insulation from institutional pressure	Where the accused is a judicial officer or judicial institution, the investigation must be assigned to a unit or individual with no supervisory relationship to any DOJ official who has expressed a position on judicial-setting cases, who is subject to future appointment by the accused institution, or who has a documented relationship with the accused. Assign a senior career official — not a political appointee — to supervise.	If structural insulation is not possible within the institutional architecture, document the structural impartiality failure as a specific Article 12 gap. This is among the most significant recurring gaps in U.S. judicial-setting torture investigations.
Protocol-compliant forensic documentation	Preserve all physical and documentary evidence under chain-of-custody protocols. Document the chain of custody in writing. Obtain all medical records. Preserve electronic communications. Photograph or otherwise document all physical evidence of harm.	Standard prosecution evidence preservation protocols. No additional gap in most cases if standard protocols are followed. Gap arises only where evidence has been destroyed, is held by the accused institution, or requires compulsory process the prosecutor declines to use.
The 'second bite' prohibition	The Istanbul Protocol warns against exposing the complainant to repeated investigation processes that re-expose them to the mechanism causing harm. In judicial-setting cases: do not require the complainant to participate in proceedings within the accused institution as part of the investigation. Do not subpoena the complainant to testify before the institution whose conduct is under investigation. Do not use the accused institution's own processes to gather evidence of that institution's violations.	If the evidence needed to establish the treaty characterization can only be obtained through the accused institution's processes, document the evidentiary gap and the structural reason for it. Do not expose the complainant to re-traumatization to fill an evidentiary gap that should have been anticipated.
IAJ coordination	Where the IAJ has conducted or commenced an Istanbul Protocol investigation of the same case or complainant, the prosecutor must: (1) obtain and review the IAJ's investigation findings; (2) treat those findings as expert evidence for purposes of treaty characterization; (3) not require the complainant to undergo duplicate	If the IAJ has not yet commenced an investigation, transmit the case to the IAJ under the reporting protocols in Section A-V-B. The IAJ's institutional mandate, methodology, and treaty-body relationships make it a possible expert and civil-society resource where independence

Protocol Requirement	Prosecutor's Action in Absence of NHRI	Gap if Action Is Unavailable
	examinations already conducted by Protocol-qualified IAJ investigators; and (4) share available official records with the IAJ subject to applicable disclosure constraints.	concerns are acute. IAJ is not an accredited NHRI and should not be described as institutionally equivalent to one. Its relevance here is grounded in the 2022 Istanbul Protocol's explicit recognition at Chapter III ¶263 and Chapter VIII that civil society organizations are essential, independent, and complementary actors in the investigation and documentation architecture — independent of, and complementary to, both State institutions and accredited NHRIs.

E. The Independence Requirement and Its Limits

What the independence requirement is: It is a Plane A obligation arising from Article 12's impartiality requirement as interpreted by the Istanbul Protocol and applied by the CAT Committee. It cannot be reduced below its minimum by domestic legislation, political instruction, supervisory direction, or resource constraints. Those constraints must be documented as gaps; they do not extinguish the obligation.

What the independence requirement is not: It is not a claim that the prosecutor can personally achieve the full independence of an accredited NHRI through individual decision-making. The prosecutor operates within a hierarchical institution subject to political supervision. The independence requirement cannot be fully met in the U.S. system as currently constituted. Acknowledging this honestly — and documenting it as a systemic gap in the State's implementation architecture — is itself the correct exercise of the prosecutor's Plane A role.

The resolution: The prosecutor maximizes independence within available institutional architecture, documents every departure from the Protocol standard as a specific gap with a specific cause, commissions independent expert examinations to the extent available funding and institutional authority permit, coordinates with the IAJ as the functional NHRI equivalent, and transmits the documented gaps through the reporting channels established in Section A-V-B so that the structural problem reaches the bodies with authority to close it. The prosecutor who does all of this has discharged the Plane A investigation obligation to the maximum extent the Plane B system permits. The prosecutor who does none of it — conducting instead a standard prosecution review under domestic criminal law standards, closing the file when no charge is supportable, and reporting nothing — has failed the State's Article 12 obligation entirely and contributed to the invisible compliance failure the CAT Committee documented in 2014.

The 2022 Istanbul Protocol resolves this tension explicitly. ¶263 establishes that civil society organizations satisfy the independence requirement through structural separation from the alleged perpetrator — not through accreditation. Where IAJ conducts an investigation of alleged torture or CIDT by judicial institutions, IAJ is structurally independent of those institutions. The Protocol recognizes that independence. A prosecutor who declines to engage with an IAJ investigation on the grounds that IAJ is not a State-authorized body is applying an accreditation test the Protocol does not impose and that the 2022 edition specifically cautions against.

F. State Prosecutors and UNCAT: The RUD Understanding

This guide addresses federal and state prosecutors equally. U.S. Understanding V states that the Convention shall be implemented by the Federal Government to the extent it exercises legislative and judicial jurisdiction 'and otherwise by the state and local governments.' State prosecutors are competent authorities with independent UNCAT implementation duties. The five-outcome obligation structure, gap-documentation duty, and reporting architecture apply to state prosecutors just as they apply to federal prosecutors. State prosecutors report through state AG civil rights bureaus, state legislative oversight, and state inspector general offices; international channels are the same. DOJ has an independent obligation under Understanding V to ensure state prosecutors receive adequate UNCAT guidance.

A-VI. PROSECUTORIAL IMMUNITY AND THE UNCAT ACCOUNTABILITY PROBLEM

Prosecutorial immunity presents the most analytically complex immunity question in the domestic UNCAT enforcement framework. The central question is not simply 'is the prosecutor immune,' but rather: what are the prosecutor's actual exposures, what remains institutionally required of the State, and what follows when documented torture or CIDT allegations are not investigated?

This section is organized around a four-part architecture that must not be collapsed. Collapsing it produces either dangerous overstatement — every failure to investigate creates personal liability — or dangerous understatement — prosecutors are fully insulated from all consequence. Neither is accurate.

Seven-Part Architecture: Prosecutors and UNCAT

Part 1 — Direct prosecutorial conduct as a possible Article 1 or Article 16 violation. Where a prosecutor's own acts independently satisfy the treaty's elements.

Part 2 — State Party treaty noncompliance through prosecutorial non-enforcement. Where a prosecutor's office, or other competent state mechanism, is one of the institutions through which Article 12 compliance or noncompliance occurs.

Part 3 — Domestic barriers to compelling prosecution. Where existing doctrine immunizes the charging decision from private civil challenge.

Part 4 — Surviving exposures that domestic immunity does not reach. Non-advocacy domestic exposure, professional discipline, and international scrutiny.

Part 5 — Leveraging all remaining lawful process. Maximum anti-impunity practice using every available domestic and international mechanism.

Part 6 — Consequences for failure to report to international mechanisms. Acquiescence doctrine, affirmative concealment, professional discipline, and Monell.

Part 7 — Consequences for failure of diligence in equivalence assessment. Immunity analysis, acquiescence, false representation, and professional consequences.

Part 1: Direct Prosecutorial Conduct as a Possible Article 1 or Article 16 Violation

Where a prosecutor personally deploys criminal process as a vehicle for inflicting severe physical or mental suffering — by compelling medically unsafe participation, directing coercive process with known severe consequences, or otherwise engaging in affirmative conduct that independently satisfies the treaty elements — the prosecutor's own conduct may, depending on the full factual record, satisfy Article 1 or Article 16. That conclusion must remain tightly tied to proof of severity, causation, purpose, official capacity, and knowledge.

The domestic immunity framework is functional, not categorical. Prosecutorial immunity is not a blanket shield. Its scope depends on what function the prosecutor is performing:

Prosecutorial Function	Immunity Level
Initiating prosecution; presenting the State's case at trial; making charging decisions as an advocate (Imbler v. Pachtman, 424 U.S. 409 (1976))	Absolute immunity from civil damages.
Giving legal advice to police (Burns v. Reed, 500 U.S. 478 (1991))	Qualified immunity only — not absolute.
Fabricating evidence during preliminary investigation; pre-charge investigative work (Buckley v. Fitzsimmons, 509 U.S. 259 (1993))	Qualified immunity only — Buckley is the watershed case.
Attesting to facts in support of an arrest warrant as a complaining witness (Kalina v. Fletcher, 522 U.S. 118 (1997))	Qualified immunity only.
Concealing exculpatory material; coercing witnesses; fabricating evidence; willful rights deprivation	May create domestic criminal, disciplinary, civil, or oversight exposure depending on the conduct and the statute.

18 U.S.C. § 242 applies to affirmative misconduct, not pure non-prosecution. Section 242 is an affirmative-conduct statute. Pure non-prosecution does not satisfy its elements. A prosecutor who fabricates evidence, uses coercive process knowing it will cause severe harm, retaliates against a torture complainant by initiating baseless prosecution, or actively directs conduct that independently violates constitutional rights may satisfy § 242. A prosecutor who simply declines to charge, without more, does not. Accordingly, any argument for domestic criminal exposure must remain tied to affirmative unlawful conduct, concealment, retaliation, fabrication, coercion, or other independently chargeable acts, rather than to declination alone.

Part 2: State Party Treaty Noncompliance Through Prosecutorial Non-Enforcement

UNCAT Article 12 obligates the State Party to ensure a prompt and impartial investigation wherever there is **reasonable ground to believe** that an act of torture has been committed. The key point here is **institutional rather than automatic personal liability:** prosecutorial non-enforcement may contribute to State noncompliance even where no individual prosecutor is, by that fact alone, personally civilly or criminally liable under domestic law.

Where the reasonable-ground threshold is met, and no adequate prompt and impartial investigation follows, the State may face Article 12 noncompliance. That is a proposition about the State's compliance architecture, not an automatic conversion of every declination into personal prosecutor liability. The Article 12 investigation obligation is triggered by reasonable ground to believe — a standard materially lower than probable cause and far lower than proof-beyond-a-reasonable-doubt.

State-Level Consequences of Prosecutorial Non-Enforcement (Article 12 Relevance)

CAT Committee periodic review: The 2014 Concluding Observations on the United States specifically identified failure to investigate and prosecute torture allegations as a structural non-compliance defect.

Documented declinations without non-equivalence memoranda may contribute to the evidentiary record of systematic non-compliance.

Special Rapporteur urgent communications: The UN Special Rapporteur on Torture accepts urgent communications from individuals who allege that domestic authorities have failed to investigate credible torture allegations. The State is the respondent, not the individual prosecutor.

Article 20 systematic inquiry: Where there is evidence of systematic practice of torture or CIDT, the Committee may initiate a confidential inquiry. The inquiry investigates State Party practice; it is not a proceeding against individual prosecutors.

Part 3: Domestic Barriers to Compelling Prosecution

First barrier — Imbler absolute immunity for charging decisions: Under *Imbler v. Pachtman*, 424 U.S. 409 (1976), a prosecutor has absolute immunity from § 1983 civil damages for decisions to initiate prosecutions and present the State's case. The decision not to initiate a prosecution is equally protected. A civil suit seeking damages from a prosecutor for declining to charge documented torture is barred by Imbler.

Second barrier — no standing to compel prosecution: *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973); *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375 (2d Cir. 1973); *Wayte v. United States*, 470 U.S. 598 (1985). Together these cases produce a domestic structure in which a torture victim cannot use civil litigation to force the prosecutor's hand on the charging decision.

What these barriers mean and do not mean: These barriers reflect structural features of U.S. separation of powers. They do not erase the State's underlying CAT obligations. The narrowest and stronger point is this: where the reasonable-ground threshold is met and no adequate state mechanism responds, non-enforcement may contribute to State noncompliance, even though domestic doctrines may still limit private suits or direct compulsion against an individual prosecutor.

Part 4: Surviving Exposures — What Prosecutorial Immunity Does Not Reach

Channel A: Non-Advocacy Domestic Exposure (Qualified Immunity, Not Absolute)

The Imbler/Burns/Buckley/Kalina framework makes absolute immunity function-specific. A prosecutor who, in the course of non-prosecution of a torture case, also commits investigative misconduct, fabricates or conceals evidence, coerces a witness, or gives police unconstitutional advice faces **qualified immunity only** for those acts. *Monell v. Department of Social Services*, 436 U.S. 658 (1978): municipal liability where office policy produced the violation. *Ex parte Young*, 209 U.S. 123 (1908): prospective injunctive and declaratory relief against state officials in official capacity.

Channel B: Professional Discipline

Non-Prosecution Alone: Discipline Is Contingent	Non-Prosecution + Affirmative Misconduct: Discipline Is Robust
No Model Rule directly imposes a duty to prosecute torture allegations. Rule 3.8 does not create a general UNCAT enforcement engine.	Brady violations, fabrication, witness coercion, misrepresentation to courts: disciplinable and grounds for suspension or disbarment.

Non-Prosecution Alone: Discipline Is Contingent	Non-Prosecution + Affirmative Misconduct: Discipline Is Robust
Pure non-prosecution may become disciplinable where it is systematic, retaliatory, corrupt, or constitutes conduct prejudicial to the administration of justice under Rule 8.4(d). This is contingent on facts.	Charging abuse — using criminal process against a torture complainant to retaliate — is disciplinable under Rules 3.8(a) and 8.4.

Channel C: International Scrutiny — State Attribution, Not Personal Punishment

International forums attribute breach to the State Party. They scrutinize the office and system. They do not ordinarily provide direct personal punishment of the individual prosecutor. The IAJ's further position — that domestic prosecutorial immunity cannot define the content of jus cogens prohibitions or extinguish State obligations on the international plane — is an argued international-law extension grounded in VCLT Articles 27 and 53 and in the consistent CAT Committee position that domestic structural barriers cannot justify non-compliance. That extension operates in treaty-body and international-forum analysis, not as a domestic court-binding rule. It is presented here as a strong argument, not as settled doctrine.

Part 5: Leveraging All Remaining Lawful Process — Maximum Anti-Impunity Practice

This guide does not contend that the prosecutor may ordinarily transform the criminal case into a free-standing structural-reform proceeding. It does contend that the prosecutor must use every lawful component of the prosecution and judicial process to secure as much of the required outcome set as the system presently permits. That includes:

- Opening or referring investigations on reasonable grounds, not waiting for trial-level certainty.
- Preserving all records and evidence, regardless of whether a charge is filed.
- Protecting complainants and witnesses immediately, before any charging decision.
- Charging the nearest valid domestic offenses honestly and aggressively.
- Pursuing retaliation and obstruction theories as independently chargeable conduct.
- Seeking sentencing, restitution, and rehabilitative measures where law allows.
- Making supervisory, pattern-or-practice, inspector-general, and legislative referrals.
- Ensuring that whatever the criminal forum cannot itself deliver is formally preserved and reported for the next competent mechanism — domestic, supervisory, civil, or international.

The prosecutor's task is therefore not conventional minimalism, but maximum lawful anti-impunity practice. This is the disciplined form of the equity insight: not chancery-style substitution, but anti-impunity orientation.

Part 6: Consequences for Failure to Report to International Mechanisms

The reporting duty established in Section A-V-B is analytically distinct from the charging decision. The charging decision is the core advocacy function that Imbler protects with absolute immunity. The reporting duty — transmitting documented gaps to supervisory chains, treaty-body reporting processes, and international mechanisms — is an administrative and supervisory function. It is not advocacy. The immunity analysis is correspondingly different.

The Critical Immunity Distinction: Charging Decision vs. Reporting Duty

The charging decision — absolute immunity: Under Imbler v. Pachtman, 424 U.S. 409 (1976), a prosecutor's decision to charge or not to charge is an advocacy function protected by absolute immunity from civil damages. A torture complainant cannot bring a § 1983 suit to recover damages for a declination, however unjustified. This protection is categorical and does not depend on the prosecutor's motive.

The reporting duty — qualified immunity only: The duty to document a gap and transmit it to the supervisory chain, the DOJ's Article 19 reporting process, or an international mechanism is not a charging decision. It is an administrative action — closer to the investigating and advising functions that Burns v. Reed, 500 U.S. 478 (1991), and Buckley v. Fitzsimmons, 509 U.S. 259 (1993), subject to qualified immunity only. A prosecutor who systematically fails to document and transmit documented UNCAT-adjacent gaps cannot invoke Imbler's absolute shield for that administrative failure. The question becomes one of qualified immunity: whether the right to have documented UNCAT gaps reported through the institutional chain was clearly established at the time of the failure.

The current state of the clearly-established inquiry: No circuit has yet held that UNCAT's Article 19 reporting obligation creates a clearly established individual right that a prosecutor's administrative failure to document and transmit violates. The reporting-duty argument is therefore, as of this writing, a qualified immunity argument that a complainant would likely lose in a § 1983 suit. That does not mean the duty does not exist. It means the domestic civil enforcement mechanism for that duty has not yet been developed. The consequence is that the reporting failure currently produces consequences primarily on Plane A and through professional and supervisory channels rather than through direct civil litigation.

A. Plane A Consequences: Acquiescence, Complicity, and State Attribution

On Plane A, the consequences for failure to report to international mechanisms are the most serious available. They are not personal damages liability. They are worse: international attribution of ongoing torture to the State, with the prosecutor's knowing failure to report identified as the mechanism of perpetuation.

CAT General Comment No. 2, ¶18: The Committee Against Torture has stated that State officials who fail to investigate, prosecute, or prevent torture of which they are aware may bear responsibility as accomplices or for condoning or facilitating such acts. This is the Committee's articulation of the acquiescence doctrine. A prosecutor who possesses documented evidence that conduct meeting the UNCAT threshold is occurring, who has declined to investigate on Plane B grounds, and who then fails to report the documented gap through any mechanism — internal or international — is, in the Committee's framework, a State official who has condoned and facilitated ongoing torture by keeping the documentation hidden. The international attribution is not a damages judgment. It is a finding that the torture continued because the State's official chose silence over the reporting that would have triggered an accountability mechanism.

The Article 20 threshold: Article 20 authorizes a confidential inquiry when the Committee receives reliable information of systematic practice. That threshold depends on reliable information reaching the Committee. A prosecutor who possesses and suppresses the documentation that would constitute the 'reliable information' needed to trigger Article 20 is, in functional terms, preventing the international accountability mechanism from operating. On Plane A, this is not a minor administrative omission. It is the specific act — suppression of information — that keeps the systematic practice invisible to the body with authority to investigate it.

The Special Rapporteur urgent communication: The Special Rapporteur on Torture accepts urgent communications where there is credible risk of imminent torture or ongoing torture without domestic remedy. A documented gap memorandum in the hands of a prosecutor who does not transmit it is a

communication that never reaches the Rapporteur. If the complainant suffers further harm in the interim, the prosecutor's failure to transmit is in the evidentiary record as the specific act that prevented timely Special Rapporteur intervention. That record will appear in any subsequent international accountability proceeding.

B. Domestic Criminal Analysis: The Affirmative Concealment Theory

Pure non-reporting, like pure non-prosecution, does not satisfy the affirmative-conduct element of 18 U.S.C. § 242. A prosecutor who simply declines to transmit a gap memorandum, without more, has not willfully deprived the complainant of a right in the sense that § 242 requires. But the analysis changes where the failure to report is accompanied by affirmative acts that either:

(a) Active concealment: A prosecutor who destroys gap documentation, falsifies declination records to omit the treaty characterization, or actively misrepresents the status of an investigation to the complainant, to supervisors, or to reporting bodies may satisfy § 242's willfulness and affirmative-deprivation elements. The active destruction or falsification of documents that would constitute 'reliable information' under Article 20 is not merely administrative omission. It is affirmative conduct that deprives the complainant of whatever international accountability mechanism the documentation would have triggered.

(b) Retaliatory non-reporting: A prosecutor who declines to transmit documentation specifically because the complainant has asserted treaty rights, contacted international mechanisms, or engaged with civil society organizations performing NHRI functions may satisfy both § 242 (willful rights deprivation under color of law) and 18 U.S.C. § 1513 (retaliating against a person for providing information to a law enforcement officer). The complainant's engagement with international mechanisms constitutes protected activity under federal law in multiple circuit interpretations.

(c) Conspiracy to maintain impunity: Where multiple prosecutors or officials coordinate to ensure that documented gaps are suppressed, that Article 19 reports omit known compliance failures, and that complainants are prevented from accessing international mechanisms, 18 U.S.C. § 241 (conspiracy against federal rights) may be implicated. The right to access international accountability mechanisms is a right arising under U.S. treaty obligations; a coordinated conspiracy to deprive complainants of that right is the kind of conspiracy § 241 reaches.

C. Professional Accountability: The Duty of Competence and Rule 8.4(d)

Model Rules of Professional Conduct Rule 1.1 requires that a lawyer provide competent representation, which includes the legal knowledge and thoroughness reasonably necessary for the representation. A prosecutor whose office is charged with enforcement of civil rights laws has a competence obligation that includes awareness of the treaty framework within which those laws operate.

Rule 8.4(d) — Conduct prejudicial to the administration of justice: Systematic failure to document UNCAT-adjacent compliance gaps, where the prosecutor has actual knowledge that the complaints fall within the treaty's scope and that no domestic remedy is available, may constitute conduct prejudicial to the administration of justice. The administration of justice includes the administration of the treaty-body system that the United States has accepted. A prosecutor who systematically prevents that system from functioning by withholding documentation is impeding the administration of justice in a broader but cognizable sense.

Rule 3.8 — Special responsibilities of a prosecutor: Rule 3.8(d) requires prosecutors to disclose to the defense evidence that negates guilt or mitigates punishment. The reporting duty runs in a different direction — to supervisory and international bodies rather than to defendants — but the underlying principle

of disclosure as a structural obligation of the prosecutor's role is the same. A prosecutor who possesses treaty-standard evidence and systematically withholds it from every mechanism that could act on it is operating contrary to the disclosure ethic that Rule 3.8 instantiates.

D. Institutional Accountability: The Monell Policy Theory

Monell v. Department of Social Services, 436 U.S. 658 (1978): Municipal or office-level liability arises under § 1983 where an official policy or custom of the office produces the constitutional violation. Where a prosecuting office maintains an established practice — informal or explicit — of not documenting UNCAT-adjacent gaps and not transmitting documentation to Article 19 reporting or international mechanisms, that practice is an office policy. If that policy produces constitutional violations — for example, by systematically denying complainants access to the remedy mechanisms that their treaty-based rights include — Monell supports institutional liability against the office. Individual prosecutors within the office who implement the policy may individually invoke qualified immunity. The office cannot.

This is the most practically significant domestic accountability mechanism for systematic reporting failures. The individual charging decision is protected by Imbler. The office's systematic policy of suppressing documentation is subject to Monell. The distinction matters: a complainant suing an individual prosecutor for declining to charge will almost certainly fail under Imbler. A complainant suing the office for maintaining a systematic policy of not documenting and reporting UNCAT-adjacent complaints has a Monell claim that survives to the merits of the policy.

Part 7: Consequences for Failure of Diligence in Equivalence Assessment and Documentation

The equivalence assessment and gap-documentation duties established in Sections A-II-B and A-V are not charging decisions. They are analytical duties: the prosecutor must assess whether domestic law can deliver each of the five required treaty outcomes, and must document the results. Failure in this duty produces consequences distinct from, and in some respects more concrete than, failure in the charging decision itself.

Why Non-Documentation Is Worse Than Non-Prosecution for Treaty Compliance Purposes

Non-prosecution is visible: When a prosecutor declines to charge, the complainant knows. They can seek private prosecution avenues (where available), engage civil society, contact international mechanisms, and transmit their own account to treaty bodies. The non-prosecution is on the record even if unexplained. On Plane A, the State's failure to prosecute is attributable; the complainant's access to international mechanisms is not foreclosed by the non-prosecution alone.

Non-documentation is invisible: When a prosecutor declines to document the treaty characterization and the equivalence gap, nothing is on record. The complaint disappears into a closed file with a standard declination. The complainant does not know that the prosecutor assessed the conduct, found it UNCAT-adjacent, and chose not to document that assessment. Treaty bodies receive no information. The CAT Committee's periodic review has nothing to act on. The Article 20 threshold is never approached. The Special Rapporteur has no basis for an urgent communication. The IAJ has no documentation to aggregate. The absence of documentation is the act that makes the treaty obligation invisible — and invisible obligations do not get fixed.

The U.S. periodic report consequence: When the United States next submits its periodic report to the CAT Committee, it will represent to the Committee that domestic law provides equivalent protection,

prevention, relief, remedy, and punishment. That representation will be made without the benefit of a documented record of specific equivalence failures, because the documentation was never created. The undocumented failures are invisible compliance gaps that the periodic report will continue to misrepresent. Every prosecutor who fails to document a gap is contributing, in a specific and traceable way, to a false international representation by the United States.

A. Immunity Analysis: The Documentation Duty Is Not Advocacy

The Buckley line: Buckley v. Fitzsimmons, 509 U.S. 259 (1993), established that pre-charge investigative work — gathering evidence, interviewing witnesses, evaluating facts — is not advocacy and receives only qualified immunity. The equivalence assessment is pre-charge analytic work: it evaluates whether the facts satisfy the treaty standard and whether domestic law can deliver the required outcomes. Under Buckley, this function receives qualified immunity only, not Imbler absolute immunity.

The Burns line: Burns v. Reed, 500 U.S. 478 (1991), held that advising police on legal questions attracts qualified immunity, not absolute immunity. The equivalence assessment and documentation duty involves advising within the institution on how to characterize and respond to a complaint under the treaty framework. This is closer to the advising function Burns addresses than to the advocacy function Imbler addresses. Qualified immunity applies.

What qualified immunity means in practice: Qualified immunity protects a government official from civil liability unless their conduct violated a clearly established statutory or constitutional right of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). The question is whether a prosecutor's failure to perform the equivalence assessment and document the gap violated a clearly established right. As of this writing, no circuit has held that UNCAT's documentation requirements create a clearly established individual right enforceable under § 1983. The qualified immunity defense would likely succeed in a direct § 1983 suit for failure to document. The duty exists — but the domestic civil enforcement mechanism for it has not yet been judicially recognized. The consequence is that the primary accountability for documentation failure currently flows through Plane A, professional discipline, and Monell institutional liability rather than individual § 1983 damages.

B. The Acquiescence Consequence: GC No. 2 ¶18 Applied to Documentation Failure

CAT General Comment No. 2, paragraph 18, states that State officials who fail to prevent torture of which they are aware may bear responsibility as complicit or acquiescent. The documentation duty sits at the precise intersection of this principle: a prosecutor who assesses a complaint, concludes that the conduct is UNCAT-adjacent, and deliberately declines to document that assessment knows the torture is occurring and has affirmatively acted to prevent the information from reaching any body that could respond to it. This is not passive ignorance. It is informed suppression.

On Plane A, the international accountability characterization of this conduct is acquiescence — the prosecutor is an official who, with actual knowledge, chose to allow the prohibited treatment to continue undocumented and unreported. The characterization is the Committee's own. It does not create domestic personal liability. But it creates a permanent record of State conduct that will appear in any Article 20 inquiry, any UPR shadow report, any Special Rapporteur country visit report, and any academic or civil society documentation of U.S. UNCAT compliance failure.

C. The False Representation Consequence: Article 19 Integrity

What the prosecutor's non-documentation does to the U.S. periodic report: The United States is overdue on its periodic report to the CAT Committee (the next was due in 2019). When that report is eventually submitted, it will represent to the Committee that domestic law delivers equivalent protection, prevention, relief, remedy, and punishment. If the prosecutors who handled UNCAT-adjacent complaints during the reporting period did not document the equivalence gaps, the State Department officials compiling the periodic report will have no factual basis to report those gaps. The periodic report will therefore continue the pattern the Committee identified in 2014 — assurances of equivalence that do not reflect the reality of domestic practice. Each undocumented declination is a brick in the wall of that false representation.

Possible false-statements consequences: A knowing false representation to a treaty body, while not directly criminalized under domestic law, may in appropriate circumstances implicate 18 U.S.C. § 1001 (false statements in any matter within the jurisdiction of the executive branch) where the false representation is made in official government communications. The precise application of § 1001 to treaty-body periodic reports is an undeveloped area of law. The argument that systematic non-documentation by prosecutors contributes to a false § 1001 statement in the U.S. periodic report is available, but it would require proof that senior officials who compiled and approved the periodic report knew of the documentation failures and chose to omit them from the report anyway.

D. Professional Consequences: The Competence and Candor Analysis

Rule 1.1 — Competence: A prosecutor in a civil rights or human rights enforcement role has a competence obligation that includes the treaty framework within which domestic civil rights law operates. Systematic failure to assess UNCAT equivalence — where the facts plainly implicate the treaty — is failure to bring the legal knowledge reasonably necessary for the work. The CAT Committee found in 2014 that the U.S. lacks adequate statutory provisions to prosecute UNCAT violations. A prosecutor who has never heard of this finding, and who closes UNCAT-adjacent files without assessing equivalence, is not competent in the subject matter of the enforcement they are supposed to be performing.

Rule 3.3 — Candor toward the tribunal: Where a prosecutor appears before a court or administrative body in a proceeding related to a UNCAT-adjacent complaint and represents that 'domestic law provides no basis for further action' without having assessed the treaty equivalence question, that representation may be misleading in a material way. The complete accurate representation is: 'domestic law provides no basis for a criminal charge, and the treaty-based obligation that those domestic statutes are meant to satisfy requires documentation and escalation of this gap.' The truncated representation — 'no domestic basis' without the treaty consequence — is technically accurate but functionally misleading in a manner that Rule 3.3 is designed to prevent.

E. What Consequences Actually Flow and When

Failure	Domestic Civil Consequence	Domestic Criminal Consequence	Professional Consequence	Plane A Consequence
Failure to charge (pure declination)	None under Imbler. Absolute immunity bars § 1983 suit for charging decision.	None from declination alone. § 242 requires affirmative deprivation.	Contingent on additional facts (retaliation, corruption). Rule 3.8 does not require prosecution.	State treaty failure (Art. 12/4/7). Attributed to State, not personally to prosecutor.
Failure to document equivalence gap	Qualified immunity only (Buckley/Burns line). No clearly	None from non-documentation alone. Changes if	Rule 1.1 competence failure (systematic). Rule 8.4(d) possible	May contribute to invisible noncompliance by

Failure	Domestic Civil Consequence	Domestic Criminal Consequence	Professional Consequence	Plane A Consequence
	established right yet recognized by any circuit. Practical immunity.	combined with active falsification or concealment.	(systematic). Rule 3.3 possible (misleading representation).	preventing a genuine implementation shortfall from entering the State's compliance record. Potential GC No. 2 ¶18 acquiescence consequence where prosecutor has actual knowledge. Does not automatically constitute false Art. 19 representation or prevent Art. 20 threshold.
Failure to report to supervisory chain	Qualified immunity only. No clearly established right. Practical immunity for the individual.	None from failure to report alone. Changes with retaliatory intent (§ 1513) or conspiracy (§ 241).	Rule 1.1. Rule 8.4(d) (systematic). Supervisory/employment consequences within the office.	GC No. 2 ¶18 acquiescence. May perpetuate noncompliance by preventing escalation of a documented gap. GC No. 2 ¶18 acquiescence consequence depends on whether the prosecutor had actual knowledge of ongoing prohibited conduct. Periodic report remains inaccurate.
Failure to report to international mechanisms	Qualified immunity only. No circuit has recognized the right as clearly established.	None from non-reporting alone. Changes with active concealment of documentation (§ 242/241).	Rule 8.4(d) (systematic). Rule 1.1 (incompetence in treaty framework). Potential bar complaint.	Plane A significance is strongest where internal channels are exhausted or implicated; effect on Art. 20 threshold, SR communications, and complicity attribution depends on the nature of the knowledge and the availability of alternative reporting pathways. Do not treat as categorically established for every case.
Office policy of non-documentation (systematic)	Monell claim against the office. Individual prosecutors within it retain qualified immunity. Office cannot claim Imbler.	If policy is established and enforced by senior officials with knowledge of violations: potential §	Office policy may constitute systematic Rule 8.4(d) conduct. State bar may investigate supervisory attorneys under Rule 5.1.	Full GC No. 2 acquiescence attribution to State. Strongest available basis for Art. 20 systematic-practice finding.

Failure	Domestic Civil Consequence	Domestic Criminal Consequence	Professional Consequence	Plane A Consequence
		241/1519 (concealment) exposure for the officials establishing and enforcing the policy.		
Active falsification / destruction of gap documentation	§ 1983 damages likely not barred (not advocacy function). Qualified immunity uncertain where conduct is clearly unlawful.	18 U.S.C. § 1519 (destruction of records in federal investigations). § 1001 (false statements). § 242 (willful rights deprivation). Strongest domestic criminal exposure in this analysis.	Rule 3.4 (obstruction). Rule 8.4(c) (dishonesty). Rules 3.3 (candor). Disciplinable and grounds for disbarment.	Full acquiescence. Active concealment of systematic practice from international mechanisms is itself a treaty violation on Plane A.

What the Prosecutor Reading This Guide Should Not Conclude

Should not conclude: that CAT always furnishes a freestanding domestic criminal rule against the prosecutor; that every declination automatically creates personal criminal or civil liability; that immunity doctrine is irrelevant; or that every failure to prosecute a grave allegation is identical to direct complicity.

Should also not conclude: that civil immunity extinguishes the State's Article 12 duty; that non-self-execution makes CAT irrelevant to intake, escalation, or documentation; or that documented torture or CIDT allegations may simply be declined without any treaty-compliance consequences.

The narrowest strong conclusion: Where the reasonable-ground threshold is met and no adequate state mechanism responds, non-enforcement may contribute to the State's breach of Article 12, even though domestic doctrines may still limit private suits or direct compulsion against an individual prosecutor.

A-VII. THE PROSECUTOR'S OBJECTIONS: COMPLETE ADVERSARIAL ANALYSIS

This section states every serious legal and institutional justification a state or federal prosecutor could offer for ignoring this guide, then rebuts each in full. The rebuttals do not overstate. Where an objection has genuine merit that the guide cannot overcome on Plane B, this section says so plainly. The purpose is to ensure that every decision to decline is made with full knowledge of what is being declined — and why the guide believes that choice has consequences that extend beyond the immediate case. Objections are divided into: (A) objections available to both state and federal prosecutors; (B) objections specific to state prosecutors; and (C) objections specific to federal prosecutors. Each is stated in its strongest form. Strawman objections are omitted.

A. Objections Available to Both State and Federal Prosecutors

Objection 1: This guide is not law. It creates no enforceable duty.

Objection: The IAJ is not an accredited National Human Rights Institution. This guide has not been adopted by any legislature, incorporated into any ethics code, or cited by any court. It creates no enforceable legal duty. A prosecutor who ignores it faces no disciplinary consequence, no civil liability, and no criminal exposure from doing so. The guide says this itself, repeatedly. Why should it be followed?

Rebuttal: This objection is legally accurate and the guide does not contest it. The guide does not claim to be law. It claims to be an accurate description of what the law — treaty law, domestic criminal law, professional responsibility rules — already requires or strongly supports. The relevant question is not whether the guide is enforceable, but whether its analysis of existing legal obligations is correct. A prosecutor who concludes the analysis is wrong should identify which authority the guide mischaracterizes. A prosecutor who concludes the analysis is right but declines to act because no one is watching has answered a different question than the one the guide poses.

Objection 2: UNCAT is not self-executing after Medellín. It creates no domestic obligation I can be held to.

Objection: The Senate gave advice and consent with a declaration that Articles 1–16 are not self-executing. Medellín v. Texas, 552 U.S. 491 (2008), confirmed that non-self-executing treaty provisions do not automatically become enforceable domestic law. I cannot be sanctioned in any U.S. court for failing to apply treaty provisions Congress has not implemented. This is the constitutional settlement and I am following it.

Rebuttal: The guide agrees entirely on Plane B: UNCAT is not self-executing and the guide does not assert otherwise. The non-self-execution point defeats a claim that UNCAT directly compels prosecution. It does not defeat three distinct propositions the guide actually makes. First, §§ 241 and 242 are enacted domestic statutes that reach conduct also satisfying Article 1. Whether to investigate under those statutes is a domestic-law question, not a treaty-law question. Second, on Plane A, the treaty obligation runs to the State Party — the United States — and every prosecutorial non-enforcement decision contributes to or detracts from that compliance record, regardless of whether the individual prosecutor can be sanctioned. Third, the Senate's non-self-execution declaration was premised on a promise that existing domestic law provides equivalent protection. The CAT Committee found in 2014 that promise has not been kept. A prosecutor who relies on non-self-execution to foreclose investigation is relying on the constitutional shell of a promise whose substance has been found deficient.

Objection 3: Absolute immunity protects my charging decision. The guide cannot reach it.

Objection: Imbler v. Pachtman, 424 U.S. 409 (1976), gives me absolute civil immunity for all advocacy-function decisions, including whether to charge. No civil plaintiff can compel investigation and no court has held that declining to investigate is independently actionable. The guide acknowledges this.

Rebuttal: Absolute civil immunity is real and the guide does not dispute it. But immunity is a defense to civil suit, not a license for any conduct. First, § 242 applies to affirmative misconduct — deliberate falsification, concealment, and destruction of records are not advocacy-function acts protected by Imbler; pre-charge investigative conduct is subject to qualified immunity only under the Buckley/Burns line. Second, the Monell doctrine means a pattern of non-investigation across multiple UNCAT-adjacent cases creates institutional liability even where individual immunity shields each decision. Third, on Plane A, absolute prosecutorial immunity is a domestic doctrine; the State's Article 12 obligation survives every immunity defense the individual prosecutor invokes. Fourth, and most directly: immunity protects the charging decision. It does not protect deliberate non-documentation, deliberate failure to preserve, or deliberate concealment of a record once one exists. Those are administrative acts in the Buckley qualified-immunity zone, not advocacy acts in the Imbler absolute-immunity zone. Fifth: the 2022 Istanbul Protocol, Chapter VIII, imposes an obligation on the State to collaborate with Protocol-recognized civil society organizations in implementation. That obligation is a Plane A obligation. Absolute prosecutorial immunity operates on Plane B. A prosecutor who invokes absolute immunity to justify refusing to engage with a Protocol-recognized civil society investigation report is invoking a domestic civil immunity doctrine to defeat a Plane A collaboration obligation. Those are different planes and the immunity does not cross between them.

Objection 4: Judicial-setting conduct is not torture. This is litigation, not the Convention's domain.

Objection: The Convention was designed for custodial interrogation, imprisonment, and state-directed physical abuse. Extending it to court orders, adverse rulings, and procedural denials would make every unfavorable judicial outcome a potential UNCAT violation. No domestic court has accepted this reading. The guide is arguing against current legal consensus.

Rebuttal: Three things are true simultaneously. First, the guide is arguing against the current domestic consensus and says so. Second, Article 1(1) contains no custodial setting qualifier; the CAT Committee confirmed this in GC No. 2 ¶3 and in the 2014 Concluding Observations. The custodial reading is an interpretive accretion, not a textual requirement. Third, the guide does not claim that every adverse ruling is torture. It requires documented severe suffering satisfying all five Article 1 elements. Litigation loss is not torture. Documented biological deterioration caused by official conduct satisfying those elements in a non-custodial setting is within the treaty's reach on the text. The prosecutor who disagrees must engage the text and the Committee's authoritative interpretation, not simply invoke the current domestic consensus, which has been wrong about treaty scope before.

Objection 5: The five sources supporting a documentation duty are not law. I have read each one.

Objection: UNCAT Arts. 12, 13, and 19 are non-self-executing. GC No. 2 ¶18 is interpretive guidance, not binding domestic law. § 1519 applies to destruction of records, not failure to create them. The Model Rules do not mandate external reporting. Jus cogens is not a domestic legal command. The guide itself now says each of these things. If none of the five sources independently creates an enforceable documentation duty, what am I being asked to comply with?

Rebuttal: You are being asked to comply with what five overlapping sources together strongly support, not with what any one independently commands. A legal duty does not require a single statute that says 'write this memo.' It can arise from the intersection of professional obligations (competence, candor, non-concealment), domestic criminal exposure (falsification once a record exists), treaty-body guidance (GC No. 2's acquiescence analysis), and jus cogens interpretive reinforcement. Each source alone may be individually defeatable. Together they create a framework no seriously-reasoning attorney can dismiss without engaging each component. More concretely: a prosecutor who knows a

complaint exists, believes it describes conduct meeting the UNCAT threshold, and deliberately creates no record of that assessment has not made a charging decision protected by Imbler. They have made an administrative decision not to document. That decision carries professional-responsibility, § 1519, GC No. 2, and Plane A consequences that compound even if none individually constitutes a prosecutable offense.

B. Objections Specific to State Prosecutors

Objection 6: No treaty obligation runs directly to me. UNCAT is a federal-government obligation.

Objection: UNCAT binds the federal government, not state prosecutors. My authority derives from state law. A treaty between the federal government and the international community does not impose obligations on me enforceable in any court I appear before. This is a correct description of the constitutional structure, not legal evasion.

Rebuttal: The constitutional structure is exactly as described and the guide does not dispute it. The response operates on three tracks. First, state prosecutors remain bound by federal domestic law — including §§ 241 and 242 — which reaches official conduct that also satisfies Article 1; the investigation trigger for those statutes is domestic, not treaty-derived. Second, GC No. 2 ¶3 is explicit that the treaty obligation extends to all branches and levels of government, including state officials; state prosecutors who contribute to State-level non-compliance do so as actors within the treaty-obligated State, even if they cannot individually be sanctioned under treaty law. Third, a state prosecutor who develops a documented practice of non-investigation in UNCAT-adjacent cases builds the Article 19 and Article 20 record that eventually becomes the basis for international-level scrutiny of the United States. That scrutiny begins with the individual decisions of state prosecutors who chose not to document.

Objection 7: My state has no implementing statute for this conduct. I have nothing to charge.

Objection: In most U.S. states there is no standalone torture statute covering non-custodial judicial-setting conduct. State civil rights statutes do not track UNCAT's Article 1 elements. Without a chargeable statute, a gap memorandum accomplishes nothing except generating paper I cannot use.

Rebuttal: The absence of a chargeable state offense does not eliminate the documentation and preservation duty — it sharpens it. A state prosecutor who cannot charge because no state statute covers the conduct faces a specific non-equivalence gap, exactly what the guide's memorandum framework exists to document. That documentation serves four purposes even without a charge: (a) it preserves the evidentiary record before evidence deteriorates; (b) it creates the paper trail for a potential federal referral under § 242 or § 241 where the conduct independently reaches those thresholds; (c) it establishes the pattern documentation for supervisory, legislative, or inspector-general escalation; and (d) it creates the Article 19 compliance record state attorneys general are positioned to transmit to the federal government for periodic reporting purposes. The absence of a charge is not the end of the analysis. In the guide's framework, it is the beginning of the gap memorandum.

Objection 8: Resources and priorities. I cannot redirect my office to a framework Congress has not endorsed.

Objection: My office operates under finite resources and defined supervisory priorities. A framework not adopted by my state legislature, not endorsed by my attorney general, and not tracked by any court reporting requirement does not justify redirecting resources from cases I can actually charge and win.

Rebuttal: The guide does not ask for resource reallocation. It asks for documentation — a written assessment that takes less time than declining a case in writing currently takes in most offices. The gap memorandum framework in Section A-V is designed for a prosecutor who has already decided not to charge: it asks that the decision be recorded with specificity about which treaty element is unmet and why. That record requires no investigation beyond what produced the declination. The resource

objection, stated precisely, is an objection to writing a more complete declination memo. The guide has no further complaint with a state prosecutor who does exactly that. The 2022 Istanbul Protocol adds a specific caution directly relevant here: the 2022 edition was updated to prevent misuse "when States arbitrarily disqualify independent, non-governmental clinical experts from testifying in judicial proceedings." A federal mechanism that excludes IAJ forensic findings on the grounds that IAJ is not a State-authorized body is engaging in exactly the conduct the Protocol was updated to address.

C. Objections Specific to Federal Prosecutors

Objection 9: DOJ institutional hierarchy controls my decisions. My supervisor reviewed this and declined.

Objection: I am a line AUSA. My supervisor reviewed this matter and declined to open a case. I have done everything the institutional structure requires. A guide published by a civil-society organization cannot override my supervisor's judgment or require me to circumvent the chain of command.

Rebuttal: The guide does not ask you to circumvent the supervisory structure. It asks you to transmit documentation of non-equivalence through that structure. Step 2 of the Reporting Duty Summary is exactly this: transmit the gap memorandum to your first-line supervisor. That is compliance with the institutional chain. If your supervisor reviewed the matter and declined, and you have a documented record of that review and declination, you have discharged the institutional duty the guide describes. What the guide cautions against is the non-documented declination — the case that closes without a written record of what was considered and why. A supervisor's decision not to prosecute, properly documented, is a Plane B outcome that keeps the Plane A record intact. An undocumented closure that disappears into institutional silence is the Plane A failure the guide exists to prevent.

Objection 10: Congress deliberately did not enact a domestic torture statute. I should follow that choice.

Objection: § 2340A covers extraterritorial torture by U.S. nationals. Congress enacted it because UNCAT required criminalization. Congress did not enact a domestic torture statute covering non-custodial judicial-setting conduct. The CAT Committee recommended in 2014 that Congress re-introduce the Law Enforcement Torture Prevention Act. Congress has not done so. A federal prosecutor who uses §§ 241-242 as a substitute for the statute Congress chose not to enact is making a legislative judgment that is not theirs to make.

Rebuttal: §§ 241 and 242 are not substitutes for a hypothetical domestic torture statute. They are enacted statutes that independently reach willful deprivation of constitutional rights under color of law — which certain conduct that also satisfies Article 1 independently satisfies. The guide does not ask you to charge under UNCAT. It asks you to assess whether the conduct before you satisfies elements of statutes Congress has already enacted, and to document the gap where those statutes fall short. Congress's failure to enact the LEPTA is evidence of the implementation gap the guide describes, not a prohibition on documenting that gap. It is, if anything, the strongest argument for the guide's documentation framework: the political branches have left a gap that the record-preservation architecture exists to make visible for the next legislative cycle.

Objection 11: The federal system already has mechanisms for this conduct. Those mechanisms have spoken.

Objection: Judicial misconduct is addressed by judicial conduct councils under 28 U.S.C. § 351 et seq. The Public Integrity Section reviews official misconduct. Inspector general offices audit agency conduct. These mechanisms have reviewed the cases the guide discusses and reached their conclusions. A federal prosecutor who substitutes the IAJ's assessment for the conclusions of designated institutional mechanisms is not doing his job; he is doing the IAJ's job.

Rebuttal: The guide's position is specific, not general. It does not ask federal prosecutors to substitute IAJ assessments for institutional findings. It asks whether those mechanisms, as applied in the documented judicial-setting cases, produced outcomes functionally equivalent to what Article 13 requires — prompt, impartial review with complainant protection. The guide's A-III Relief row answers that question for the specific case set it documents, and labels that answer as the guide's practice-based inference, not a quoted CAT finding. If the mechanisms produced equivalent outcomes in the cases you are reviewing, the gap memorandum reflects that. If they did not, the gap memorandum reflects that. The existence of mechanisms does not automatically establish equivalence. The guide's framework evaluates whether they performed equivalently — a different question from whether they existed.

Objection 12: Reasonable grounds have not been established. The guide cannot establish them.

Objection: Article 12 triggers investigation where there is 'reasonable ground to believe' torture occurred. That standard requires evidence, not assertion. An IAJ investigation report based on a Level 3 forensic evaluation with stated epistemic uncertainty does not by itself establish reasonable grounds. A federal prosecutor who reviews that report, applies professional judgment, and concludes the evidence does not meet the threshold has applied the guide's own evidentiary framework to reach a lawful declination. The guide creates no right of investigation on demand.

Rebuttal: This objection is correct as stated and the guide does not contest it. A prosecutor who reviews an IAJ report and concludes in good professional judgment that reasonable grounds are not established has followed the guide's framework correctly. The guide's concern is not with that prosecutor. It is with two different failure modes: the prosecutor who does not review the report at all, and the prosecutor who reviews it, reaches the threshold conclusion, but creates no record of either. Both produce the same invisible non-compliance on Plane A. The guide asks that the reasonable-grounds determination be made consciously, documented in writing, and preserved in a form that makes the State's Article 12 compliance record accurate rather than silent.

Objection 13: The parity argument is an inference, not a legal rule. I am not required to follow inferences.

Objection: The guide's parity argument — that domestic investigation thresholds should mirror what § 2340A would deliver extraterritorially — is the guide's own inference. § 2340A does not codify an Article 12 reasonable-grounds trigger as positive domestic law. The guide says this. Congress has not adopted the parity logic. No court has required it. An inference from a statute's extraterritorial design does not create an obligation to apply the same logic domestically.

Rebuttal: Correct. The parity argument is an inference, not a black-letter rule, and the guide labels it as such throughout. Its function is to identify what a consistent application of the principles underlying existing enacted law would suggest for domestic cases, and to make visible the inconsistency when domestic location alone determines whether identical conduct receives inquiry. A federal prosecutor who reviews a UNCAT-adjacent domestic case, concludes the parity logic does not apply, and closes the case with documentation has made a defensible Plane B decision. A federal prosecutor who closes it without considering the parity logic at all has made the same Plane B decision less carefully. The guide exists to ensure the consideration happens before the closure, not to compel a different outcome.

D. What the Objections, Taken Together, Establish

The thirteen objections above, each stated in their strongest form, establish three things that a prosecutor who has read this guide honestly must acknowledge.

First: no single domestic legal source currently compels the full framework the guide describes. The guide has said this throughout. The five overlapping supports strongly support the documentation and reporting architecture; they do not individually command it. A prosecutor who demands a single enacted statutory

command for every element of this guide will not find one for every element. That is the guide's acknowledged limitation and its reason for existing simultaneously.

Second: the objections are strongest on Plane B — domestic enforceability — and weakest on Plane A — the international obligation. Every objection correctly identifies a domestic barrier: non-self-execution, absolute immunity, institutional hierarchy, resource constraints, legislative silence. None of those barriers extinguishes the State's Article 12, 13, and 19 obligations. They explain why individual prosecutors cannot be domestically compelled. They do not explain why the obligations themselves do not exist or why the State's non-compliance does not matter.

Third: the objections are strongest when the prosecutor has already made a documented, considered, and transmitted declination. They are weakest when the prosecutor has made an undocumented, unconsidered, or silently-buried one. The guide's documentation framework is designed specifically for the gap between those two outcomes. A prosecutor who has genuinely engaged with this guide, assessed the evidence, reached the conclusion that the threshold has not been met, documented that assessment, and transmitted it through the appropriate supervisory channel has done what this guide asks. The guide has no complaint with that prosecutor.

Every silence the guide documents happened in the decisions of individual prosecutors and officials who could have chosen differently. This guide exists because the next time such a decision is made, the prosecutor making it should know exactly what the law requires, what the treaty demands, and what the gap between those two planes means for the person in front of them.

A-VIII. SELECTED AUTHORITIES — OPERATIONAL REFERENCE

The following are primary citations for Part A's operational rules. For the full Selected Authorities list — including international instruments, IAJ primary documents, treaty-body materials, and ATS/CIDT threshold cases — see Part C, Section C-X.

Core Criminal Statutes

- 18 U.S.C. § 242 — Primary vehicle. Willful deprivation of rights under color of law. Reaches disability discrimination without requiring physical harm; more legally available than § 249 for judicial accommodation denial facts.
- 18 U.S.C. § 241 — Conspiracy to injure or oppress in exercise of federal rights.
- 18 U.S.C. §§ 1512, 1513, 1519 — Witness tampering, retaliation, obstruction; independently chargeable where complainant retaliation is present.
- 18 U.S.C. § 249(a)(2) — Disability hate crime; secondary theory where bodily injury elements independently satisfied.
- 42 U.S.C. § 1985(2) — Conspiracy to obstruct justice in federal court; no class-based animus required in Clause One.
- 42 U.S.C. § 1985(3); Griffin v. Breckenridge, 403 U.S. 88 (1971) — Civil rights conspiracy; civil analogue only. Circuit split on disability as protected class: Lake v. Arnold, 112 F.3d 682 (3d Cir. 1997) [recognizes disability]; Post v. Trinity Health-Michigan, 44 F.4th 572 (6th Cir. 2022) [rejects]. See Part C, Section C-VIII for full analysis and prosecution duty principle.

Prosecutorial Immunity (civil doctrine; does not bar criminal review)

- Imbler v. Pachtman, 424 U.S. 409 (1976) — Absolute immunity from civil damages for advocacy-function conduct. Does not bar criminal review.
- Burns v. Reed, 500 U.S. 478 (1991); Buckley v. Fitzsimmons, 509 U.S. 259 (1993); Kalina v. Fletcher, 522 U.S. 118 (1997) — Qualified immunity only for non-advocacy functions.
- Monell v. Dep't of Social Services, 436 U.S. 658 (1978) — Municipal liability where office policy produced constitutional violation.
- Ex parte Young, 209 U.S. 123 (1908) — Prospective injunctive relief against state officials.
- Pulliam v. Allen, 466 U.S. 522 (1984) — Injunctive and declaratory relief available against judicial officers.
- Linda R.S. v. Richard D., 410 U.S. 614 (1973); Wayte v. United States, 470 U.S. 598 (1985) — No private standing to compel prosecution; does not extinguish Art. 12 obligation.

Constitutional Threshold Standards

- Farmer v. Brennan, 511 U.S. 825 (1994) — Deliberate indifference: actual knowledge of serious risk + disregard. Primary CIDT-level standard.
- Estelle v. Gamble, 429 U.S. 97 (1976) — Deliberate interference with medical treatment is constitutional violation.
- Hope v. Pelzer, 536 U.S. 730 (2002) — Continuation after actual notice; novel facts + general principles = fair warning.
- Hudson v. McMillian, 503 U.S. 1 (1992); Whitley v. Albers, 475 U.S. 312 (1986) — Wantonness standard.

- Rochin v. California, 342 U.S. 165 (1952) — shocks-the-conscience test under the Fourteenth Amendment; the guide draws analogy to Article 16 CIDT severity; not a formal treaty-law threshold ruling.
- United States v. Lanier, 520 U.S. 259 (1997) — Willfulness requires knowledge of unconstitutionality; fair warning from general principles.

Judicial Prosecution Precedents

- Press Release, U.S. Dep't of Justice, Former Charles County Circuit Court Judge Robert C. Nalley Pleads Guilty (Feb. 1, 2016) (D. Md.); sentenced Mar. 31, 2016.
- Press Release, U.S. Dep't of Justice, Former Murray County Chief Magistrate Judge Bryant L. Cochran Found Guilty (Dec. 11, 2014) (N.D. Ga.); sentenced July 8, 2015, five years.

Disability, Accommodation, and Courts

- Tudor v. Whitehall Central School District, No. 23-665-cv, 132 F.4th 242 (2d Cir. Mar. 25, 2025) — ADA may require accommodation even where employee can perform essential functions; ability/capacity distinction.
- A.J.T. v. Osseo Area Schools, Indep. Sch. Dist. No. 279, No. 24-249 (S. Ct. June 12, 2025) (9-0) — Same standard for disability discrimination in educational settings.
- City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) — Irrational prejudice standard; relevant by analogy to § 242 discriminatory purpose in disability fact patterns.
- Tennessee v. Lane, 541 U.S. 509 (2004) — ADA Title II applies to court access.
- United States v. Georgia, 546 U.S. 151 (2006) — ADA Title II abrogates immunity where conduct simultaneously violates Fourteenth Amendment.

Treaty Instruments — Operational Reference

- Convention Against Torture arts. 2, 4, 10, 12, 13, 16 — Art. 12 investigation threshold: reasonable grounds to believe, not probable cause. Art. 13: complainant protection. Full citation at Part C, Section C-X.
- Committee Against Torture, General Comment No. 2, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) — ¶3: The prohibition extends to all branches of government, in all settings in which public officials act in an official capacity, including the judiciary; ¶18: State officials who fail to prevent torture of which they are aware may bear responsibility as accomplices or for condoning; acquiescence doctrine.
- Office of the United Nations High Commissioner for Human Rights, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 ed., HR/P/PT/8/Rev.2) — Chapter III ¶263: civil society organizations play an important independent and complementary role by documenting torture, representing victims, prompting investigations, providing expertise to investigative bodies, scrutinizing proceedings, and providing legal analysis of investigation adequacy; Chapter VIII: States must undertake comprehensive and sustained action to implement the Protocol in collaboration with civil society. Used as the authority basis for IAJ's Protocol-recognized civil society role and for the State's Chapter VIII collaboration obligation.

✓✓✓ SAFE STOPPING POINT FOR OPERATIONAL USE ✓✓✓

A prosecutor, investigator, or public-integrity officer needing only operational guidance may stop here. Part A contains the complete domestic enforcement framework: charging vehicles, investigation duties, practical rules, the non-equivalence checklist, and the prosecutorial immunity analysis.

Part B (following) states the IAJ's institutional declaration on the anti-impunity obligation. Part C (following Part B) provides the treaty-body and academic synthesis that supplies the jurisprudential and methodological foundation for Part A's rules.

PART B

IAJ INSTITUTIONAL DECLARATION

The normative and institutional voice of the Institute for the Advancement of Justice & Human Rights

Primary audience: International forums, treaty bodies, policy audiences, IAJ institutional use

This Part states the Institute for the Advancement of Justice & Human Rights' institutional position on the anti-impunity obligation. It is not a substitute for Part A's operational guidance. It represents the IAJ's normative voice on what silence in the face of documented official torture or CIDT means for the rule of law and the international community's commitment to human dignity. For the analytical foundation, see Part C.

B-I. PREVENTION AS THE FOUNDATIONAL OBLIGATION

UNCAT's own structure reflects a preventive orientation. Article 2 requires effective measures to prevent torture. Article 10 requires that training of public officials fully includes the prohibition. Article 16 extends both obligations to CIDT through express cross-reference. Prevention is not a policy preference — it is embedded in the treaty's text and architecture. This guide should be read together with the IAJ Psychological Investigation Standard (v1.5) and UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB), which supply the forensic and analytical disciplines for documenting severity, causation, consistency, and institutional non-equivalence.

B-II. THE OBLIGATION THAT CANNOT BE DELEGATED AWAY

This guide has insisted on two propositions at once. First, CAT is not ordinarily a freestanding domestic criminal cause of action. Second, that limitation does not render the treaty irrelevant. The United States remains bound to prevent, investigate, and punish torture and CIDT in good faith, and domestic implementation gaps do not convert themselves into permission for inaction.

The most important conceptual safeguard in the guide is the distinction between the international obligation plane and the domestic enforceability plane. Limits on private compulsion, direct domestic enforcement, or civil damages actions do not eliminate the underlying obligation or foreclose international accountability for noncompliance. The obligation persists even where domestic enforcement tools are incomplete or structurally constrained.

The practical conclusion is therefore narrow but firm. Public officials, including judges and prosecutors, are not categorically outside the anti-torture framework. At the same time, allegations against them must remain tied to enacted domestic law, actual evidence, and disciplined threshold analysis. Where domestic law reaches the conduct, it should be used. Where it does not fully do so, the gap must be documented, preserved, and escalated rather than converted into silent impunity.

Distribution note: Part A of this guide constitutes the operational body of the work and is intended for use by prosecutors, investigators, civil rights officers, inspectors general, and judicial conduct personnel.

Part B (this section) is the IAJ's institutional declaration — it states the Institute's normative position on the obligation at stake. It is appropriate for distribution to international forums, policy audiences, academic venues, and treaty bodies. Part C supplies the treaty-body and academic synthesis that provides the jurisprudential foundation for Part A's operational rules. Practitioners distributing this guide for internal training or prosecutorial use may distribute Part A as a standalone operational packet and treat Parts B and C as the IAJ's institutional and scholarly foundation.

The Dignity Alignment Test — Final Calibration

The thesis: Prosecutors must investigate credible official torture and CIDT allegations, charge through existing domestic statutes wherever available, document any gap in a written non-equivalence memorandum addressing both planes, and escalate that gap rather than convert it into silent impunity.

The adversarial counter: Non-self-execution, Medellín, and prosecutorial discretion mean CAT is legally irrelevant to daily prosecutorial practice; prosecutors need not investigate or document anything under UNCAT because domestic immunity makes them structurally safe.

The concurrent obligation: A prosecutor who declines a case for fully legitimate Plane B reasons — insufficient evidence, unsupportable elements, resource constraints, supervisory direction — has not thereby discharged the State's Plane A obligation. The declination is the prosecutor's; the treaty failure is the State's. The prosecutor is the official through whom the United States performs or fails its UNCAT obligations on that specific case on that specific day. Where the State promised the CAT Committee that domestic law provides equivalent protection, prevention, relief, remedy, and punishment, and where the prosecutor has just confirmed that it does not, the gap-documentation memorandum is the act that keeps the international obligation alive rather than letting it disappear into an unrecorded file closure.

The dignity alignment: The foundational principle of every international human rights instrument — the inherent dignity of the human person — forecloses the adversarial position. A legal system that produces impunity for documented official torture by declining to investigate, declining to document, and declining to escalate is not administering the law. It is administering the gap. The United States told the international community that this gap does not exist. The prosecutor who buries a declination without documentation confirms that the U.S. assurance was correct. The prosecutor who documents the gap confirms that it was not. The obligation does not disappear because it is inconvenient to enforce. It intensifies.

FINAL DECLARATION

The Institute for the Advancement of Justice & Human Rights declares that credible allegations of torture or cruel, inhuman, or degrading treatment or punishment must not be treated as presumptively beyond domestic criminal law merely because implementation is incomplete or because the alleged actor occupies public office. The United States remains bound to prevent, investigate, and punish such conduct in good faith. Where domestic law does not fully capture the conduct, the implementation gap must be documented, preserved, and escalated on both planes rather than converted into silent impunity. The international obligation plane and the domestic enforceability plane are distinct: limits on private compulsion or direct domestic enforcement do not eliminate the underlying obligation or foreclose international accountability for noncompliance. Civil immunity doctrines applicable to damages actions do not extinguish the State's institutional obligations under CAT and do not by

themselves resolve whether criminal investigation, disciplinary review, or treaty-compliance consequences should follow.

The obligation does not disappear because it is inconvenient to enforce. It intensifies.

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PART C

TREATY-BODY AND ACADEMIC SYNTHESIS

Jurisprudential and methodological foundation for the operational rules in Part A

Primary audience: Treaty bodies, academic and legal researchers, IAJ analysts

This Part supplies the jurisprudential and treaty-body foundation for the operational rules in Part A. It is written primarily for treaty bodies, academic audiences, IAJ analysts, and specialist legal researchers. Prosecutors are encouraged to use Part C as the authority basis for Part A's rules. The Part C section applicable to each major Part A proposition is identified by cross-reference.

C-0. THE U.S. PERIODIC REPORTING RECORD AND THE EQUIVALENCE FAILURE

This section provides the treaty-body and historical context that gives the guide its urgency. Part A's operational rules and gap-documentation requirements are not abstract compliance exercises. They are a response to a specific, documented, and ongoing failure of the United States to deliver the treaty outcomes it promised when it ratified UNCAT in 1994.

A. What the United States Promised: The Equivalence Assurance

The United States ratified the Convention Against Torture on October 21, 1994, with Reservations, Understandings, and Declarations (RUDs) that defined the scope of its domestic implementation commitment. The most consequential feature of the RUDs was the equivalence premise: the Senate Foreign Relations Committee concluded, in crafting the conditions of consent, that existing domestic law already provides protection, relief, remedy, and punishment 'equivalent' to what UNCAT requires. This was the Senate's own constitutional judgment — not an executive assurance given to a passive Senate — and it was the basis on which the Senate chose not to condition ratification on new implementing legislation. The executive accepted the RUDs, transmitted them internationally, and repeated the equivalence position in every subsequent periodic report as the official position of the United States. Both branches own the commitment: the Senate authored it; the executive transmitted and defended it.

The U.S. Initial Report to the Committee (1999) asserted that federal and state criminal law, civil rights statutes, and constitutional protections together satisfy the Convention's criminalization, investigation, and reparation requirements. The 2005 periodic report made the same assurance. The 2013 (combined 3rd–5th) report, submitted as CAT/C/USA/CO/3-5 review material, repeated the position that domestic mechanisms provide the equivalent of what the treaty requires. In its response to the Committee's List of Issues, the U.S. government stated that *all acts of torture as understood in the Convention are already punishable under U.S. law*. The U.S. also represented that domestic courts are not part of 'all places that the State Party controls as a governmental authority' — effectively asserting that the judiciary is outside the scope of Convention obligations.

B. What the CAT Committee Found: CAT/C/USA/CO/3-5 (December 2014)

The CAT Committee's Concluding Observations on the combined 3rd–5th periodic reports of the United States, issued December 19, 2014, constitute the most recent substantive compliance review of U.S. UNCAT obligations. The Committee's findings are not binding domestic law. They are Plane A treaty-body determinations that define what the international community's authoritative monitoring body has found about U.S. compliance. Five findings are of direct operational relevance to this guide.

CAT/C/USA/CO/3-5 — Five Operational Findings	**Paragraph**	**What the Committee Found**	**Operational Significance**
Restrictive interpretation	Para. 9	The Committee found that the U.S. maintains a restrictive interpretation of the Convention's definitional provisions, including the 'prolonged mental harm' understanding of the mental-suffering element, and does not intend to withdraw its interpretative understandings lodged at ratification. The Committee stated that under international law, reservations contrary to the object and purpose of a treaty are not permissible.	The U.S. definition of what constitutes torture is narrower than the Committee's authoritative interpretation. Every domestic prosecution that fails because it cannot satisfy the restrictive U.S. definition represents a potential Plane A gap where the Convention's actual standard would be met.
Geographic scope: courts not self-excluded	Para. 9 (impermissibility finding) + Para. 10 (geographic scope reaffirmation) + GC No. 2 ¶3 (synthesis)	The U.S. stated in its periodic reports (documented in ECF-89.1) that it does not consider its state and federal courts among 'all places that the State Party controls as a governmental authority.' This is the U.S.'s own treaty-report position, not a Committee determination. The Committee addressed two related points: Para. 9 found the U.S. restrictive interpretation impermissible; Para. 10 reaffirmed that Convention obligations extend to 'all places that the State party controls as a governmental authority.' General Comment No. 2 ¶3 separately extends the prohibition to all branches of government. The three sources in conjunction foreclose the self-exclusion position — no single sentence in CAT/C/USA/CO/3-5 expressly names domestic courts.	A U.S. prosecutor evaluating judicial conduct is operating in a setting the U.S. government told the CAT Committee is outside the Convention's scope. The combination of Para. 9, Para. 10, and GC No. 2 ¶3 rejects that position. The gap between the U.S. reporting posture and the applicable standards is itself a compliance failure requiring documentation. Note: Para. 10 was addressed to overseas contexts; the application to domestic courts is derived by extension, not by express Committee declaration.
Incomplete federal criminalization	Para. 9	The Committee specifically found that 'the specific offence of torture has not yet been introduced at the federal level' in full conformity with Article 1. Para. 9 addresses both the definitional/reservation problem and the criminalization failure. The Committee	The charging matrix in Part A, Section A-II is a map of available domestic vehicles, not a representation that they fully satisfy UNCAT. Every gap between available charges and UNCAT-defined conduct is a criminalization failure that the

CAT/C/USA/CO/3-5 — Five Operational Findings	Paragraph	What the Committee Found	Operational Significance
		recommended re-introduction of the Law Enforcement Torture Prevention Act (LEPTA).	Committee specifically identified. The LEPTA recommendation confirms the Committee views the gap as requiring legislative correction.
OLC torture memos: deeply flawed legal arguments	CAT/C/USA/CO/3-5 (Recommendations)	The Committee found that the Article 16 reservation had been invoked in Office of Legal Counsel memoranda as 'deeply flawed legal arguments' to advise that torture could be lawfully authorized. The Committee recommended withdrawal of the Article 16 reservation as part of the U.S.'s compliance obligations.	The OLC memos are an institutional acknowledgment that the U.S. government's own legal apparatus was used to narrow the Convention's protections. The Committee's characterization as 'deeply flawed legal arguments' is the international monitoring body's rejection of the legal reasoning, not merely a policy disagreement. The recommendation to withdraw the Art. 16 reservation is directly relevant to CIDT enforcement gaps documented in Part A.
CIA rendition not adequately investigated	CAT/C/USA/CO/3-5 (Recommendations)	The Committee found that the CIA rendition and secret detention program violated multiple Convention provisions and has not been adequately investigated. The Committee called for full accountability, including prosecution of responsible officials, and for the disclosure of information about individuals subjected to rendition.	The failure to investigate and prosecute CIA rendition is the most documented instance of Article 12 non-compliance in U.S. practice. The same structural barriers — prosecutorial immunity, executive deference, and DOJ non-referral — that prevented accountability there operate in domestic torture and CIDT cases. The CIA rendition finding is the Committee's own precedent for treating U.S. non-investigation as a treaty breach.

C. The Equivalence Failure in Practice

In its periodic reports, the United States asserted that domestic law provides equivalence across all five required outcomes: protection, prevention, relief, remedy, and punishment. The following table maps the Committee's findings onto those five categories to show where the equivalence assurance fails.

Required Outcome	U.S. Assurance in Periodic Reports	CAT Committee / Practice Finding	Resulting Gap
Protection	Existing constitutional law (8th, 14th Amendments; §	No mechanism compels protective action before harm occurs when the harm-causer is a	Art. 2 protection obligation systematically unmet for judicial-

Required Outcome	U.S. Assurance in Periodic Reports	CAT Committee / Practice Finding	Resulting Gap
	1983) provides equivalent pre-harm protection.	court. Injunctive relief against judicial officers is structurally constrained. The DOJ deferred to SCOTUS when protective action was requested.	setting abuse. Gap must be documented.
Prevention	Federal training requirements and civil rights law provide equivalent systemic prevention.	No federal statute mandates UNCAT-aligned training for judicial personnel. No mechanism reviews judicial accommodation-denial patterns. The 'prolonged mental harm' reservation prevents training from targeting the full UNCAT-defined category of prohibited mental suffering.	Art. 10/16 prevention obligation structurally incomplete. Training gap must be documented in every case where judicial personnel lacked UNCAT-aligned training.
Relief	DOJ complaint intake, judicial conduct boards, and inspector general referral provide equivalent complainant relief.	In the documented judicial-setting cases relied on by this guide, DOJ responses failed to provide functionally equivalent Article 13 relief — the guide's practice-based analysis, not a quoted CAT finding. Judicial conduct boards are non-criminal and exclude Article III judges from most disciplinary action. Inspector general jurisdiction excludes Article III courts. No independent human rights mechanism.	Art. 13 relief obligation: the most structurally complete recurring gap in U.S. practice. Every documented DOJ deferral or judicial conduct board non-referral is a specific Art. 13 gap.
Remedy	Compensatory and punitive damages, injunctive relief under existing civil rights law, and state tort law provide equivalent reparation.	Judicial immunity bars most damages claims. Statutory caps limit compensation. Rehabilitation, satisfaction, and non-repetition guarantees — required by GC No. 3 — have no domestic procedural vehicle. No structural reform mechanism exists for judicial conduct patterns.	Five-form reparation as described in GC No. 3 — restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition — is not reliably available through existing domestic vehicles in the judicial-setting cases emphasized here.
Punishment	All acts of torture as understood in the Convention are already punishable under U.S. law.	Federal criminal law (§§ 241-242) does not fully map UNCAT's Article 1 definition. No mandatory prosecution mechanism. In the documented judicial-setting cases emphasized here, DOJ responses deferred to institutions alleged to be implicated in the violations. Prosecutorial declination is discretionary; it does not trigger any Art. 7 compliance review.	Art. 4 and 7 punishment obligation: partially met by available statutes, systematically incomplete because prosecution is discretionary and DOJ has a documented practice of deferring in judicial-setting cases.

D. What This Means for Prosecutors

A U.S. prosecutor reading this guide is not operating in a system that has delivered on the equivalence commitment embedded in the Senate's RUDs and repeated by the executive branch in every periodic report to the CAT Committee. The Senate concluded that domestic law provides equivalent protection, prevention, relief, remedy, and punishment. The executive represented this conclusion internationally. The CAT Committee found that it does not. The gap between the promise and the practice is the space this guide addresses.

The operational consequence is this: every time a prosecutor identifies a gap between what UNCAT requires and what domestic law can deliver, they are documenting a specific instance of the structural failure the Committee already identified. That documentation is not merely a best practice. It is the mechanism through which the U.S.'s treaty compliance record reflects reality rather than the assurances made in periodic reports. The Committee reviews that record. Shadow reporters contribute to it. Special procedures draw on it. Individual communications reference it. A prosecutor who documents a gap is performing a function that no other institutional actor in the U.S. system currently performs — making the implementation failure visible at the moment and in the place where it occurs.

The CAT Committee recommended in CAT/C/USA/CO/3-5 that the United States re-introduce the Law Enforcement Torture Prevention Act and withdraw the Article 16 reservation. Neither recommendation has been implemented. Until structural reform occurs, the gap-documentation requirement in Part A, Section A-V is the principal mechanism available to individual prosecutors for ensuring that the implementation failure does not disappear into unrecorded declinations. See Part C, Section C-V for the full Medellín and two-plane analysis that governs how domestic structural constraints interact with Plane A obligations.

Under Chapter VIII of the 2022 Istanbul Protocol, States are obligated to undertake comprehensive and sustained action to implement the Protocol in collaboration with civil society. For prosecutors, this means: (a) preserving the documented record in a form accessible to civil-society organizations performing Protocol ¶263 functions; (b) treating IAJ investigation reports and forensic findings as Protocol-compliant expert evidence rather than as informal advocacy; and (c) not arbitrarily disqualifying non-governmental clinical experts from contributing to proceedings — a specific misuse the 2022 Protocol was updated to address. The guide does not categorically require every prosecutor to transmit documentation directly to IAJ. The narrower and correct point is that the Chapter VIII collaboration obligation makes engagement with Protocol-recognized civil society actors part of the State's implementation architecture, not an optional supplement to it.

C-0A. NO SETTING QUALIFIER: UNCAT APPLIES TO ALL OFFICIAL CONDUCT

The most persistent misreading of the Convention Against Torture — and the one most consequential for domestic prosecutors — is the assumption that UNCAT applies only to interrogation rooms, prison cells, and detention facilities. This assumption is wrong as a matter of text, wrong as a matter of treaty-body interpretation, wrong as a matter of jus cogens law, and wrong as a matter of consequence under VCLT Article 31. This section states the textual argument, the CAT Committee's authoritative position, and the analytical consequence of accepting the narrow reading.

A. The Text Contains No Setting Qualifier

Article 1(1) of the Convention Against Torture defines torture as:

> **"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."**
>
> *UNCAT Article 1(1). The word 'detention' does not appear. The word 'prison' does not appear. The phrase 'during interrogation' does not appear. The definition contains five elements: (1) any act; (2) intentional infliction; (3) severe pain or suffering, physical or mental; (4) by a public official or person acting in an official capacity; (5) for one of the enumerated purposes or any discriminatory reason. No element incorporates a setting qualifier of any kind.*

The custodial paradigm — the assumption that UNCAT is 'about' interrogation rooms and prison cells — entered through the political background of the 1984 drafting negotiations, not through any textual choice the drafters made. The setting that dominated the political debate was custodial and interrogation-based because the most visible abuses of the era occurred in those settings. But the text the drafters enacted is wider than that background concern. The enacted language covers public officials in any official capacity inflicting severe suffering for any of the enumerated purposes. No categorical exclusion of any setting — judicial proceedings, administrative agencies, civil courts, hospitals, family courts — was introduced by the drafters through any textual choice. Applied on its face, without the custodial paradigm's distorting lens, Article 1 reaches any act by any public official in any official setting that satisfies the five elements.

B. The CAT Committee's Authoritative Position: All Branches, All Settings

The Committee Against Torture has authoritatively confirmed that the Convention's obligations extend to all branches of government and all settings in which public officials act in an official capacity. Three sources establish this beyond reasonable dispute.

General Comment No. 2 (2008), ¶3: The Committee states that the obligation of non-derogability 'must be upheld in all circumstances' and expressly provides that 'all branches of government' are required to comply. The judiciary is a branch of government. GC No. 2 does not carve out judicial settings, administrative agencies, or any other form of official conduct from the Convention's reach.

Hajrizi Dzemajl et al. v. Yugoslavia (CAT Comm. No. 161/2000): The Committee found state acquiescence liability in a non-custodial setting — specifically, police failure to prevent mob violence

against a Roma settlement. No detention. No interrogation. No prison cell. The Committee's liability finding was grounded solely in official acquiescence in conduct that caused severe harm. This decision forecloses any argument that the Convention's reach is inherently limited to custodial settings.

CAT/C/USA/CO/3-5 (2014), ¶10: The Committee's geographic-scope reaffirmation states that obligations apply to 'all places that the State party controls as a governmental authority' — not only detention facilities. Domestic courts are unquestionably places the United States controls as a governmental authority. The U.S. position — documented in ECF-89.1 — that its state and federal courts are not within this scope was not endorsed by the Committee and is inconsistent with the plain language of paragraph 10 read together with GC No. 2.

CRITICAL: The CAT Committee Found in 2014 that the United States Lacks Adequate Statutory Provisions to Prosecute UNCAT Violations

The Committee's finding: In CAT/C/USA/CO/3-5, issued December 19, 2014, the Committee Against Torture expressly found that the United States has not criminalized torture at the federal level in full conformity with Article 1 of the Convention. The U.S. government had represented in its periodic reports that 'all acts of torture as understood in the Convention are already punishable under U.S. law.' The Committee rejected this position. The Committee found that the U.S. statutory scheme — principally 18 U.S.C. §§ 241–242 and 2340A — does not fully capture the range of conduct prohibited by Article 1, that the 'prolonged mental harm' understanding of the mental-suffering element is excessively narrow and creates actual loopholes for impunity, and that the Article 16 reservation was invoked in OLC memoranda as authority for conduct the Convention prohibits.

What this means for prosecutors: A prosecutor who declines a UNCAT-adjacent case on the ground that 'no domestic statute covers this' may be correct as a matter of Plane B law. But that correct Plane B observation is simultaneously a specific instance of the compliance failure the Committee documented in 2014. The absence of an adequate statute is not a reason to close the file. It is a gap that must be documented, because the Committee has already found the absence inadequate and has called on Congress to remedy it. Every documented gap memorandum produced by a U.S. prosecutor is evidence of the structural deficiency the Committee identified. Every buried declination confirms the U.S. assurance that the deficiency does not exist.

The recommended remedy the U.S. has not implemented: The Committee specifically recommended that the United States re-introduce the Law Enforcement Torture Prevention Act — legislation that would have created a domestic criminal prohibition aligned with Article 1. Congress has not enacted it. The Article 16 reservation, which the Committee recommended withdrawing, remains in place. The OLC torture memos, which the Committee described as containing 'deeply flawed legal arguments' used to advise that torture could be lawfully authorized, have not been formally repudiated in a manner that satisfies the Committee's concerns. The statutory gap the Committee identified in 2014 remains open.

The 18 U.S.C. § 2340A misreading: The federal torture statute, 18 U.S.C. § 2340A, is frequently cited as evidence that the U.S. understood UNCAT to be limited to overseas custodial settings. This inference is unjustified. Section 2340A fills the jurisdictional gap for torture occurring outside the United States. It does not address domestic torture because domestic criminal law — primarily §§ 241–242, state assault and civil rights statutes, and constitutional torts — was understood to cover it. The statute's extraterritorial jurisdiction reflects an implementing choice about coverage gaps; it does not define the Convention's international scope. A prosecuting authority that treats § 2340A's extraterritorial jurisdiction as evidence that domestic UNCAT violations are not prosecutable has reversed the statute's purpose: it was enacted to extend reach, not to limit it.

C. The VCLT Article 31 Consequence Argument

Under Vienna Convention on the Law of Treaties Article 31(1), treaties are interpreted in good faith in accordance with their ordinary meaning, in their context, and in light of their object and purpose. Where a proposed reading of a treaty produces results radically incompatible with the treaty's purpose, that incompatibility is itself an interpretive argument against the reading.

The 'detention only' reading of UNCAT — which would confine the Convention's substantive prohibitions to custodial, interrogation, and imprisonment settings — produces exactly those absurd consequences when applied to the range of official conduct alleged in complaints received by the IAJ across its 500+ registered complainants.[5] In every case where a public official in a non-custodial setting causes severe documented suffering satisfying the remaining Article 1 elements, the detention-only reading would produce permanent and categorical immunity solely because the mechanism of compulsion was legal rather than physical.[6]

The IAJ's Shadow Report to the 83rd Session of the Committee Against Torture (September 2025) identifies 24 systemic factors of prohibited official conduct occurring in family courts, child protective services, administrative agencies, and judicial proceedings — all of which satisfy Article 1's elements except the setting qualifier the text does not contain. Each factor describes conduct that: causes documented severe physical or psychological suffering; is inflicted by public officials in official capacity; satisfies at least one Article 1 purpose element; and has no effective domestic remedy. Accepting the detention-only reading would immunize every one of them permanently and completely — not because they fail the Convention's elements, but solely because they occur outside a cell. That result is the clearest possible evidence that the detention-only reading is incompatible with the Convention's purpose. Causation methodology for non-physical-contact harm: Where harm arises in non-physical-contact settings, the IAJ Psychological Investigation Standard (IAJ-STD-20260324-001-PUB) provides a five-step Daubert-compliant causation protocol (the Distress-Induced Harm framework): (i) documented biological vulnerability; (ii) notice to institutional actors of that vulnerability; (iii) a coercive institutional act; (iv) a published biological pathway linking the act to the harm; and (v) contemporaneous clinical records of biological deterioration. This is an IAJ analytic tool. Whether the mechanism satisfies a specific domestic legal doctrine is a question for counsel; the evaluator establishes the mechanism. Prosecutors reviewing IAJ reports using this framework should understand what it means and how the five steps work. The PIS framework is an IAJ forensic methodology for evaluating evidence and preserving the record; it is not a treaty-body holding, statutory rule, or settled domestic doctrinal requirement. Legal characterization of whether the mechanism satisfies a specific domestic doctrine remains counsel's task.

D. The Jus Cogens Argument: Independent of and Above the Treaty Architecture

Even if the architectural argument somehow constrained the Convention's conventional reach — which the IAJ disputes — it has no purchase on the jus cogens prohibition, which operates independently of and above the treaty architecture. The jus cogens minimum content of the torture prohibition is not limited by the original sovereignty horizon of the 1984 drafters. The prohibition against torture has been recognized by the ICJ as a peremptory norm giving rise to obligations owed to the international community as a whole. See

Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 2012 I.C.J. 422, ¶69–70 (July 20, 2012). Jus cogens does not respect the custodial paradigm any more than

[5] April 2026

[6] A regime could immunize its torture apparatus entirely by relocating its operations from a named detention facility to an administrative tribunal. That conclusion is incompatible with the Convention's object of absolutely prohibiting torture by state agents in all circumstances. VCLT Article 31 requires rejection of a reading that produces it.

it respects treaty reservations, statutes of limitations, or official-status immunity defenses. A prosecutor who accepts that the jus cogens prohibition is not extinguished by domestic non-self-execution cannot simultaneously accept that it is limited to custodial settings the 1984 drafters were most concerned about. The two positions are inconsistent.

For prosecutors: the jus cogens argument operates on Plane A and does not by itself supply a Plane B charging vehicle. But it forecloses the argument that UNCAT's reach is categorically limited to prisons and interrogation rooms, because that argument cannot be squared with a prohibition that operates as a peremptory norm of international law applicable to all official torture in all settings.

E. Operational Summary for Prosecutors

The Claim	The Response	Authority
UNCAT only applies to interrogation and detention.	The text contains no setting qualifier. Any act, any official capacity, any setting satisfying the five elements is covered.	Art. 1 text; GC No. 2 ¶3; Dzemajl v. Yugoslavia
Courts are not within UNCAT's scope; the U.S. said so.	The CAT Committee rejected the U.S. self-exclusion of courts. The U.S. position was documented and not endorsed. The Committee's geographic-scope reaffirmation covers courts as places of governmental authority.	CAT/C/USA/CO/3-5 ¶10; GC No. 2 ¶¶3, 18; ECF-89.1
Section 2340A proves UNCAT is about overseas custody.	Section 2340A fills the extraterritorial gap. It does not limit the Convention's scope; it extends coverage to overseas acts not otherwise reachable domestically.	18 U.S.C. § 2340A legislative history; IAJ analysis
There is no domestic statute that covers this, so UNCAT is irrelevant.	The CAT Committee found in 2014 that the U.S. lacks adequate statutory provisions to prosecute UNCAT violations in full conformity with Art. 1. The absence of a statute is a documented compliance gap, not a reason to close the file without documentation.	CAT/C/USA/CO/3-5 ¶9; Law Enforcement Torture Prevention Act (not enacted)
The jus cogens prohibition is limited to classic torture scenarios.	Jus cogens operates above the treaty architecture and its minimum content is not bounded by the 1984 drafters' political horizon. It applies to all official torture in all settings.	Belgium v. Senegal (ICJ 2012); VCLT Arts. 53, 64

C-I. INTRODUCTION: TWO ERRORS TO AVOID AND THE TWO-PLANE FRAMEWORK

A prosecutor-facing guide on UNCAT enforcement must navigate between two equal and opposite errors. The first is doctrinal overstatement: asserting that UNCAT may always be invoked as a freestanding domestic criminal cause of action; that every prosecutor who declines a case is automatically criminally liable for acquiescence to torture; that civil immunity is simply overridden by treaty norms; or that the non-self-executing declaration is of merely formal significance. Overstatement makes a document vulnerable to dismissal as tendentious and strips it of the authority needed to guide prosecutors.

The second error is institutional deference masquerading as doctrinal caution: retreating so far behind Medellín that UNCAT appears legally irrelevant to domestic criminal practice; treating the implementation gap as a prosecution-free zone; or hedging every claim so thoroughly that prosecutors receive no operational guidance. This converts treaty obligations into paper norms, rewards impunity, and ensures the 2014 CAT Concluding Observations produce no behavioral change.

This guide occupies the space between those errors. It also incorporates the IAJ Six-Move Framework developed in the IAJ's primary authority work UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB)[7] and the IAJ's Harmonizing the Architecture of Disability Rights (Disability Harmony, v3b, March 2026)[8]. This guide should be read together with the IAJ Psychological Investigation Standard (v1.5), which supplies the forensic disciplines for documenting severity, causation, consistency, and institutional non-equivalence.

The Two-Plane Framework — Essential Methodological Distinction

International obligation plane (Plane A): The existence and content of the international legal obligation. This plane is governed by UNCAT, VCLT, jus cogens, and the CAT Committee's authoritative interpretations. U.S. domestic doctrines — non-self-execution, Medellín, judicial immunity, sovereign immunity — do not determine the content of obligations on this plane.

Domestic enforceability plane (Plane B): Whether that obligation is directly enforceable in U.S. courts. This plane is governed by Medellín, the non-self-executing declaration, and domestic immunity doctrines. A conclusion that direct domestic enforcement is limited on Plane B does not resolve whether the obligation exists on Plane A, whether it has been breached, or whether that breach can be raised before international forums. The two planes must remain distinct throughout this guide.

C-II. SOURCE HIERARCHY AND TIERING CONVENTION

This guide uses a three-tier structure so prosecutors can tell, at a glance, the legal standing of each proposition. Throughout the guide, authority is also classified by source type. Readers should be able to distinguish at all times between treaty text, treaty body interpretation, domestic case law, and IAJ analytic synthesis:

Source Type	Examples	How It Appears in This Guide
Treaty text	UNCAT Arts. 1, 4, 12, 16; VCLT Arts. 53–64	Cited by article number; the most authoritative source on Plane A
Treaty body interpretation	CAT GC No. 2 (2008); CAT/C/USA/CO/3-5 (2014)	Cited with document number; described as providing support for, or stating, a position — not as domestically binding authority

[7]Inst. for the Advancement of Justice & Human Rights, UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB, May 2026) [hereinafter IAJ Jus Cogens Perspective].

[8]Inst. for the Advancement of Justice & Human Rights, Harmonizing the Architecture of Disability Rights (Disability Harmony, v3b, Mar. 2026) [hereinafter IAJ Disability Harmony]; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, ¶31–36, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (prepared by Juan E. Méndez).

Source Type	Examples	How It Appears in This Guide
Domestic case law	Farmer v. Brennan; Hope v. Pelzer; Imbler v. Pachtman; U.S. v. Lanier	Cited with full reporter citation; controlling authority on Plane B
IAJ analytic synthesis	Six-Move Framework; Jurisdictional Custody; Five-Level Gravity Scale	Explicitly labeled as IAJ analytic architecture or IAJ argued extension; internal reasoning tools, not independent legal tests binding on courts

The three-tier structure for domestic legal standing:

Tier	Meaning	Typical Use
Tier 1	Clearly Established Domestic Law: propositions grounded in enacted statutes, controlling constitutional doctrine, or settled criminal-procedure principles.	Charging decisions, warrants, grand jury, court filings
Tier 2	Strongly Arguable Prosecutorial Position: legally supportable and operationally useful, but depends on analogy, interpretation, or unresolved boundaries.	Charging memos, litigated motions, supervisory review, training
Tier 3	Implementation-Gap / International-Obligation Territory: follows from CAT's international requirements or identified noncompliance gaps; may lack a coextensive domestic criminal vehicle.	Training, prevention, gap documentation, reform referrals, treaty-body accountability

C-III. THE CONVENTION AGAINST TORTURE: WHAT IT REQUIRES

CAT's operative articles impose distinct legal obligations. Article 2 is the absolute prohibition: no exceptional circumstance and no superior order justifies torture.[9] Article 4 requires criminalization of torture, attempt, complicity, and participation.[10] Article 7 requires submission of qualifying cases for prosecution or extradition (aut dedere aut judicare).[11] Article 10 requires education and training on the prohibition.[12] Article 12 requires prompt and impartial investigation wherever there is reasonable ground to believe torture has occurred.[13] Article 13 requires a right to complain and protection against retaliation.[14] Article 15 prohibits use of torture-derived statements.[15] Article 16 extends prevention and investigatory obligations to CIDT committed by or with official consent or acquiescence, importing Articles 10–13.[16]

Article	Core Obligation	Tier
Art. 2	Absolute prohibition; no emergency, superior-orders, or exceptional-circumstance justification.	T3 intl.; T2 interpretive/compliance
Art. 4	Criminalize torture, attempt, complicity, participation.	T3 intl.; T1 where enacted domestically
Art. 7	Submit qualifying cases for prosecution or extradition.	T3 intl.; supports escalation obligations
Art. 10	Education and training on the prohibition.	T2/T3; prevents normalization
Art. 12	Prompt and impartial investigation on reasonable grounds — lower than probable cause.	T2/T3; shapes intake and triage decisions
Art. 13	Right to complain; protection against retaliation.	T2/T3; overlaps with obstruction/retaliation statutes
Arts. 15–16	Exclude torture-derived statements; prevent CIDT; import Articles 10–13 to CIDT settings.	T2/T3; CIDT threshold and evidence treatment

CAT General Comment No. 2 (2008)[17], ¶18: States that the prohibition extends to all branches of government, including the judiciary, and provides support for the position that State officials who know or should know of torture or CIDT by others and fail to exercise due diligence to prevent, investigate, prosecute, or punish may bear responsibility as complicit or acquiescent.

[9]Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 [hereinafter UNCAT].

[10]Id. art. 4.

[11]Id. art. 7.

[12]Id. art. 10.

[13]Id. art. 12.

[14]Id. art. 13.

[15]Id. art. 15.

[16]Id. art. 16.

[17]Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, ¶18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

C-IV. WHY UNCAT STILL MATTERS: FIVE ADDITIVE LEGAL GAINS

Absolute non-derogability [Tier 2/3]. CAT rejects exceptional-circumstances and superior-orders defenses even where domestic actors attempt to normalize institutional cruelty.[18] The jus cogens status of the torture prohibition — recognized by the ICJ in Belgium v. Senegal (2012) — provides a substantial basis for the argument that the prohibition operates on a plane independent of any specific treaty architecture, giving rise to obligations owed to the international community as a whole.

8. Individual criminal-accountability framing [Tier 2]. CAT keeps the analysis centered on the perpetrator's own acts and state of mind rather than allowing the matter to collapse into institutional malpractice or civil liability alone. Part A, Section A-VI provides the full analysis of prosecutorial immunity and what it does and does not reach.
9. No civil-immunity short circuit [Tier 1 in criminal context]. Civil immunity doctrines (judicial immunity, qualified immunity, prosecutorial immunity) do not answer whether criminal investigation is warranted under an otherwise applicable domestic statute. Stump v. Sparkman, Imbler v. Pachtman, and Harlow v. Fitzgerald are civil-damages cases; they do not bar criminal review. On the international plane (Plane A), the jus cogens prohibition is not extinguished by domestic immunity doctrine. Pulliam v. Allen, 466 U.S. 522 (1984) confirms that injunctive and declaratory relief against judicial officers was available at common law. Note: Congress limited injunctive relief against judicial officers under 42 U.S.C. § 1983 in 1996 (Fed. Courts Improvement Act, Pub. L. 104-317) to cases where a declaratory decree was violated or declaratory relief was unavailable.
10. International monitoring and accountability leverage [Tier 3]. A documented declination may become part of the treaty-compliance record on Plane A and may later be reviewed in treaty-body, special-procedures, or shadow-reporting contexts. Where serious implementation gaps are not documented, analyzed, or escalated, those omissions may be cited as evidence of an impunity gap in the United States' periodic review or related international accountability processes.
11. Equivalence-gap remedy [Tier 2/3]. UNCAT Article 16 can identify serious official mistreatment even where domestic comparator-based doctrines like equal protection fail to capture situations in which an entire class is uniformly subjected to degrading treatment without a similarly situated comparator group. Equal protection is often comparator-dependent. CAT Article 16 is not.

[18]UNCAT art. 2(2) ('No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.').

C-V. SELF-EXECUTION, MEDELLÍN, JUS COGENS, AND THE TWO-PLANE FRAMEWORK

A. Domestic Plane — The Non-Self-Execution Constraint

The foundational domestic constraint: The United States ratified CAT with a declaration that Articles 1–16 are non-self-executing.[19] Under *Medellín v. Texas*, 552 U.S. 491 (2008), non-self-executing treaty provisions do not automatically become freestanding rules judicially enforceable in domestic court.[20] Prosecutors therefore should not assert that CAT, by itself and without more, supplies a standalone domestic criminal cause of action.

What non-self-execution does not mean: It does not erase CAT's legal relevance. CAT remains binding on the United States as a matter of international obligation and remains relevant in at least three narrower domestic ways: first, as interpretive context where domestic constitutional or statutory text is genuinely susceptible to more than one permissible reading; second, as authority bearing on offense gravity, complaint protection, and the seriousness of official abuse; and third, as a framework for identifying and documenting implementation gaps that domestic law does not fully cover.

The Charming Betsy canon as a limited aid:[21] The Charming Betsy canon remains a limited interpretive aid where domestic text is genuinely open to more than one permissible construction. It does not authorize courts or prosecutors to rewrite clear criminal statutes or to create offenses not enacted by domestic law. The correct domestic formulation is therefore: charge through enacted domestic statutes; use CAT as contextual, interpretive, and gravity-reinforcing authority where appropriate; and where domestic law does not reach the full scope of the conduct, identify the gap candidly rather than converting it into impunity.

B. International Plane — Jus Cogens and the Limit of Domestic Immunity

On the international plane, the jus cogens status of the torture prohibition provides a substantial basis for the argument that international obligations are not extinguished by domestic enforceability limits. The prohibition against torture has been recognized by the ICJ as a peremptory norm giving rise to obligations owed to the international community as a whole. See *Belgium v. Senegal*, 2012 I.C.J. 422 (July 20, 2012)[22]. Vienna Convention on the Law of Treaties (VCLT) Articles 53 and 64, used here as customary international law (the United States has not ratified the VCLT), provide that peremptory norms supervene any treaty or domestic rule in conflict with them on Plane A — though the precise domestic implications of that supervening effect in U.S. courts remain contested.

The strongest formulation is this: on Plane A, domestic doctrines do not extinguish the underlying international obligation. They may limit what a domestic litigant can compel in a U.S. court, but they do not resolve whether the obligation exists, whether State practice is compliant, or whether international accountability mechanisms may treat noncompliance as a breach. Accordingly, the two planes must remain distinct. A conclusion that CAT is not directly enforceable as a freestanding domestic criminal rule does

[19]UNCAT, Declarations and Reservations, United States of America (deposited Oct. 21, 1994), available at U.N. Treaty Collection, https://treaties.un.org.

[20]Medellín v. Texas, 552 U.S. 491, 504–06 (2008).

[21]Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

[22]Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. Rep. 422, ¶69–70 (July 20) [hereinafter Belgium v. Senegal].

not answer whether the United States remains internationally bound to prevent, investigate, and punish the conduct in question.

C. The U.S. RUDs and the Equivalence Problem

The U.S. reservations, understandings, and declarations narrow domestic enforceability, but they also create an equivalence problem. Where the United States relies on domestic constitutional law as functionally equivalent protection, serious failure of that domestic framework may strengthen the argument that the United States has not provided the protection it represented to the international community. The prudent prosecutorial lesson is not that the RUDs vanish, but that they cannot honestly be used as a rhetorical shield for non-enforcement where domestic law already prohibits the conduct or where the gap must at least be documented and escalated.

The Two-Plane Principle in Operational Practice

Plane A — International obligation: Where a prosecutor's office, or other competent state mechanism, declines to investigate documented torture, the State's Article 12 obligation may be relevant regardless of whether the individual prosecutor is immune from domestic civil suit. The CAT Committee, the Special Rapporteur on Torture, and the Human Rights Committee review State practice on Plane A, where domestic immunity doctrines are not defenses to State responsibility.

Plane B — Domestic enforceability: Non-self-execution (Medellín), Imbler, and qualified immunity operate on Plane B. They determine what private litigants can compel in U.S. courts. They do not resolve whether the international obligation exists, whether it has been breached, or whether that breach can be raised in international accountability forums.

D. The Medellín Paradox and the Judicial Backstop

The ratification framework materially depended on the adequacy of domestic legal institutions, including courts, to prevent the anti-torture obligation from becoming hollow in practice. Where those institutions no longer deliver functionally equivalent protection, prevention, relief, remedy, and punishment, a serious structural paradox emerges. This guide preserves that paradox as an interpretive and treaty-compliance problem. It does not ask line prosecutors in ordinary criminal cases to seek frontal reconsideration of Medellín. Rather, it directs them to preserve the factual and legal record showing the consequences of the present regime, so that courts, legislatures, supervisory institutions, and international mechanisms may confront the unresolved problem in appropriate settings. The question of whether Medellín's non-self-execution holding extends to jus cogens norms — expressly reserved by the majority — remains open and may be reached in appropriate future proceedings.

E. Equity-Inflected Prosecutorial Practice Without Chancery Overreach

The anti-torture obligation has an equitable dimension because punishment alone cannot exhaust the State Party's obligations of protection, prevention, relief, remedy, and non-repetition. This does not mean that prosecutors in ordinary criminal cases may demand all forms of structural equitable relief against any institution implicated in the abuse. It does mean that prosecutors must orient their practice toward maximum lawful realization of the outcome set: using the criminal process to secure all punitive, protective, restorative, and record-preserving measures within reach, while expressly identifying and preserving for other domestic and international mechanisms the elements that exceed the criminal forum's ordinary remedial scope. The proper role of equity in this guide is therefore not chancery-style substitution, but anti-impunity orientation.

The distinction matters because it determines the theory of the case. A prosecutor who asks a court for structural reform of a judicial institution in a criminal case will fail: courts do not grant such relief in criminal proceedings. A prosecutor who charges every available count, seeks every available protective order, preserves every piece of evidence, requests restitution at sentencing, and then refers the structural gap to the Civil Rights Division for pattern-or-practice civil enforcement has done what the five-outcome framework requires. The former is chancery overreach. The latter is maximum lawful anti-impunity practice. The difference is not in the ambition; it is in the vehicle.

F. What Medellín Does Not Permit the Prosecutor to Ignore

Even where Medellín prevents a prosecutor from treating UNCAT as a freestanding domestic criminal cause of action, it does not justify treating the treaty as irrelevant to the prosecutor's task. The prosecutor must still evaluate whether domestic law provides functionally equivalent protection, prevention, relief, remedy, and punishment; must preserve the record of any shortfall; and must report the shortfall through the appropriate domestic and international channels. Medellín may constrain one mode of domestic enforcement. It does not authorize silent closure. Medellín did not hold that jus cogens norms are non-self-executing — that question was expressly reserved. The jus cogens character of the torture prohibition operates independently of and above the treaty architecture, and prosecutors who accept that the jus cogens prohibition is not extinguished by domestic non-self-execution cannot simultaneously accept that treaty obligations are irrelevant to intake, investigation, documentation, preservation, or reporting.

C-VI. JUDGES, COURTS AS INSTITUTIONAL ACTORS, AND THE THREE-CATEGORY JUDICIAL TAXONOMY

Courts are not merely neutral backdrops in every case. In some circumstances they may function as institutional actors that cause, exacerbate, or maintain serious disability-related or stress-mediated harm through compelled participation, denied accommodation, retaliatory process, or systematic refusal to mitigate documented risk. That proposition should be stated carefully. It does not mean every harmful judicial process becomes torture or CIDT. It means only that courts are not categorically outside the field of potential official responsibility. See IAJ, Harmonizing the Architecture of Disability Rights (Disability Harmony, v3b, March 2026), which provides the comprehensive framework for courts as disability-causing actors.

The most important practical distinction in judicial-abuse cases is between adjudicative error, serious abuse remediable through appeal or discipline, and independently criminal conduct. Prosecutors must not collapse these categories:

Category	Description	Typical Response
A. Adjudicative error	Wrong, harsh, biased, or even knowingly unjust rulings that remain within ordinary appellate or mandamus correction.	Appeal, mandamus, discipline, recusal — not criminal prosecution
B. Serious abuse short of crime	Patterned denial of protection or accommodation; process failures; bad-faith rulings remediable through discipline, equity, or structural remedy.	Oversight, discipline, injunction, record-building for treaty-body review. Pulliam v. Allen, 466 U.S. 522 (1984) confirms that injunctive and declaratory relief against judicial officers was available at common law. Note: Congress limited injunctive relief against judicial officers under 42 U.S.C. § 1983 in 1996 (Fed. Courts Improvement Act, Pub. L. 104-317) to cases where a declaratory decree was violated or declaratory relief was unavailable.
C. Independently criminal conduct	Knowing participation in rights deprivation, willful interference with medical care, retaliation, obstruction, coercive evidence use, conspiracy, or coordinated abuse.	Criminal review under §§ 241–242 and related statutes; investigation warranted

Judicial office does not confer criminal immunity. The relevant question is whether the conduct independently satisfies a domestic criminal statute — not whether the defendant held judicial office. At the same time, not every grave judicial wrong is criminal. The point of the taxonomy is to preserve that distinction. *United States v. Nalley*: judge convicted under § 242. *United States v. Cochran*: judge convicted on §§ 241–242. Judicial prosecution is not theoretical.[23] The practical rule is therefore simple: do not stop because a judge is involved, but do not skip the element-by-element criminal analysis either.

[23]Press Release, U.S. Dep't of Justice, Former Charles County Circuit Court Judge Robert C. Nalley Pleads Guilty to Deprivation of Rights Under Color of Law (Feb. 1, 2016) (D. Md.); sentenced Mar. 31, 2016 (one year's probation, $5,000 fine) [United States v. Nalley (D. Md. 2016)]. Press Release, U.S. Dep't of Justice, Former Murray County Chief Magistrate Judge Bryant L. Cochran Found Guilty by Federal Jury on All Counts (Dec. 11, 2014) (N.D. Ga.); sentenced July 8, 2015 (five years' imprisonment) [United States v. Cochran (N.D. Ga.)].

Accommodation-law authorities and deliberate indifference: *Tudor v. Whitehall Central School District*, No. 23-665-cv, 132 F.4th 242 (2d Cir. Mar. 25, 2025), supports the narrower proposition that apparent ability to continue functioning under duress is not the same as genuine safe capacity to participate without accommodation — the ADA may require reasonable accommodation even where an employee can perform essential functions without it. That ability/capacity distinction bears on notice, rights awareness, and possible deliberate indifference under *Farmer v. Brennan*. Separately, the Supreme Court held unanimously in *A.J.T. v. Osseo Area Schools, Independent School District No. 279*, No. 24-249 (S. Ct. June 12, 2025), vacating *A.J.T. v. Osseo Area Schools*, 96 F.4th 1058 (8th Cir. 2024), that disability discrimination claims in educational settings are subject to the same standard as other ADA claims and are not required to satisfy a heightened 'bad faith or gross misjudgment' threshold. These authorities are best used as evidence bearing on notice and rights awareness. They should not, standing alone, be treated as automatic proof of disability animus, CAT severity, or criminal willfulness. Each criminal theory must remain tied to the elements of the enacted domestic offense.

C-VII. SEVERITY THRESHOLD: SIX-MOVE FRAMEWORK, FOUR-TIER GRADIENT, AND THE LIMITING PRINCIPLE

A. The IAJ Six-Move Framework: An Internal Analytic Architecture

Forensic grounding note: In cases where harm arises from institutional rather than physical conduct, the IAJ Psychological Investigation Standard (IAJ-STD-20260324-001-PUB) provides the forensic methodology for establishing severity. The PIS identifies three categories of harm grounding a severity analysis in non-physical-contact settings: documented biological deterioration (e.g., inflammatory flare, cardiovascular destabilization, neurological relapse), clinical crisis (e.g., acute cardiac event), and complex PTSD following an institutional trigger. This is an IAJ analytic framework, not a CAT Committee or Istanbul Protocol rule. Prosecutors reviewing IAJ investigation reports should understand that severity findings in those reports are grounded in this methodology. This is an IAJ forensic framework; it is not a CAT Committee rule or Istanbul Protocol requirement. Legal characterization of whether documented harm meets a specific domestic or treaty severity standard remains counsel's task. The IAJ Six-Move Framework — developed in UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB) as a response to the challenge that non-custodial UNCAT claims require explicit treaty-element grounding — is an **internal analytic architecture** designed to discipline reasoning about non-classic UNCAT claims. It is not a freestanding legal test binding on courts. Its purpose is to ensure that each treaty element and threshold issue is addressed systematically before a CAT characterization is advanced. All six moves should therefore be treated as internal IAJ analytic checkpoints rather than as independent sources of law.

Move 1 — The Text Contains No Setting Qualifier

Article 1(1) defines torture as 'any act' — the enacted language contains no restriction confining the prohibition to custodial or interrogation settings. The absence of a classic custodial setting does not automatically end the inquiry.

Move 2 — Purpose Elements May Be Satisfied Outside Classic Custody

Punishment, coercion, intimidation, discrimination, and analogous abusive purposes can arise in non-classic official settings. The point is not to assume purpose, but to ask whether the specific facts support one of Article 1's five enumerated purpose categories.

Move 3 — The Lawful Sanctions Carve-Out Becomes Weaker Where the Process Is Itself Unlawful

The 'lawful sanctions' exclusion should not be read to insulate sanctions or process that materially depart from the State's own governing law and basic legal obligations. Where the sanction or process is unlawful in a relevant and substantial way, reliance on the carve-out becomes correspondingly weaker. Three considerations may substantially undermine the carve-out argument: (a) the sanction or process materially violates the State's own domestic law; (b) the sanction produces harm grossly disproportionate to any legitimate penal or administrative objective; and (c) the process was used as an instrument of harm rather than as a genuine juridical mechanism. These considerations do not automatically resolve the issue, but they significantly weaken the claim that the conduct remains protected by the 'lawful sanctions' exclusion.

Move 4 — Severity Must Be Established, Not Assumed

Severity is not self-proving. It must be established through recognized forensic or clinical methodology (Istanbul Protocol-compliant methodology using validated clinical instruments: PCL-5, PHQ-9, CAPS-5 under DSM-5/ICD-11), objective medical or psychological evidence where available, and disciplined causation analysis. The Daubert caution in Part C, Section C-IX applies directly here.

Move 5 — Jus Cogens as Residual Backstop

Where residual architectural objections remain — such as that a custodial paradigm should be read into the treaty as an implicit limitation — the jus cogens status of the torture prohibition strengthens the argument that treaty interpretation should not be artificially narrowed below the substantive floor of the prohibition. This move should be framed as a strong international-law argument, not as a magic override of all domestic doctrine.

Move 6 — Jurisdictional Custody (IAJ Analytic Extension)

Jurisdictional Custody — an IAJ analytic contribution: This concept is present when four conditions are satisfied simultaneously: (1) a court has taken jurisdiction and exercises coercive authority — including contempt and sanctions — over a person's participation; (2) the person cannot exit without catastrophic legal consequence; (3) continued compelled participation causes documented severe harm that the state actor knows of and imposes anyway; and (4) every available domestic mechanism to exit — stay, disqualification, appeal, mandamus, injunction — has been exhausted without result. Where these four conditions are met, the strongest IAJ argument is that OPCAT Article 4(2)'s functional concept of deprivation of liberty is substantially implicated. This remains an analytic extension and should be presented as a reasoned interpretation rather than as already settled domestic doctrine.

B. The Four-Stage Severity Framework

After the Six Moves, apply the Four-Stage Severity Framework to the specific record. This too is an internal IAJ discipline, not a court-imposed legal test:

Stage 1 — Isolate the Anchor Act: Identify the specific act that allegedly crosses the CIDT or torture threshold. Document with Istanbul Protocol-compliant methodology.

Stage 2 — Establish Official Purpose: Document the evidence of punitive, coercive, intimidatory, discriminatory, retaliatory, or analogous purpose. Purpose may be established by pattern evidence, statistical data, and circumstantial proof where direct evidence is unavailable.

Stage 3 — Map the Process as Instrument: Show that surrounding procedural failures were not merely background conditions, but functioned as the means by which the threshold-level harm was produced, sustained, or concealed.

Stage 4 — Exhaust the Domestic Remedies Analysis: Distinguish substantive denial (court considered and rejected the argument on the merits) from evasion (court declined to address the merits).

Evasion documented as a pattern across multiple forums is the element that distinguishes a UNCAT case from an ordinary civil rights case.

C. The Four-Tier Domestic Threshold Gradient

Tier	Conduct	SCOTUS Standard	CAT/CIDT Status
I	Ordinary error / negligence — no actual knowledge of specific harm	Does not shock the conscience: County of Sacramento v. Lewis, 523 U.S. 833 (1998)	Not CIDT
II	Reckless disregard — substantial risk without actual knowledge	May approach shocks-the-conscience in deliberative settings (Lewis): evaluate cumulatively (Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Ga. 2002))	Border of CIDT; cumulative analysis required
III	Deliberate indifference — actual knowledge of serious risk + disregard	Constitutional violation: Farmer v. Brennan, 511 U.S. 825 (1994); Estelle v. Gamble, 429 U.S. 97 (1976); Hope v. Pelzer, 536 U.S. 730 (2002); United States v. Lanier, 520 U.S. 259 (1997)	UNCAT Art. 16 CIDT — Tier 2/3
IV	Wanton / malicious / sadistic — no legitimate objective; harm is the purpose	Clear constitutional violation: Hudson v. McMillian, 503 U.S. 1 (1992); Whitley v. Albers, 475 U.S. 312 (1986); Chavez v. Martinez Kennedy concurrence, 538 U.S. 760 (2003)	UNCAT Art. 1 Torture threshold

Prosecutors should not atomize long records into unrelated fragments, but they should also avoid treating cumulative adversity alone as sufficient. Severity, causation, knowledge, and purpose still have to be shown on the specific facts.

D. The Tri-Partite Limiting Principle (Answering the Africa Slippery-Slope Objection)

12. Deviation Principle: the analysis is INTERNAL to the system's own governing norms and obligations. See Trop v. Dulles, 356 U.S. 86 (1958). The question is whether THIS system deviated from ITS OWN established standards.
13. Harm Causation Requirement: there must be documented, not merely speculative, causal connection between specific official conduct and serious physical or psychological harm. Istanbul Protocol documentation and Daubert-ready medical evidence provide the threshold test.
14. Exhaustion and Evasion Requirement: the matter becomes stronger where meritorious domestic arguments were not merely lost on appeal but were repeatedly evaded. Systematic evasion of accommodation obligations across multiple forums, with formulaic identical language, may satisfy the requirement.

C-VIII. HARMONIZATION: DISCRIMINATORY ANIMUS, ALL CLASSES, GRAVITY SCALE, AND THE § 1985(3) ANALYSIS

Discriminatory Purpose: All Classes Under UNCAT and Domestic Law

UNCAT Article 1: unlimited. UNCAT Article 1's discriminatory purpose clause reaches 'any reason based on discrimination of any kind.' This language is deliberately unlimited. No class of victims can be excluded. The following classes are the most documented targets of official discriminatory abuse in judicial and administrative settings.

Race (paradigm class — all circuits and statutes): Race is the original and paradigm protected class under § 1985(3) (Ku Klux Klan Act lineage), under §§ 241–242 (equal protection), and under § 249(a)(1). Any analysis of official discriminatory abuse must assess race as a potential basis. Intersectional discrimination — where a victim is targeted for race and disability, or race and pro se status — is covered under all applicable classes independently.

Indigence and poverty (UNCAT covers; domestic statutes do not): San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), held that poverty is not a suspect class under the equal protection clause. No domestic hate crime statute covers indigence as a class. But UNCAT Article 1's 'any discrimination of any kind' explicitly covers poverty-based discriminatory official abuse. Boddie v. Connecticut, 401 U.S. 371 (1971), confirms that absolute barriers to court access for the poor violate due process — a right enforceable under § 242. Where official conduct targets economically disadvantaged litigants as a class for disadvantageous treatment, the § 249 and § 1985(3) gap must be documented as a specific UNCAT non-equivalence: the treaty covers this discrimination; domestic hate crime and conspiracy statutes do not.

Pro se litigant status (UNCAT covers; domestic statutes do not): No domestic hate crime or civil rights conspiracy statute specifically protects pro se litigants as a class. But the discriminatory purpose toward self-represented litigants as a group is directly relevant to § 242's willfulness element and to UNCAT Article 1. Judge Richard Posner, while serving on the U.S. Court of Appeals for the Seventh Circuit, described in a 2016 New York Times interview the treatment of pro se litigants by federal courts as treating them 'like a kind of trash.' This is an account, by a sitting federal appellate judge, of a documented institutional discriminatory attitude toward an identifiable class of court participants. The IAJ record establishes that pro se litigants in the United States are overwhelmingly persons with disabilities, persons experiencing poverty, persons in immigration proceedings, and persons whose counsel has withdrawn for economic reasons. Discrimination against pro se litigants as a class is therefore functionally discrimination against these underlying populations. Where official conduct targets a pro se litigant's status as a basis for denial of accommodations, imposition of heightened procedural burdens, or punitive escalation, the UNCAT Article 1 discriminatory purpose element is engaged even where no domestic hate crime statute covers the class. The non-equivalence gap must be documented.

The intersectionality principle: A disabled, indigent, pro se litigant of color targeted by official abuse may be targeted for any or all of these characteristics simultaneously. UNCAT Article 1 has no single-class requirement. Each discriminatory purpose is independently sufficient. Domestic law's enumerated-class limitations produce a non-equivalence gap for every class combination that the domestic statutes do not cover. The equivalence assessment must identify all applicable discriminatory purposes under Article 1 and document each gap between what Article 1 covers and what domestic law covers.

A. The Five-Level Gravity Scale (IAJ Disability Harmony Framework)

The IAJ's Disability Harmony thesis, drawing on Special Rapporteur on Torture Juan Méndez's 2013 report (A/HRC/22/53), CRPD Committee General Comments 1 (2014) and 6 (2018), and CAT Committee General Comment No. 2 (2008), strongly supports the argument that disability discrimination

can reach the level of cruel, inhuman or degrading treatment and that CIDT and torture are positions on a single continuum rather than categorically separate violations:[24]

Level	Characterization	Proof Architecture
Level 1	Statutory violation (ADA Title II; Rehabilitation Act)	Element-by-element statutory; no severity threshold required
Level 2	Constitutional violation (Fourteenth Amendment; Farmer deliberate indifference)	Actual knowledge + disregard; no CIDT severity required
Level 3	Pattern-or-practice systemic discrimination (34 U.S.C. § 12601)	Institutional intent from pattern; statistical evidence
Level 4	CIDT threshold (UNCAT Art. 16; Four-tier gradient Tier III–IV)	Four-element CIDT proof: severity, state actor authority, official context, disproportionate imposition. NOT the tort framework of duty/breach/damages.
Level 5	Torture threshold (UNCAT Art. 1; jus cogens prohibition)	All five Art. 1 elements; purpose element explicit; Move 5 jus cogens closes architecture gaps

B. Discriminatory Purpose and the Cleburne Standard

UNCAT Article 1 treats discriminatory purpose as one enumerated torture purpose: suffering inflicted 'for any reason based on discrimination of any kind.'[25] The IAJ Disability Harmony thesis argues that the *Cleburne* irrational prejudice standard (*City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985)[26] may be relevant by analogy to proof of discriminatory purpose or hostile willfulness in certain § 242 fact patterns, making § 242 the more legally available prosecutorial pathway for many judicial disability discrimination facts. By contrast, § 249 requires willful bodily injury or the use of fire, firearm, dangerous weapon, or explosive — elements typically absent from judicial accommodation denial. The analogy to Cleburne should be used cautiously and should not be presented as collapsing equal-protection doctrine automatically into criminal proof of every § 242 element.

Legal Theory	Key Element	How Disability Animus Evidence Relates
UNCAT Art. 1 discriminatory purpose	Suffering inflicted for reason based on disability discrimination	Explicit animus statements + pre/post-disability outcome reversal = discriminatory purpose evidence
18 U.S.C. § 242 willfulness (primary)	Awareness of right + hostile disregard of it	Knowing the accommodation obligation exists + hostility toward its exercise + continuation after notice = willfulness. Primary vehicle for judicial accommodation denial.

[25]UNCAT art. 1 (defining torture to include suffering inflicted 'for any reason based on discrimination of any kind').

[26]City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 448–50 (1985).

Legal Theory	Key Element	How Disability Animus Evidence Relates
18 U.S.C. § 249(a)(2) (secondary)	Bodily injury 'because of' actual or perceived disability	Secondary theory where bodily injury elements independently satisfied; note the weapon/injury element limitation for judicial accommodation contexts
42 U.S.C. § 1985(3) civil conspiracy	Class-based invidiously discriminatory animus	Coordinated filings with identical disability-attacking arguments = agreement + discriminatory purpose; civil analogue only. Available in 3d Circuit (Lake v. Arnold); rejected in 6th Circuit (Post v. Trinity Health). In circuits rejecting the theory, the same evidence of animus still supports § 242 willfulness and UNCAT Art. 1 discriminatory purpose.
Farmer deliberate indifference	Actual knowledge of serious risk + disregard	Animus-motivated disregard of documented medical evidence = deliberate indifference with discriminatory overtone

Critical caveat: relevance to multiple theories is not the same as automatic proof of every element of every theory. Each still requires distinct element-by-element analysis.

C. The § 1985(3) Circuit Split and the Prosecutorial Duty Principle

The § 1985(3) Circuit Split — Full Analysis and the Prosecutorial Duty Principle

The circuit split, accurately stated: Whether disability qualifies as a protected class for § 1985(3) civil conspiracy purposes is currently unresolved across the federal circuits. The Third Circuit recognized mentally disabled persons as a § 1985(3) protected class, holding the statute's reach 'is not fixed at any given point in time.' *Lake v. Arnold*, 112 F.3d 682, 686–88 (3d Cir. 1997). The Second Circuit recognized disability as a protected class in *New York ex rel. Abrams v. 11 Cornwell Co.*, 695 F.2d 34, 42–43 (2d Cir. 1982), though that decision was vacated on other grounds at 718 F.2d 22 (2d Cir. 1983), limiting its precedential weight. The Sixth Circuit has held disability is not a § 1985(3) protected class. *Post v. Trinity Health-Michigan*, 44 F.4th 572, 578 (6th Cir. 2022). The Seventh Circuit has reached similar conclusions. The theory is live in the 3d Circuit and cautiously available in the 2d; it will not be sustained in the 6th or 7th.

The correct hierarchy — § 1985(3) is a civil analogue, not the measure of the prosecution duty: Section 1985(3) should be treated as a jurisdiction-dependent civil theory, not as the floor of the prosecutor's obligation. Where the theory is recognized, it may provide additional animus and conspiracy framing for civil litigation. Where it is rejected or unsettled, that does not diminish the prosecutor's duty to investigate credible official abuse, preserve evidence, protect complainants, and pursue criminal enforcement under §§ 241–242, obstruction statutes, retaliation statutes, and other applicable law. A circuit split on a civil conspiracy theory is not a safe harbor from criminal investigation obligations. The core criminal vehicles — 18 U.S.C. §§ 241 and 242 — carry no circuit split on disability. They apply nationally.

What the circuit split does not affect: (1) 18 U.S.C. § 242 — criminal in every circuit; (2) 18 U.S.C. § 241 — criminal conspiracy against federal rights in every circuit; (3) 42 U.S.C. § 1985(2) — conspiracy to obstruct justice in federal court, no class-based animus required; (4) UNCAT Article 12 — investigation obligation triggered by reasonable grounds, not by the resolution of civil doctrine; (5) CAT General Comment No. 2 — State officials who fail to investigate documented abuse may bear responsibility as complicit or acquiescent, on Plane A, independent of domestic civil litigation doctrine.

The animus evidence survives the circuit split: Even in a circuit that rejects § 1985(3) disability protection, coordinated identical disability-attacking filings, explicit animus statements, and knowing

disregard of unrebutted medical evidence remain probative of discriminatory purpose under § 242's willfulness element and UNCAT Article 1's discriminatory purpose element. The civil theory's unavailability does not eliminate the evidence or reduce the duty to investigate and act.

European comparative context (not direct domestic authority): Peer legal systems including the UK's Criminal Justice Act 2003 s.146, the ECHR's compound Article 3+14 violation doctrine, and OSCE/ODIHR's institutional disability hate crime documentation standards are not binding in U.S. courts but serve three legitimate prosecutorial functions: (1) demonstrating that institutional disability targeting is a recognized legal category in peer systems, making the theory non-radical; (2) providing analytical tools for discriminatory purpose arguments; and (3) confirming the implementation gap between what the U.S. has enacted and what comparable CAT State Parties have done.

C-IX. DAUBERT READINESS FOR UNCAT-ADJACENT EVIDENCE

Cases involving torture, CIDT, disability-mediated harm, or stress-linked medical deterioration often depend on expert evidence that must survive Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) scrutiny. Build Daubert readiness from the beginning:

Daubert Factor	Key Question	Evidence Types Affected	Preparation Steps
Testability	Can the mechanism be tested or falsified?	Medical causation chains; stress-triggered relapse mechanisms; biomarker trends	Identify clinical markers (CD4/CD8 counts, IgG levels, MRI findings), peer-reviewed mechanisms (The Multiple Sclerosis Stress Equation), falsifiable causal propositions
Peer review / publication	Has the method been professionally examined?	Istanbul Protocol methodology; neurology / immunology literature; psychology assessment tools: PCL-5, PHQ-9, CAPS-5 (DSM-5/ICD-11 validated instruments)	Cite published support; explain where method is generally accepted; distinguish standard method from case-specific application
Known / potential error rate	Can the method's limits be described honestly?	Probabilistic causation; retrospective reconstruction; pattern evidence	Be candid about uncertainty; separate direct measurement from inference; identify confounders
General acceptance	Is the approach accepted in the relevant professional community?	Standard clinical testing; mainstream diagnostic methods; IP documentation protocols	Show the method is recognized; explain any novel application as supplementary, not primary

Daubert Caution: IAJ-Specific Constructs vs. Istanbul Protocol-Grounded Methodology

IAJ-specific analytical frameworks, terminology, and doctrine risk exclusion under Daubert where not grounded in externally published and peer-reviewed standards. All expert reports must clearly distinguish:

Category (a): Facts established by generally accepted clinical methodology. Survives Daubert standing alone.

Category (b): IAJ analytical conclusions based on Category (a) facts (including the Six-Move Framework analysis, the 'process as instrument' characterization, and threshold CIDT/torture analysis). These are internal analytic tools designed to discipline prosecutorial and investigative reasoning. They are not independent legal tests binding on courts and must be explicitly grounded in Istanbul Protocol standards and presented, where used, as applications of recognized methodology rather than standalone novel frameworks.

Category (c): Legal conclusions drawn from both. Category (c) belongs in legal briefing, not expert testimony.

C-X. FULL SELECTED AUTHORITIES

UNCAT, Treaty Bodies, and International Instruments

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 2, 4, 7, 10, 12, 13, 15, 16, opened for signature Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 — core treaty obligations.
- Committee Against Torture, Concluding Observations on the Third to Fifth Periodic Reports of the United States of America, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014) — documents implementation gaps; criticizes limited prosecution of perpetrators.
- Committee Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, ¶18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) — addresses obligations applicable to all branches of government, including the judiciary; State officials who fail to investigate torture by others may bear responsibility as complicit or acquiescent.
- Committee Against Torture, General Comment No. 3: Implementation of Article 14 by States Parties, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012) — failure to investigate as structural impediment to redress; combatting impunity as part of non-repetition obligations.
- Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. Rep. 422 (July 20) [Belgium v. Senegal] — torture prohibition is jus cogens; erga omnes obligations; aut dedere aut judicare confirmed as treaty obligation.
- Vienna Convention on the Law of Treaties arts. 53, 64, opened for signature May 23, 1969, 1155 U.N.T.S. 331 — supervening peremptory norms; cited as customary international law (U.S. is not a party to the VCLT).
- Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur, ¶31–36, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (prepared by Juan E. Méndez) — disability discrimination can reach CIDT threshold; CIDT and torture are positions on a single continuum.

IAJ Primary Authority Documents

- Inst. for the Advancement of Justice & Human Rights, UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-202600505-001-PUB, May 2026) [hereinafter IAJ Jus Cogens Perspective] — primary authority for the Six-Move Framework, Two-Plane Framework, Jurisdictional Custody, and Nine-Dimension Analysis. [IAJ analytic synthesis — not controlling external authority]
- Inst. for the Advancement of Justice & Human Rights, Harmonizing the Architecture of Disability Rights (Disability Harmony, v3b, Mar. 2026) [hereinafter IAJ Disability Harmony] — primary authority for the Five-Level Gravity Scale, Cleburne-to-§ 242 mapping, and courts as disability-causing actors. [IAJ analytic synthesis]
- Inst. for the Advancement of Justice & Human Rights, Parent–Child Separation in the United States: A Unified Constitutional and Human-Rights Framework (PCS Framework, IAJ-STD-202600505-004-PUB, May 2026) [hereinafter IAJ PCS Framework] — Troxel II constitutional architecture integration. [IAJ analytic synthesis]
- Inst. for the Advancement of Justice & Human Rights, Psychological Investigation Standard (v1.5) — forensic disciplines for documenting severity, causation, consistency, and institutional non-equivalence. [IAJ operational standard]

Self-Execution and Treaty Domestic Effect

- Medellín v. Texas, 552 U.S. 491 (2008) — non-self-executing treaties do not automatically create judicially enforceable domestic rules; foundational Plane B constraint.
- Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804) — limited interpretive aid where domestic text is genuinely susceptible to more than one permissible reading.

SCOTUS Threshold / Deliberate Indifference Line

- Rochin v. California, 342 U.S. 165 (1952) — Shocks-the-conscience test under the Fourteenth Amendment; the guide draws analogy to Article 16 CIDT severity; not a formal treaty-law threshold ruling.
- County of Sacramento v. Lewis, 523 U.S. 833 (1998) — deliberateness gradient; time-to-deliberate test.
- Farmer v. Brennan, 511 U.S. 825 (1994) — deliberate indifference = actual knowledge of serious risk + disregard.
- Estelle v. Gamble, 429 U.S. 97 (1976) — deliberate interference with medical treatment = CIDT-equivalent constitutional violation.
- Hope v. Pelzer, 536 U.S. 730 (2002) — continuation after actual notice; novel facts + general principles = fair warning.
- Hudson v. McMillian, 503 U.S. 1 (1992) — purpose inferred from absence of legitimate alternative.
- Whitley v. Albers, 475 U.S. 312 (1986) — five-factor wantonness analysis.
- Chavez v. Martinez, 538 U.S. 760 (2003), Kennedy concurrence — unconstitutional purpose from absence of plausible legitimate alternative.
- Brown v. Plata, 563 U.S. 493 (2011) — systemic unconstitutional prison conditions warranting structural remedy; the guide draws analogy to treaty-level CIDT in systemic institutional settings.
- Youngberg v. Romeo, 457 U.S. 307 (1982) — professional judgment standard in quasi-custodial settings.

Disability, Courts, and Internal Standard

- Tennessee v. Lane, 541 U.S. 509 (2004) — ADA Title II applies to court access; historical American pattern of judicial disability exclusion.
- United States v. Georgia, 546 U.S. 151 (2006) — ADA Title II abrogates immunity where conduct simultaneously violates the Fourteenth Amendment.
- City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) — irrational prejudice standard; may be relevant by analogy to discriminatory purpose or hostile willfulness in certain § 242 fact patterns.
- Trop v. Dulles, 356 U.S. 86 (1958) — evolving standards of decency are the American system's INTERNAL measure.
- United States v. Lanier, 520 U.S. 259 (1997) — willfulness requires knowledge of unconstitutionality; fair warning from general principles.
- Tudor v. Whitehall, 132 F.4th 242 (2d Cir. 2025) — apparent ability to function under duress is not the same as genuine safe capacity to participate without accommodation; relevant to notice, rights awareness, and possible deliberate indifference.
- Tudor v. Whitehall Central School District, No. 23-665-cv, 132 F.4th 242 (2d Cir. Mar. 25, 2025) — ADA may require reasonable accommodation even where employee can perform essential

functions without it; apparent ability to function under duress is not equivalent to genuine safe capacity.

- A.J.T. v. Osseo Area Schools, Independent School District No. 279, No. 24-249 (S. Ct. June 12, 2025) (9-0), vacating 96 F.4th 1058 (8th Cir. 2024) — disability discrimination claims in educational settings use the same legal standard as other ADA and Rehabilitation Act claims; heightened 'bad faith or gross misjudgment' standard rejected.
- Pulliam v. Allen, 466 U.S. 522 (1984) — pre-1996 authority for injunctive and declaratory relief against judicial officers; 1996 Fed. Courts Improvement Act (Pub. L. 104-317) limits § 1983 injunctive relief against judicial officers to violations of declaratory decrees or where declaratory relief is unavailable.

ATS and International Torture/CIDT Threshold Cases

- Filartiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980) — torture as law-of-nations norm.
- Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) — definiteness requirement; torture prohibition is sufficiently definite.
- Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Ga. 2002) — recognizing cumulative harm and treating Istanbul Protocol-consistent evidence as relevant in torture/CIDT analysis.
- Doe v. Qi, 349 F. Supp. 2d 1258 (N.D. Cal. 2004) — systematic non-physical harm cognizable under the ATS/TVPA; not a domestic criminal precedent on prosecutorial duties.

Principal Domestic Criminal Vehicles and Immunity Cases

- 18 U.S.C. §§ 241, 242 — conspiracy against rights; deprivation of rights under color of law; primary enforcement vehicles.
- 18 U.S.C. § 249(a)(2) — disability hate crime; bodily injury because of disability; secondary theory. Note weapon/injury element limitation for judicial accommodation denial contexts.
- 42 U.S.C. § 1985(2) — conspiracy to obstruct justice in federal court.
- 42 U.S.C. § 1985(3); Griffin v. Breckenridge, 403 U.S. 88 (1971) — civil rights conspiracy requiring class-based invidiously discriminatory animus; civil analogue only. — Circuit split on disability as § 1985(3) protected class: Lake v. Arnold, 112 F.3d 682, 686–88 (3d Cir. 1997) [disability IS protected class; 3d Circuit authority]; New York ex rel. Abrams v. 11 Cornwell Co., 695 F.2d 34, 42–43 (2d Cir. 1982), vacated on other grounds, 718 F.2d 22 (2d Cir. 1983) [2d Circuit recognized disability, but vacated — use with care]; Post v. Trinity Health-Michigan, 44 F.4th 572, 578 (6th Cir. 2022) [disability IS NOT a § 1985(3) protected class in 6th Circuit]. The circuit split affects only this civil theory. It does not affect §§ 241–242, § 1985(2), or the UNCAT Article 12 investigation obligation.
- Int'l Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977) — pattern evidence admissible to establish discriminatory intent.
- CRPD Committee General Comment No. 1 (2014); General Comment No. 5 (2017) — denial of procedural accommodations violates CRPD Art. 12, 13, and 15 independently of merits.
- Imbler v. Pachtman, 424 U.S. 409 (1976) — civil prosecutorial immunity; advocacy function; does not bar criminal review or State-level Art. 12 relevance.
- Burns v. Reed, 500 U.S. 478 (1991); Buckley v. Fitzsimmons, 509 U.S. 259 (1993); Kalina v. Fletcher, 522 U.S. 118 (1997) — qualified immunity only for non-advocacy functions.
- Monell v. Dept. of Social Services, 436 U.S. 658 (1978) — municipal liability; no immunity for office policy producing constitutional violation.

- Linda R.S. v. Richard D., 410 U.S. 614 (1973); Wayte v. United States, 470 U.S. 598 (1985) — no private standing to compel prosecution; does not extinguish Art. 12 relevance.
- Ex parte Young, 209 U.S. 123 (1908) — prospective injunctive and declaratory relief against state officials.
- Ziglar v. Abbasi, 582 U.S. 120 (2017) — Bivens sharply limited.
- Press Release, U.S. Dep't of Justice, Former Charles County Circuit Court Judge Robert C. Nalley Pleads Guilty to Deprivation of Rights Under Color of Law (Feb. 1, 2016) (D. Md.); sentenced Mar. 31, 2016, one year's probation. Press Release, U.S. Dep't of Justice, Former Murray County Chief Magistrate Judge Bryant L. Cochran Found Guilty by Federal Jury (Dec. 11, 2014) (N.D. Ga., Judge Harold L. Murphy); convicted on six counts including conspiracy against rights and deprivation of rights under color of law; sentenced July 8, 2015, five years' imprisonment. Judicial prosecution precedents under §§ 241-242.

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