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

Integrated Version 1.1 (Three-Part Edition + Appendix) — June 2026

Document ID IAJ-GDE-20260608-001-PUB

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. Many of those failures are produced by structural choices embedded in statutes, doctrines, agency design, jurisdictional architecture, and reporting frameworks; others are implemented through 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.

The IAJ's Constitutional and Treaty Premise

The Institute for the Advancement of Justice & Human Rights holds, as its foundational legal premise, that the United States Constitution faithfully interpreted is consistent with and reinforces the Universal Declaration of Human Rights, the Convention Against Torture, the International Covenant on Civil and Political Rights, the Convention on the Rights of Persons with Disabilities, and the customary international law of the torture and CIDT prohibitions, including the jus cogens norm. The Constitution's text — the Eighth Amendment's prohibition on cruel and unusual punishment; the Fifth and Fourteenth Amendments' due-process guarantees and prohibition on conduct that shocks the conscience; the Supremacy Clause's recognition of treaties as the supreme law of the land; Article I's grant of authority to define and punish offenses against the law of nations; the First Amendment right to petition the government for redress of grievances and the constitutional tradition of access to courts; and the Ninth Amendment's preservation of rights not enumerated — does not contain any provision that permits what the human-rights treaties forbid. The First Amendment and access-to-courts tradition reinforce the same conclusion: judicial process may not be transformed from a forum for rights into an instrument of retaliatory degradation, disability-based exclusion, or severe suffering imposed because a person seeks protection from the State. Where domestic doctrines of non-self-execution, judicial immunity, prosecutorial immunity, qualified immunity, abstention, finality, procedural default, Rooker-Feldman, sovereign immunity, or congressional silence appear to bar prevention, investigation, exclusion, redress, or accountability for documented official torture or CIDT, the IAJ's legal position is that the conflict is evidence of doctrinal error or implementation failure — not evidence that the Constitution permits the conduct or condones the gap.

The premise has a direct operational consequence. This guide is to be read in two modes simultaneously. In Mode 1, the guide is assistive: it gives prosecutors, investigators, attorneys, complainants, and oversight officials operational tools for using existing US domestic mechanisms — statutes, rules, doctrines, and

institutional processes as currently constituted — to the maximum lawful extent. In Mode 2, the guide is authoritative: it states how those mechanisms should work, and how US law should be interpreted, applied, and reformed to bring the United States into full compliance with the human-rights obligations it has undertaken and with the Constitution faithfully read. Both modes inform the guide as a whole. Mode 2 is not aspirational; it is the IAJ's institutional holding on what U.S. law correctly requires when the Constitution is interpreted in harmony with the United States' human-rights obligations. The operational rules in Mode 1 are the guide's implementation architecture for carrying those binding constitutional and treaty obligations as far as present domestic mechanisms lawfully permit, while documenting every point at which those mechanisms fall short.

From this premise five operational propositions follow, each of which the IAJ holds to be the correct legal position regardless of whether current US doctrine has yet adopted it. First, courts are not exempt from UNCAT; judicial actors are public officials whose conduct in official capacity is fully within the Convention's reach, and the Constitution does not authorize judicial process to be deployed as an instrument of severe suffering. Second, Article 16 CIDT is not a consolation category; it is an absolute, non-derogable human-rights violation that requires prevention, investigation, complainant protection, and reform on equal terms as to seriousness and non-derogability with Article 1 torture. Article 16(1) on its face expressly imports Articles 10, 11, 12, and 13 — training, custodial review, investigation, and complaint procedures — and does not expressly import Articles 4 and 7 in the same direct manner. The CAT Committee in General Comments No. 2 and No. 3, the Human Rights Committee in General Comment No. 20 on ICCPR Article 7, the European Court of Human Rights under Article 3 ECHR (see, e.g., *Nasr and Ghali v. Italy*, App. No. 44883/09, ECtHR (Fourth Section), 23 February 2016; *Cestaro v. Italy*, App. No. 6884/11, ECtHR (Fourth Section), 7 April 2015; *Bouyid v. Belgium*, App. No. 23380/09, ECtHR (Grand Chamber), 28 September 2015; Abdülsamet *Yaman v. Turkey*, App. No. 32446/96 (Eur. Ct. H.R., Second Section, Nov. 2, 2004), ¶ 55; *Okkali v. Turkey*, App. No. 52067/99, ECtHR, 17 October 2006; Marguš v. Croatia, App. No. 4455/10, ECtHR (Grand Chamber), 27 May 2014), and the Inter-American Court (see, e.g., *Bueno-Alves v. Argentina*, Merits, Reparations and Costs, Judgment of 11 May 2007, Series C No. 164) have nonetheless converged on the position that the State Party's procedural obligation to investigate and to ensure criminal punishment commensurate with the gravity of the conduct applies equally to torture and to CIDT, and that statutes of limitations and amnesties for state-agent ill-treatment are incompatible with that obligation. The Istanbul Protocol, paragraph 256, applies the same prosecutorial duty to bring appropriate charges and recommend punishment commensurate with gravity to allegations of torture or ill-treatment. The residual textualist gap between Article 16's express importation of Articles 10-13 and its non-importation of Articles 4 and 7 is therefore itself a feature of the implementation challenge this Guide documents, not a license for the State Party to treat CIDT as a lesser category of violation for enforcement purposes. Third, judicial, prosecutorial, and sovereign immunity doctrines describe limits on civil damages remedies; they do not erase the underlying violation, the State Party's treaty responsibility, the duty (where the facts and governing authority support such measures) to discipline, recuse, reassign, refer for criminal review, reform institutional practice, or report to international mechanisms. Fourth, non-self-execution describes a procedural rule about direct judicial enforceability; it does not narrow the substantive obligation, and the absence of an enacted implementing vehicle is itself the implementation failure the CAT Committee identified in 2014. Fifth, domestic remedial failure is not a defense; it is evidence of the equivalence failure the IAJ exists to document, and the IAJ's reform thesis is that doctrines producing that failure must be corrected to bring US institutional practice into conformity with the Constitution and treaties to which both branches of government have committed the country.

Where this Guide states "the IAJ holds" or "the IAJ position," it states the Institute's authoritative interpretation of what binding constitutional law and binding treaty obligations correctly require of the United States. The Institute issues these interpretations in its capacity as a civil-society actor performing functions of the type recognized in Chapter III, paragraph 263 of the 2022 Istanbul Protocol — including documenting torture or ill-treatment, representing victims, prompting investigations or other inquiries or legal proceedings resulting in investigations, providing evidence and/or expertise to investigative bodies, scrutinizing proceedings, and providing legal analysis of the adequacy of investigations. Within the United States legal framework, the function of "representing victims" described in paragraph 263 is performed by the Institute as human-rights advocacy and reporting on behalf of victims — including submission of victim experiences to treaty bodies and oversight mechanisms, public advocacy, and accompaniment — and does not include legal

representation as counsel; victims who require legal counsel are referred to licensed attorneys, and nothing in this Guide should be read as authorizing the Institute or any non-attorney to engage in the unauthorized practice of law. The Istanbul Protocol recognizes the independent and complementary role of civil-society actors generally; it does not name the IAJ specifically and does not accredit the IAJ as a National Human Rights Institution or State-designated body. The 2022 Istanbul Protocol expressly provides that "States are required to respect the role played by such actors and provide effective protection against any threats, harassment or other unwarranted interference." Consistent with the independence principle that runs through the Istanbul Protocol's methodology, the Institute conducts its documentation, psychological evaluations (performed in accordance with Chapter V of the Istanbul Protocol by psychologists engaged as IAJ advisors and investigators), and legal analyses with methodological independence from law enforcement and prosecutorial authorities; any finalized findings or analyses subsequently transmitted to competent domestic or international authorities are transmitted to assist the State Party in fulfilling its obligations under UNCAT (including Articles 12, 13, 14, and 16) and not as an extension of, or under the direction of, law enforcement or prosecutorial offices. The IAJ's interpretations are framed as what the law correctly requires, not as a report of what every U.S. court has yet decided; that distinction reflects the standard relationship between a treaty-monitoring civil-society institution and the domestic doctrinal record on which it reports.

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.

TABLE OF CONTENTS

PROSECUTOR QUICK-START — READ THIS FIRST ... 9
PROSECUTOR DESK REFERENCE ... 12
A-I. Executive Conclusion ... 13
A-II. Domestic Charging Vehicles and Charging Matrix ... 14
A-II-B. The § 2340A Parity Principle and the Proper Equivalence Test ... 17
A. What § 2340A Establishes When Applied Extraterritorially ... 17
B. The Parity Argument: Minimum Domestic Floor ... 19
C. The Proper Equivalence Test: UNCAT as the Treaty-Compliance Baseline ... 21
D. How Prosecutors Should Use the Parity Principle Operationally ... 24
A-III. Investigation, Protection, and Prevention Duties ... 25
Residual Mapping Duty: Making the Shortfall Visible ... 27
A-IV. Practical Prosecutorial Rules ... 30
A-V. Non-Equivalence Checklist and Gap-Triggered Prosecutorial Duties ... 31
A. Non-Equivalence Checklist (16 Questions Across 5 Dimensions) ... 31
Dimension 1: Threshold CAT Characterization ... 31
Dimension 2: Investigation Equivalence ... 31
Dimension 3: Punishment Equivalence ... 32
Dimension 4: Remedy Equivalence ... 32
Dimension 5: Prevention Equivalence ... 32
B. When Non-Equivalence Is Confirmed ... 32
C. Seven Gap-Triggered Prosecutorial Duties ... 32
D. The Mandatory Gap-Documentation Memorandum ... 33
E. Residual Duty After Declination or Partial Declination ... 35
A-V-B. The Reporting Duty: Documentation Is Not Enough ... 36
A. Reporting Within the State: The Institutional Chain ... 37
B. Reporting to International Mechanisms: The UNCAT Architecture ... 37
C. Protocol-Consistent Collaboration: How Prosecutors Should Use Independent Civil-Society and Expert Documentation ... 39
D. The Reporting Duty Summary: What 'Reporting' Requires ... 41
E. Reporting, Sovereign Immunity, and Professional Responsibility ... 41
A-V-C. The Istanbul Protocol Investigation Duty: Independence from Domestic Influence ... 42
A. The Istanbul Protocol Standard: What an Adequate Investigation Requires ... 42
B. Working with Independent Monitoring or Expert Bodies Where They Exist — and Preserving Independence Where They Do Not ... 44
C. When to Request NHRI Investigation vs. Conduct In-House: The Decision Rule ... 45
D. How the Prosecutor Must Discharge the Investigation Duty in the Absence of a U.S. NHRI ... 47

E. The Independence Requirement and Its Limits 48
F. State Prosecutors and UNCAT: The RUD Understanding 49
A-VI. Prosecutorial Immunity and the UNCAT Accountability Problem 49
Part 1: Direct Prosecutorial Conduct as a Possible Article 1 or Article 16 Violation 50
Part 2: State Party Treaty Noncompliance Through Prosecutorial Non-Enforcement 51
Part 3: Domestic Barriers to Compelling Prosecution 51
Part 4: Surviving Exposures — What Prosecutorial Immunity Does Not Reach 51
Channel A: Non-Advocacy Domestic Exposure (Qualified Immunity, Not Absolute) 51
Channel B: Professional Discipline 52
Channel C: International Scrutiny — State Attribution, Not Personal Punishment 52
Part 5: Leveraging All Remaining Lawful Process — Maximum Anti-Impunity Practice 52
Part 6: Consequences for Failure to Preserve, Internally Escalate, or Lawfully Support External Reporting 53
A. Plane A Consequences: Acquiescence, Complicity, and State Attribution 53
B. Domestic Criminal Analysis: The Affirmative Concealment Theory 54
C. Professional Accountability: The Duty of Competence and Rule 8.4(d) 56
D. Institutional Accountability: The *Monell* Policy Theory 57
Part 7: Consequences for Failure of Diligence in Equivalence Assessment and Documentation 57
A. Immunity Analysis: The Documentation Duty Is Not Advocacy 58
B. The Acquiescence Consequence: GC No. 2 ¶18 Applied to Documentation Failure 58
C. The False Representation Consequence: Article 19 Integrity 58
D. Professional Consequences: The Competence and Candor Analysis 59
E. What Consequences Actually Flow and When 59
A-VII. The Prosecutor's Objections: Complete Adversarial Analysis 61
A. Objections Available to Both State and Federal Prosecutors 62
Objection 1: This guide is not law. It creates no enforceable duty. 62
Objection 2: UNCAT is not self-executing after *Medellín*. It creates no domestic obligation I can be held to 62
Objection 3: Absolute immunity protects my charging decision. The guide cannot reach it. 63
Objection 4: Judicial-setting conduct is not torture. This is litigation, not the Convention's domain. 63
Objection 5: The five sources supporting a documentation duty are not law. I have read each one. . 63
B. Objections Specific to State Prosecutors 64
Objection 6: No treaty obligation runs directly to me. UNCAT is a federal-government obligation. 64
Objection 7: My state has no implementing statute for this conduct. I have nothing to charge. 64
Objection 8: Resources and priorities. I cannot redirect my office to a framework Congress has not endorsed. 65
C. Objections Specific to Federal Prosecutors 65

Objection 9: DOJ institutional hierarchy controls my decisions. My supervisor reviewed this and declined. 65
Objection 10: Congress deliberately did not enact a domestic torture statute. I should follow that choice. 65
Objection 11: The federal system already has mechanisms for this conduct. Those mechanisms have spoken. 66
Objection 12: Reasonable grounds have not been established. The guide cannot establish them. 66
Objection 13: The parity argument is an inference, not a legal rule. I am not required to follow inferences. 67
D. Objections Specific to FBI / DOJ Intake and Civil-Rights Criminal Review 67
E. Intake Avoidance: When a Complaint Is Defeated Before Review 72
F. What the Objections, Taken Together, Establish 74
A-VIII. Selected Authorities — Operational Reference 74
A-IX. Mandatory Jus Cogens Interpretation: The IAJ Perspective 77
A. The Operational Directive 77
B. The Hierarchy Argument 77
C. The Minimum-Content Derivation 77
D. The Dignity Foundation 78
E. The Breadth Argument and the Absurd-Result Canon 78
F. Operational Obligations for the Prosecutor 78
G. Source-Status Marker 78
B-I. Prevention as the Foundational Obligation 80
B-II. The Obligation That Cannot Be Delegated Away 80
C-0. The U.S. Periodic Reporting Record and the Equivalence Failure 83
A. What the United States Promised: The Equivalence Assurance 83
B. What the CAT Committee Found: CAT/C/USA/CO/3-5 (December 2014) 83
C. The Equivalence Failure in Practice 86
D. What This Means for Prosecutors 87
C-0A. No Setting Qualifier: UNCAT Applies to All Official Conduct 88
A. The Text Contains No Setting Qualifier 88
B. The CAT Committee’s Authoritative Position: All Branches, All Settings 88
C. The VCLT Article 31 Consequence Argument 90
D. The Jus Cogens Argument: Independent of and Above the Treaty Architecture 90
E. Operational Summary for Prosecutors 91
C-I. Introduction: Two Errors to Avoid and the Two-Plane Framework 92
C-II. Source Hierarchy and Tiering Convention 92
C-III. The Convention Against Torture: What It Requires 93
C-IV. Six Dimensions of Domestic Shortfall: Why UNCAT Remains Necessary 94

C-V. Self-Execution, *Medellín*, Jus Cogens, and the Two-Plane Framework ... 96
A. Domestic Plane — The Non-Self-Execution Constraint ... 96
B. International Plane — Jus Cogens and the Limit of Domestic Immunity ... 97
C. The U.S. RUDs and the Equivalence Problem ... 97
D. The *Medellín* Paradox and the Judicial Backstop ... 98
E. Equity-Inflected Prosecutorial Practice Without Chancery Overreach ... 99
F. What *Medellín* Does Not Permit the Prosecutor to Ignore ... 99
C-VI. Judges, Courts as Institutional Actors, and the Three-Category Judicial Taxonomy ... 99
C-VII. Severity Threshold: Six-Move Framework, Four-Tier Gradient, and the Limiting Principle ... 101
A. The IAJ Six-Move Framework: An Internal Analytic Architecture ... 101
B. The Four-Stage Severity Framework ... 102
C. The Four-Tier Domestic Threshold Gradient ... 103
D. The Tri-Partite Limiting Principle (Answering the Africa Slippery-Slope Objection) ... 103
C-VIII. Harmonization: Discriminatory Animus, All Classes, Gravity Scale, and the § 1985(3) Analysis ... 104
A. The Five-Level Gravity Scale (IAJ Disability Harmony Framework) ... 104
B. Discriminatory Purpose and the *Cleburne* Standard ... 105
C. The § 1985(3) Circuit Split and the Prosecutorial Duty Principle ... 106
C-IX. Daubert Readiness for UNCAT-Adjacent Evidence ... 107
C-X. Full Selected Authorities ... 109
Appendix I — A Substantive-Justice Architecture for Domestic UNCAT Enforcement: What the Department of Justice Was Named to Do ... 115
Part I — The Architecture and Its Constitutional and Comparative Lineage ... 115
Part II — The Prosecutor as Corrective Constitutional Officer ... 117
Part III — The Architecture in Operation: A Composite Walkthrough ... 118
III.A. The Violation and Its Institutional Setup ... 119
III.B. The Prosecutor Receives the Documentation ... 119
III.C. The Escalation ... 120
III.D. The Judicial Corrective Function ... 121
Part IV — What This Would Mean for the Department ... 122
Part V — The Gap Between Architecture and Current Practice ... 123
Part VI — The Architecture Across the Gravity Scale: Other Cases the Current Architecture Cannot Reach ... 125
VI.A. Extraterritorial Custodial Torture ... 125
VI.B. Domestic Custodial CIDT: Solitary Confinement, Denial of Medical Care, Retaliation ... 125
VI.C. Parent-Child Separation as Torture or CIDT ... 126
VI.D. The Common Structural Lesson ... 127

PROSECUTOR QUICK-START — READ THIS FIRST

How to read this guide. This guide is written to be read in two modes simultaneously. Mode 1 is assistive: it gives a victim, complainant, attorney, prosecutor, investigator, or oversight official the operational tools to use existing US domestic mechanisms to the maximum lawful extent. Mode 2 is authoritative: it states how those mechanisms should work to bring the United States into compliance with the human-rights treaties it has ratified and with the United States Constitution faithfully interpreted. The IAJ holds that the Constitution, correctly interpreted, is consistent with and reinforces UNCAT, the Universal Declaration of Human Rights, and the customary international law of the torture prohibition. Where current US doctrine — non-self-execution, judicial immunity, prosecutorial immunity, abstention, finality, procedural default, sovereign immunity — appears to block enforcement of the prohibition, the IAJ's position is that the conflict is evidence of doctrinal error or implementation failure, not evidence that the Constitution permits what the treaties forbid. On the human-rights plane, the doctrines that appear to bar enforcement are subordinate to the absolute prohibition they cannot lawfully circumscribe. The operational rules that follow are the guide's implementation architecture for carrying the United States' binding constitutional and treaty obligations as far as present domestic mechanisms lawfully permit, not a discretionary best-practices framework. A prosecutor who declines a case for legitimate Plane B reasons has not thereby discharged the State Party's Plane A obligation; an undocumented declination converts a documented implementation failure into invisible non-compliance; and silent acquiescence in the gap between what US law currently delivers and what UNCAT and the Constitution require is itself a feature of the violation the guide exists to address.

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-20260505-001-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 where bodily-injury or weapon elements are met; § 1985(3) as civil analogue only]
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.

If the FBI, DOJ, or another investigative or prosecutorial authority declines a torture or CIDT referral: Require a statute-and-elements explanation. A declination that says only "no federal predicate," "judicial matter," "immunity," "non-self-executing treaty," or "resource limits" is incomplete unless it identifies the domestic statutes considered, the elements found missing, the evidence reviewed, and which of the five treaty outcomes — protection, prevention, relief, remedy, and punishment — remain undelivered. See Part A-VII, Subsection D, and Element 12 of the Mandatory Gap-Documentation Memorandum.

If a credible torture or CIDT complaint is refused, mis-routed, orally dismissed, or screened out before reaching a competent authority: Do not treat that event as a merits decision. Identify whether the complaint was received, logged, preserved, routed, and reviewed by an authority capable of statutory analysis. If it was not, document the event as an Article 12 / Article 13 intake-avoidance gap and identify which of the five treaty outcomes — protection, prevention, relief, remedy, and punishment — remain undelivered. See Part A-VII, Subsection E, and Element 13 of the Mandatory Gap-Documentation Memorandum.

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 does not discharge the State's Plane A obligation: every undelivered treaty outcome is an implementation shortfall, and the IAJ holds that a Plane B-justified declination necessarily creates a Plane A shortfall whenever any of the five required outcomes — protection, prevention, relief, remedy, punishment — remains undelivered. The two planes do not collapse into each other and Plane B compliance does not substitute for Plane A compliance. 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

State Party obligation and five outcomes. The United States is a State Party to the Convention Against Torture and is bound, as a matter of international obligation, to deliver five outcomes for every person within its jurisdiction subjected to torture or cruel, inhuman, or degrading treatment by or with the consent or acquiescence of public officials: protection, prevention, relief, remedy, and punishment.

Equivalence representation and CAT findings. The Senate gave advice and consent to ratification on the express premise that existing domestic law already supplies that equivalence; the executive transmitted that representation in every periodic report; the CAT Committee found in 2014 (CAT/C/USA/CO/3-5) that the representation was not borne out in practice.

Prosecutor's role and practical conclusion. The prosecutor reading this section is the State Party's official on the ground. Every charging, declining, referral, documentation, or preservation decision the prosecutor makes either advances the State's performance of that binding obligation, preserves the record of the shortfall for later supervisory, legislative, or international review, or contributes to the structural failure the Committee identified by letting the gap remain invisible. The IAJ holds that the Constitution faithfully interpreted requires the prosecutor to exercise prosecutorial discretion in conformity with this obligation; the doctrines of non-self-execution, immunity, abstention, and finality may describe domestic procedural limits, but they do not narrow the substantive obligation and they do not authorize silent acquiescence in its non-fulfillment. U.S. prosecutors therefore 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's substantive prohibitions. The Convention 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.

What prosecutors must do under current law. At the same time, the operational rules must remain disciplined. The IAJ does not assert that CAT supplies a freestanding domestic criminal cause of action in disregard of self-execution doctrine; the IAJ asserts something firmer. The substantive obligation is binding on the United States and the prosecutor is one of the officials through whom it is performed. The sound prosecutorial position is therefore: charge through existing domestic statutes wherever available; treat CAT not as merely interpretive but as the controlling statement of what the United States is bound to deliver; do not treat judicial office or other public office as an immunity shield, because immunity doctrines are civil and do not erase the criminal review obligation or the State's treaty responsibility; and where domestic law is incomplete, document and report the implementation gap rather than silently convert that

gap into non-enforcement. The IAJ's position is that the absence of an enacted implementing vehicle aligned with Article 1 — the gap the Committee identified in 2014 and called on Congress to close through the Law Enforcement Torture Prevention Act (most recently introduced as H.R. 3332, 114th Cong., 2015; not enacted) — is the implementation failure, not a discretionary feature of US compliance.

Mode 2 corollary — what U.S. law should look like. 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 the State Party's binding obligation is performed to the maximum extent the domestic structure currently permits, and 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. Mode 2 corollary: in a system in full compliance with the Constitution and the treaties to which the United States is bound, the gap-documentation duty would not exist as a workaround because Congress would have enacted an implementing vehicle aligned with Article 1, the Article 16 reservation would have been withdrawn, judicial and prosecutorial immunity doctrines would not function as accountability shields for official torture or CIDT, and an independent National Human Rights Institution would discharge the Article 12 investigation function the individual prosecutor is presently asked to approximate without statutory or institutional support. The IAJ's reform thesis is that those structural conditions describe what US law correctly requires; the operational rules in this Part are the implementation of that requirement within the system as it currently exists.

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:

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

[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).

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 two charging-matrix tables below map available domestic vehicles honestly: Table A lists criminal charging vehicles, and Table B lists civil and remedial analogues that inform the analysis but are not themselves DOJ criminal counts. 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.

Table A — Criminal Charging Vehicles

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. § 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.
CIDT requiring criminal accountability	Primary vehicles: §§ 241, 242, 1512,	Tier 2/3 by domestic elements	CIDT is not non-criminal by default. Where official CIDT is knowing, willful, retaliatory, discriminatory, coercive, punitive, deliberately indifferent, or otherwise culpable, prosecutors

Theory	Primary Statute	Tier	Key Notes
	1513, 1519, § 249 where elements are met, state criminal law, and applicable obstruction, retaliation, coercion, abuse-of-office, disability-rights, or civil-rights predicates		must identify every available domestic criminal vehicle. Where no vehicle fully fits, the absence of punishment is an Article 16 implementation gap, not a basis for silent closure; document the gap on both planes, preserve the record, and escalate.

Table B — Civil / Remedial Analogues and Evidentiary Pathways

Theory	Primary Statute	Tier	Key Notes
Conspiracy affecting federal-court participation — civil analogue	42 U.S.C. § 1985(2)	Tier 2 civil / analogical	Civil remedy and analogical structure only; not a DOJ criminal count. Where conduct deters parties, witnesses, experts, or complainants from federal-court participation, prosecutors should analyze criminal vehicles separately, including §§ 241, 242, 1512, 1513, 1519, or other applicable statutes.
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.

The statutes in Table B are civil analogues and evidentiary or analytical structures. They are not DOJ criminal charging counts. They appear here because they inform the analysis of agreement, animus, and federal-court interference; the criminal charge, where one lies, must be brought under a Table A vehicle.

[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 the Plane A treaty-compliance baseline (the UNCAT counterfactual baseline defined in Section A-II-B.C below — UNCAT treated as self-executing for comparison purposes only, as the analytic comparator), 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, the CAT Committee's authoritative treaty-body interpretation is that amnesties and statutes of limitations for torture and ill-treatment are incompatible with the Convention (see GC No. 3 ¶¶

Element	What § 2340A Provides
	40-41, quoted verbatim below) — an authoritative treaty-body finding that applies to Article 16 CIDT equally, without any death-or-injury qualifier. *Belgium v. Senegal* (ICJ 2012) underscores the seriousness of the anti-impunity obligation under CAT. GC No. 3 ¶ 40 (CAT/C/GC/3, 13 Dec. 2012) additionally provides that, "on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them"; GC No. 3 ¶ 41 holds that amnesties for the crime of torture are incompatible with the obligations of States parties under the Convention, including under article 14. The same anti-impunity logic is codified in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (G.A. Res. 60/147, 16 Dec. 2005), Section IV (Statutes of limitations), paragraph 6 of which provides that "where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law." In the Inter-American system the same principle is stated with particular force: in *Barrios Altos v. Peru* (Merits, Judgment of 14 March 2001, Series C No. 75) ¶ 41 the Inter-American Court held that "all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law," and in ¶ 44 declared that, as a consequence of their manifest incompatibility with the American Convention on Human Rights, such amnesty laws "are devoid of legal effects" and cannot continue to obstruct investigation, identification, or punishment of those responsible. In *Almonacid Arellano v. Chile* (Preliminary Objections, Merits, Reparations and Costs, Judgment of 26 Sept. 2006, Series C No. 154) the Court extended this reasoning beyond self-amnesty laws and held that domestic courts must apply a "conventionality control" that disregards any domestic provision—including statutes of limitations, res judicata, prescription, or other procedural obstacles—to the extent it shields serious human rights violations from investigation and punishment. This guide does not claim that GC No. 2, GC No. 3, the Inter-American Court's jurisprudence, the 60/147 Basic Principles, or the jus cogens norm automatically nullifies every domestic limitations bar, amnesty, pardon, preclusion doctrine, or final judgment as a matter of current U.S. law. The operative rule is narrower: any domestic limitations bar, amnesty, pardon, immunity, preclusion doctrine, or finality rule that operates to prevent prosecution, investigation, or remedy for 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, the Article 13 complainant-protection obligation, the Article 14 redress obligation, or the documentation and reporting duties. On Plane A, the international consensus authorities cited above converge on a single proposition (this convergent proposition is the IAJ's synthesis of those authorities, not the language of any single one of them): where serious human rights violations including torture and CIDT are at issue, doctrines whose function is to terminate further inquiry—statutes of limitations, amnesties, pardons, res judicata, prescription, immunity short-circuits, and other finality rules—cannot lawfully discharge the State's Plane A obligation to investigate, prosecute, protect, remedy, and prevent. Two source-status clarifications. First, this is a Plane A (treaty-compliance) proposition; it describes what UNCAT and customary international law require of the State Party. It does not state that, on Plane B (current US domestic doctrinal law), every domestic limitations bar, immunity, pardon, preclusion doctrine, or final judgment is automatically displaced. Plane B questions about which of those domestic doctrines yield, and through which procedural vehicles, remain governed by US constitutional and statutory law and are addressed elsewhere in this Guide. Second, the Inter-American Court authorities cited above (*Barrios Altos*, *Almonacid Arellano*) and the conventionality-control doctrine are persuasive and comparative anti-impunity authority demonstrating how a regional human-rights court has resolved the same Plane A question. They are not US-binding domestic law and do not, of their own force, create domestic prosecutorial obligations.

Element	What § 2340A Provides
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.

What parity requires (IAJ position): The three subsections above use "suggests" because they describe how the parity inference should operationally inform prosecutorial practice within the present domestic adjudicative framework. The IAJ's normative position is stronger: consistency with UNCAT as the binding treaty obligation that § 2340A only partially implements, with the United States' own equivalence representation in every periodic report that domestic law already supplies UNCAT-equivalent protection, prevention, relief, remedy, and punishment, and with the legislative judgment reflected in § 2340A regarding the seriousness of torture and the level of enforcement Congress accepted for extraterritorial cases, requires domestic parity as a matter of correct treaty-compliance analysis and constitutional interpretation. The IAJ holds that a domestic complainant of official torture is entitled to outcomes at least as protective as § 2340A would deliver extraterritorially, and that any lesser domestic outcome is not a permissible discretionary choice but an implementation failure the State Party is bound to correct. The operational subheadings use the softer formulation to describe what an individual prosecutor working within the existing structure can do; the IAJ's reform thesis is that the structure itself must be brought into conformity with the parity Congress and the treaty already require. Source-status marker: this

is the IAJ's authoritative treaty-compliance position on what UNCAT, the United States' equivalence representation, and § 2340A together require — not a claim that § 2340A itself applies domestically. The statute's jurisdictional scope is extraterritorial; the parity requirement runs through UNCAT and the equivalence representation, with § 2340A serving as evidence of the outcomes Congress has already decided are appropriate for torture by U.S. nationals abroad.

C. The Proper Equivalence Test: UNCAT as the Treaty-Compliance Baseline

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.

DEFINITION — "Plane A treaty-compliance baseline." This comparison is an analytic device: by asking what UNCAT would require if it were directly enforceable in domestic court — that is, **UNCAT treated, solely as an analytic counterfactual for measurement, as if it were self-executing for comparison purposes only** — the guide measures the size of the Plane A implementation gap. Throughout this guide the labeled term "Plane A treaty-compliance baseline" (and the equivalent forms "UNCAT treaty-compliance baseline" and "what UNCAT requires on Plane A") denotes exactly and only this counterfactual analytic move.

What the labeled term is NOT. It is not an assertion that UNCAT is self-executing after *Medellín*; it is not a claim that UNCAT supplies a freestanding domestic criminal cause of action; it is not a claim that current U.S. courts would enforce UNCAT directly; and it is not an argument for any specific charging decision. It is the labeled audit comparator against which current domestic delivery is measured.

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 Requires on Plane A	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
Protection	Art. 2: immediate, effective, pre-harm protective measures	No protective mechanism in § 2340A. The statute is purely	No reliable CAT-equivalent mechanism compels pre-harm	Full gap: neither § 2340A nor domestic

Required Outcome	What UNCAT Requires on Plane A	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
	wherever risk is known and an official is responsible. Mandatory, not discretionary.	retrospective — prosecution after torture occurs. No pre-harm obligation.	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.	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 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.	Full gap: § 2340A parity is irrelevant. Art. 13 relief is the most structurally 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

Required Outcome	What UNCAT Requires on Plane A	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
				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 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,	No specific implementing statute for domestic CIDT below the Article 1 threshold. Criminal vehicles may include §§ 241, 242, 1512, 1513, 1519, § 249 where elements are met, and state criminal law; civil/remedial and rights-anchor pathways	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

Required Outcome	What UNCAT Requires on Plane A	What § 2340A (if domestic) Would Deliver	What Current Domestic Law Delivers	Equivalence Gap
	complainant-protection, and remedial logic in full. CIDT is equally serious as a treaty-compliance category and requires the same five-outcome architecture: protection, prevention, relief, remedy, and punishment. Article 16 expressly imports Articles 10–13, and the IAJ's position is that the Article 16 prevention and anti-impunity obligation cannot be satisfied if culpable official CIDT is left without criminal accountability. Current U.S. law lacks a dedicated CIDT offense and often forces prosecutors to rely on partial domestic analogues such as §§ 241, 242, 1512, 1513, 1519, § 249 where elements are met, state criminal law, obstruction, retaliation, abuse-of-office, disability-rights, or civil-rights predicates. Where those vehicles do not fully reach the conduct or do not permit punishment proportionate to the gravity of official CIDT, the result is a specific Article 16 non-equivalence gap that must be documented, reported, and corrected.	may include ADA Title II, the Rehabilitation Act, § 1983, and related disability-rights frameworks. No CIDT-specific investigation mechanism.		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 Plane A treaty-compliance baseline (per Section A-II-B.C — UNCAT treated as self-executing for comparison purposes only): 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; CIDT prevention expressly extended	Civil rights training requirements; § 1983 supervisory liability; agency policy reform as settlement term.	No federal statute mandates UNCAT-aligned training for judicial personnel. No standing mechanism for systemic 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, in the judicial-setting case set relied on by this guide, appears to be the most structurally complete recurring gap.
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.

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 purpose of documentation is not bureaucratic completeness. The purpose is to prevent a human-rights violation from being converted into administrative silence and to force the State Party to confront which of the five outcomes UNCAT requires — protection, prevention, relief, remedy, and punishment — remains undelivered, and why.

Stabilizing premise. The five sources listed below operate as overlapping supports for the guide's documentation-and-reporting architecture: the architecture is cumulative, not multiplicative. The sources do not create five concurrent and independent rules each producing identical domestic legal duties, identical immunity consequences, or automatic personal liability for every omission. The IAJ's position is that the five sources together describe a coherent institutional duty that the State Party is bound to discharge on Plane A; individual prosecutorial exposure on Plane B depends on the particular source invoked, the facts at issue, and the applicable domestic doctrine.

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. In many individual cases, the prosecutor is the State official closest to the facts relevant to Articles 12 and 13, and is also one of the officials whose preserved record may later supply factual material for the State's Article 19 periodic reporting process: the investigation (Art. 12) and the complaint record (Art. 13) frequently pass through the prosecutor's office, and the factual material from which any Article 19 periodic report must be compiled is drawn in part from records the prosecutor's office preserves. 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, nor that the prosecutor's proximity to Art. 19 is the same as the prosecutor's proximity to Arts. 12 and 13: Article 19 runs to the State Party as a periodic reporting obligation, and the prosecutor's role is to preserve the factual material the State will need to report accurately.

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 institutional act preventing a known implementation gap from disappearing into silence; its absence supplies powerful evidence in a Plane A acquiescence analysis, especially where the prosecutor has actual knowledge of ongoing prohibited conduct and lawful steps were not taken. Source-status marker: this is the IAJ's Plane A compliance analysis, not a claim that domestic courts already treat every such omission as personal liability. Documentation keeps Plane A's account of State conduct accurate rather than falsified by omission.

Source 3 — 18 U.S.C. § 1519 and anti-concealment support for record preservation (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] Section 1519 is not a freestanding duty to create a UNCAT gap memorandum. It is a domestic criminal anti-concealment rule that reinforces the preservation obligation once records exist and makes falsification, destruction, alteration, or concealment of those records independently serious.

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. The IAJ's view is that competent civil-rights and public-integrity practice in this domain requires knowledge of the treaty framework, the 2014 CAT findings, and the documentation architecture required to prevent implementation gaps from disappearing by silence. A prosecutor evaluating UNCAT-adjacent complaints without that knowledge is operating below the standard the IAJ holds Rule 1.1 to require in this domain. 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

[3] Section 1519 reaches the knowing destruction, alteration, falsification, or concealment of records in any matter within the jurisdiction of the executive branch. Where a prosecutor destroys, alters, falsifies, or conceals documentation of a UNCAT-adjacent complaint after it is created, that conduct falls squarely within the statute's reach. Deliberate non-creation of documentation is a distinct and less direct exposure: it does not itself constitute destruction or falsification of a record, though it may contribute to the acquiescence and false-representation consequences described in Sources 1 and 2.

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.
20. Interpret and apply jus cogens according to the IAJ standard *UNCAT and jus cogens: A contemporary perspective* (IAJ-STD-20260505-001-PUB). UNCAT prosecution and gap-documentation analysis must not be limited to detention, custody, interrogation, and imprisonment cases. See Section A-IX for the full operational directive, the hierarchy and minimum-content arguments, the dignity foundation, the breadth argument, and the source-status discipline that governs this Rule's application.

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.

Element 12 — FBI / DOJ declination analysis: If the matter was referred to the FBI, DOJ Civil Rights Division, a United States Attorney's Office, or a state criminal authority and declined, attach or summarize the declination. Identify whether the declination relied on lack of domestic predicate, judicial-function framing, immunity, resource discretion, insufficient evidence, prior adjudication, non-self-execution of treaty obligations, or another stated ground. For each reason given, state whether it is a Plane B limitation, a factual deficiency that can be cured, or a Plane A implementation gap. A declination that does not identify the statutes reviewed, the elements found missing, the evidence considered, and the treaty outcomes left undelivered should itself be treated as incomplete documentation of the State's

response, and the prosecutor should request a more complete written declination through supervisory channels. See Part A-VII, Subsection D, for the institutional-objection analysis the declination should be measured against.

Element 13 — Intake and routing history: If the matter appears to have been screened out before merits review, identify the office or unit that received the complaint, the date and method of receipt, whether it was logged or preserved, whether it was routed to a competent authority, whether a supervisor reviewed the intake decision, whether written reasons were given, and whether the complaint reached any investigator, prosecutor, inspector general, civil-rights component, or judicial-conduct body capable of statutory review. If no competent authority reviewed the complaint, classify the event as an intake-avoidance gap rather than a merits declination. See Part A-VII, Subsection E, for the Article 12 and Article 13 analysis the intake history should be measured against.

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.

Mode 2 corollary on the residual duty. The residual duty exists in this guide because the United States has not yet enacted the implementing legislation, established the National Human Rights Institution, withdrawn the Article 16 reservation, or reformed the immunity and finality doctrines that would otherwise discharge the Article 12 investigation, Article 13 protection, Article 14 reparation, and Article 4/7 punishment obligations through ordinary domestic processes. The IAJ's position is not that the residual duty is the correct steady-state allocation of obligation between the State and its prosecutors. The correct allocation is that the State delivers the five required outcomes through enacted statutes, appropriated resources, independent institutions, and reformed doctrine, and that individual prosecutors operate within a structure that supports rather than substitutes for those institutional commitments. The residual duty exists because that allocation has not yet been achieved. Every gap-documentation memorandum is simultaneously a record of one case's implementation failure and an item of evidence for the legislative, regulatory, and doctrinal reform the IAJ holds the Constitution and the treaties already require.

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. Systemic patterns across multiple cases. Identified Article 19 compliance failures.	After any investigation declination involving documented UNCAT-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 (most recently introduced as H.R. 3332, 114th Cong., 2015; not enacted), 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.
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	Credible allegations of torture or CIDT where disability status is a factor	Applies to all UN member states; no	Note: Special Rapporteurs receive information and may send urgent appeals or allegation letters to States; this is not the same as a

Mechanism	Article / Instrument	Threshold / Trigger	U.S. Acceptance	Role of Prosecutorial Documentation
	mandate; CRPD Article 15		acceptance required	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 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-Consistent Collaboration: How Prosecutors Should Use Independent Civil-Society and Expert Documentation

The 2022 Istanbul Protocol recognizes the independent and complementary role of civil-society actors in documenting torture and ill-treatment, prompting investigations, providing evidence and expertise, scrutinizing proceedings, and providing legal analysis of investigation adequacy. The IAJ's position is that prosecutors should treat independent civil-society documentation, including IAJ documentation where relevant, as part of the Article 12 compliance environment rather than as an external inconvenience. This is the IAJ's Mode 2 treaty-compliance reading and a Mode 1 evidentiary-practice rule; it is not a claim that current U.S. domestic doctrine treats the Istanbul Protocol as a freestanding source of prosecutorial duty. See Constitutional and Treaty Premise (above) for the Institute's full source-status, methodological-independence, and unauthorized-practice-of-law architecture, which governs the operational reading of every reference in this section. Source-status note: this is the IAJ's Mode 2 reading of how the Protocol's civil-society provisions interact with the State Party's Article 12 / 19 obligations, not a claim that current U.S. domestic doctrine treats the Protocol as a freestanding source of prosecutorial duty or that prosecutors must collaborate with IAJ in every case. They are not advisory suggestions. They are the Protocol standards against which the CAT Committee measures Article 12 compliance.

First, Chapter III, paragraph 263 of the 2022 Istanbul Protocol provides, verbatim: "International law obliges States to investigate allegations of torture or ill-treatment. Actors other than States, such as civil

[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.

society organizations, play an important independent and complementary role in seeking to achieve the objectives of investigations to combat impunity, secure justice and uphold the rule of law. This role consists in documenting torture or ill-treatment, representing victims, prompting investigations or other inquiries or legal proceedings resulting in investigations, providing evidence and/or expertise to investigative bodies, scrutinizing proceedings and providing legal analysis of the adequacy of investigations." Paragraph 263 closes with a State-duty clause: "States are required to respect the role played by such actors and provide effective protection against any threats, harassment or other unwarranted interference." These are the six Protocol-recognized civil-society functions, and the closing sentence is a Protocol-imposed State obligation, not a courtesy. Read together, the two parts of paragraph 263 establish both what civil-society actors do in the international anti-torture architecture and what States Parties owe those actors when they do it. The IAJ is established to perform the civil-society functions specifically described and endorsed in Chapter III, paragraph 263 of the 2022 Istanbul Protocol, and the State Party's obligation to respect that role and protect against interference applies to the IAJ as it applies to any other civil-society actor performing the same Protocol-recognized functions.

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 — Where an IAJ report is prepared under the IAJ Psychological Investigation Standard and uses Istanbul Protocol-consistent methodology, treat it as independent civil-society forensic documentation relevant to Article 12 review. 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. The proper inquiry is methodological reliability, independence, evaluator qualification, and relevance, not institutional accreditation.

Step 2 — Preserve the gap memorandum for lawful supervisory and independent review. The gap memorandum should be preserved in a form that allows later lawful review by supervisors, inspectors general, legislative oversight bodies, treaty-report compilers, courts where appropriate, and independent civil-society or expert actors where disclosure is legally authorized or complainant-driven. A gap memorandum filed internally and never routed to any review mechanism satisfies neither the Article 12 investigation obligation nor the State Party's Article 19 periodic-reporting obligation. The point is not automatic transmission to IAJ. The point is that the record must not disappear into an unreviewable internal closure.

Step 3 — Where IAJ has commenced an investigation of the same matter, consider available IAJ findings before closing the prosecutorial file, where lawful and safe. If the complainant consents or disclosure is otherwise legally available and safe, prosecutors should consider the IAJ findings before closure. Prosecutors should not duplicate or disregard independent civil-society documentation without reason. Where findings cannot be shared because of confidentiality, complainant safety, privilege, or retaliation risk, that limitation should itself be documented in the gap memorandum.

Step 4 — Treat an IAJ forum nullus designation as an IAJ analytical triage signal, not a binding jurisdictional ruling. Where IAJ designates a venue as forum nullus, the designation reflects the IAJ's analytical conclusion that ordinary domestic remedies appear functionally non-remedial for the complainant and claims at issue. The prosecutor should then examine whether supervisory escalation, independent investigation, external supervisory or oversight review, or treaty-compliance reporting is

necessary to prevent the matter from disappearing. The designation is not itself a domestic legal ruling; it is a warning that Plane B mechanisms may be failing to deliver the Plane A obligations the State Party owes.

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,	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

Istanbul Protocol Principle	What It Requires	Failure Mode in U.S. Practice
	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.	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.
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	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.

Istanbul Protocol Principle	What It Requires	Failure Mode in U.S. Practice
	deteriorates rapidly and that delay in commencing medical examination directly prejudices the investigation's reliability.	

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 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.	If no appropriation exists for independent medical experts, document the funding 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	If the evidence needed to establish the treaty characterization can only be

Protocol Requirement	Prosecutor's Action in Absence of NHRI	Gap if Action Is Unavailable
	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.	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 examinations already conducted by Protocol-qualified IAJ investigators; and (4) share available official records with the IAJ subject to applicable disclosure constraints.	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 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.
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 Preserve, Internally Escalate, or Lawfully Support External Reporting

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. Independent international support for treating documentation, supervisory referral, and reform-oriented action as core elements of the prosecutorial function appears in the Special Rapporteur on the independence of judges and lawyers, A/HRC/53/31 (13 April 2023) (Satterthwaite) ¶ 45, which expressly endorses prosecutorial discretion to address "overincarceration" and the "overrepresentation of minority and marginalized groups among those incarcerated" through alternatives to prosecution, non-prosecution, decarceration, and depenalization where these are authorized by the Guidelines on the Role of Prosecutors and consistent with human-rights law. The IAJ position is that the same prosecutorial-discretion authorities support a parallel duty: to use prosecutorial discretion, where the facts so warrant, to investigate, document, and refer UNCAT-adjacent conduct rather than to terminate inquiry through silent decline.

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 — Section 241 and structural acquiescence. Where multiple prosecutors or officials coordinate to ensure that documented gaps are suppressed, that Article 19 reports omit known compliance failures, that complainants are retaliated against, or that the victim's last practical path to protection, prevention, relief, remedy, or punishment is closed, 18 U.S.C. § 241 (conspiracy against rights) may be implicated. Section 241 reaches conspiracies to injure, oppress, threaten, or intimidate persons in the free exercise or enjoyment of rights secured by the Constitution or laws of the United States. The domestic rights anchors for the structural-acquiescence pattern addressed in this Guide include, depending on the facts: the Fifth and Fourteenth Amendment due process guarantees; equal-protection principles where applicable; the First Amendment rights of petition and access to courts; the Eighth Amendment in custodial or punishment contexts; and the ADA, the Rehabilitation Act, and other federal civil-rights statutes whose interference can be proved as the deprivation underlying a § 241 charge. Civil conspiracy statutes such as 42 U.S.C. § 1985(3) may supply analogical structure or related civil doctrine, but the § 241 charge must still identify the secured constitutional or federal statutory right actually interfered with. UNCAT and Article VI of the Constitution supply the Plane A treaty-compliance baseline, the interpretive context for the underlying right to be free from torture and CIDT, fair-warning evidence of the obligation, and proof of the United States' implementation gap; they should not be relied on as the sole § 241 rights anchor where current domestic enforceability of the treaty itself is contested.

Agreement. The agreement element may be proved by direct evidence or inferred from coordinated conduct (*Iannelli v. United States*, 420 U.S. 770 (1975); *Direct Sales Co. v. United States*, 319 U.S. 703 (1943)). Mere parallel institutional behavior, bureaucratic conformity, or predictable deference to hierarchy is not enough. The evidence must support a shared unlawful objective, which may be inferred from coordinated acts, communications, repeated synchronized omissions, common false rationales, retaliation patterns, falsified records, suppression of documentation, or other facts showing that officials knowingly joined the same rights-deprivation scheme.

Injury, oppression, threat, or intimidation in the enjoyment of the secured right. Where officials with actual knowledge of credible torture or CIDT facts and lawful capacity to act in a different direction instead join a coordinated pattern — including declinations without record, suppression of documentation, retaliatory procedure, concealed conflicts, falsified rationales, coordinated rulings or docket actions or procedural orders that knowingly suppress the record, retaliate against complaint-making, deny necessary accommodation after actual notice, or refusals to escalate — and where that pattern closes the victim's last practical path to protection, prevention, relief, remedy, or punishment, the injury element may be satisfied by oppression in the enjoyment of secured federal rights, including meaningful access to courts (*Bounds v. Smith*, 430 U.S. 817 (1977); *Christopher v. Harbury*, 536 U.S. 403 (2002)), due process, equal protection where applicable, and federal disability or civil-rights protections.

Specific intent. Section 241 requires specific intent to interfere with a federal right made specific by federal law (*Screws v. United States*, 325 U.S. 91 (1945); *United States v. Guest*, 383 U.S. 745 (1966); *United States v. Lanier*, 520 U.S. 259 (1997)). Specific intent is not limited to personal hatred or sadistic motive, but it still requires proof that the defendant knowingly joined the agreement with the purpose of interfering with the victim's secured federal rights, or with deliberate commitment to a coordinated institutional course known and intended to obstruct those rights. Actual knowledge of the rights-risk, repeated choice to proceed, refusal to document or escalate, falsified rationales, concealment, and coordination with other officials may be powerful evidence of specific intent; knowledge of harm alone is not automatically sufficient. The knowledge component of specific intent may, in appropriate cases, be established through the doctrine of willful blindness or conscious avoidance: a defendant who subjectively believes there is a high probability that a fact exists and takes deliberate actions to avoid confirming it may be found to have knowledge of that fact (*Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011)). Willful blindness is a demanding standard, not a substitute for proof of intent: it requires both a subjective belief in a high probability and a deliberate effort to avoid learning the truth, and it does not reach a defendant who is merely careless, mistaken, or negligent in failing to investigate. Where an official is

presented with credible, Istanbul Protocol-consistent documentation of torture or CIDT and takes deliberate steps to avoid engaging it — declining to read the submission, instructing subordinates not to forward it, or routing it away precisely so that its contents need not be confirmed — the conscious-avoidance doctrine may be relevant to whether the knowledge element is satisfied. It remains the prosecution's burden to prove every other element, including the purpose to interfere with secured federal rights; conscious avoidance speaks only to knowledge, not to purpose. Fair warning under Lanier must be grounded primarily in the underlying constitutional or federal statutory right. UNCAT's ratified status, object and purpose, and the United States' treaty-compliance representations may support notice, interpretive context, and the Plane A implementation-gap analysis, but they should not be treated as independently sufficient to establish fair warning for a § 241 charge where domestic enforceability of the treaty is contested. The Lanier general-statement-of-law standard does not require a case on identical facts, but it does require that the unlawfulness be apparent from the relevant constitutional or statutory rule.

No overt-act requirement. Unlike the general federal conspiracy statute, 18 U.S.C. § 371, section 241 does not require proof of an overt act as a statutory element; the unlawful agreement itself constitutes the offense. Overt acts may supply evidence of agreement, intent, and the operation of the conspiracy, but they are not independently required.

Operational reach and Plane B disclaimer. Where the agreement, specific-intent, injury, and rights-deprivation elements are proved on the facts, the elements of § 241 may be reached in the structural-acquiescence pattern this Guide addresses. Each charged conspiracy still requires element-by-element proof. Civil immunity doctrines — prosecutorial immunity (*Imbler v. Pachtman*, 424 U.S. 409 (1976)) and judicial immunity (*Stump v. Sparkman*, 435 U.S. 349 (1978); *Mireles v. Waco*, 502 U.S. 9 (1991)) — are civil-damages doctrines and do not bar criminal prosecution under §§ 241 or 242 where the statutory elements are proved. Obstruction of complainants' access to international accountability mechanisms is relevant to Plane A noncompliance and may supply motive or context for the domestic offenses; it is not itself an independently sufficient rights anchor where the international mechanism has not been domestically incorporated.

Plane A implementation gap. Separately, where DOJ practice does not enforce § 241 against structural-acquiescence patterns despite credible torture or CIDT facts, the resulting non-enforcement is itself a reportable Article 19 implementation gap. That gap does not prove the § 241 theory wrong; it is evidence that the State's domestic enforcement architecture is failing to deliver the punishment and accountability UNCAT requires, and the State Party owes a continuing duty to confront the gap.

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 operating below the standard the IAJ holds Rule 1.1 to require in this domain — failure to bring to the work the legal knowledge that competent civil-rights and public-integrity practice in the UNCAT subject matter requires.

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	Domestic Civil Consequence	Domestic Criminal Consequence	Professional Consequence	Plane A Consequence
Failure to document equivalence gap	Qualified immunity only (*Buckley*/*Burns* line). No clearly established right yet recognized by any circuit. Practical immunity.	None from non-documentation alone. Changes if combined with active falsification or concealment.	Rule 1.1 competence failure (systematic). Rule 8.4(d) possible (systematic). Rule 3.3 possible (misleading representation).	May contribute to invisible noncompliance by 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	If policy is established and enforced by senior officials	Office policy may constitute systematic Rule 8.4(d) conduct. State bar may investigate	Full GC No. 2 acquiescence attribution to State. Strongest available

Failure	Domestic Civil Consequence	Domestic Criminal Consequence	Professional Consequence	Plane A Consequence
	immunity. Office cannot claim *Imbler*.	with knowledge of violations: potential § 241/1519 (concealment) exposure for the officials establishing and enforcing the policy.	supervisory attorneys under Rule 5.1.	basis for Art. 20 systematic-practice finding.
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. The question the guide poses is not whether the guide is enforceable against the prosecutor; it is whether the State Party's binding constitutional and treaty obligations — to protect, prevent, relieve, remedy, and punish official torture and CIDT — are performed or left unperformed when the prosecutor makes the decision in front of them. The guide's own lack of domestic enforceability against the prosecutor does not change that question, and the absence of external scrutiny in the individual case does not discharge the State's obligation. The IAJ's position is that those obligations bind whether or not anyone is watching, and the guide exists to make visible the implementation failure when the prosecutor's decision lets them go unperformed.

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. What the prosecutor must do, when non-self-execution is invoked in a UNCAT-adjacent case, is precisely what §§ 241 and 242 already require on Plane B: review the elements,

document the equivalence assessment, preserve the record, and transmit the result through the supervisory chain — operations that depend on no treaty self-execution at all and that simultaneously preserve the State's Article 12, 13, and 19 compliance record on Plane A.

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. What the prosecutor must do, in a UNCAT-adjacent case occurring outside the custodial setting, is engage the five-element Article 1 analysis on the documented facts, document any element the prosecutor finds unmet and why, and preserve that record — not foreclose the analysis at the threshold by importing a custodial-setting limitation the text does not contain. The IAJ's position is that the textual scope is wider than the custodial paradigm, and the operational rule for the prosecutor is to test the documented facts against the elements the text actually states.

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. A state prosecutor who documents the gap and routes it through the appropriate supervisory channel has performed the Mode 1 duty the guide assigns to the individual prosecutor inside the current institutional structure. But the IAJ's institutional concern remains: if protection, prevention, relief, remedy, or punishment is still undelivered, the State Party's Plane A obligation remains unmet, and the documented gap becomes evidence of the structural reform the Mode 2 thesis requires. 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 comprehensive federal implementing legislation aligned with Article 1 — including the Law Enforcement Torture Prevention Act[5] 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. What the prosecutor must do, in the meantime, is apply the enacted statutes Congress did pass — §§ 241, 242, 1512, 1513, 1519 — to the elements they reach, document precisely where they fall short of the UNCAT-defined conduct, and preserve that record so that the next legislative cycle has the implementation evidence it needs. Documenting Congress's gap is not legislating against Congress; it is the means by which the political branches receive the factual basis for the corrective legislation the CAT Committee has been calling for since 2014.

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. Where designated mechanisms exist but fail to deliver outcomes functionally equivalent to what Articles 13 and 12 require, that failure is the implementation gap the State Party is bound to correct under the Convention, not a domestic answer to the Plane A obligation. Citing the existence of designated mechanisms while their outputs fail equivalence is precisely the pattern of unmet equivalence the CAT Committee identified in CAT/C/USA/CO/3-5 (2014), and the IAJ's position is that the State Party's obligation persists until the mechanisms deliver what the treaty requires, not merely until a designated institution has nominally reviewed the case.

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

[5] Law Enforcement Torture Prevention Act, introduced and reintroduced as H.R. 5688 (111th Cong., 2010), H.R. 3781 (112th Cong., 2012), and most recently as H.R. 3332 (114th Cong., 2015), sponsored by Rep. Danny K. Davis (IL-7); none enacted. The bill would have added 18 U.S.C. § 250 to criminalize torture committed by law enforcement officers and others acting under color of law within U.S. territory. Citation here is to the legislative concept and its most recent introduction, not to a pending bill.

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 personal blame for a prosecutor who made a documented, good-faith reasonable-grounds determination; the guide's concern is the State Party's Plane A obligation that remains: the record must show what was reviewed, what evidence was weighed, why the threshold was not met, what outcome components — protection, prevention, relief, remedy, punishment — remain undelivered, and what structural gap, if any, prevents full compliance. 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, and to make visible the equivalence failure where domestic location alone determines whether identical official torture receives inquiry. The IAJ holds that where the parity logic is treaty-required and unmet, the resulting disparity is itself the implementation failure the guide exists to document and to advocate against. The IAJ does not accept that inferences derived from a faithful reading of enacted statute and binding treaty are normatively inferior to silence; they are the correct legal position the State has not yet adopted, and the guide exists in part to advance that correction.

D. Objections Specific to FBI / DOJ Intake and Civil-Rights Criminal Review

This subsection addresses the institutional positions a federal investigative or prosecutorial authority — the FBI, the DOJ Civil Rights Division, a United States Attorney's Office, or an analogous state authority — may articulate when declining to act on an IAJ-referred torture or CIDT matter. The rebuttals are not adversarial responses to hostile officials. They are institutional responses to the institutional positions a federal authority may take, written so that each declination produces the documentary record the State Party requires under Article 12, Article 19, and the implementation-gap analysis. In the adjacent public-corruption context, the Supreme Court has narrowed several federal public-corruption and public-integrity statutes in ways that leave substantial enforcement responsibility to state law and state prosecutors: *Skilling v. United States*, 561 U.S. 358 (2010); *McDonnell v. United States*, 579 U.S. 550 (2016); *Kelly v. United States*, 590 U.S. 391, 140 S. Ct. 1565 (2020); and most recently *Snyder v. United States*, 603 U.S. 1, 5, 14–15, 20 (2024) (Kavanaugh, J., for the Court). The *Snyder* dissent's "unwarranted power" phrasing, which is itself a quotation from the record below (*Snyder*, slip op. at 2 (Jackson, J., dissenting) (quoting

App. 14–15)), is not attributed to the majority in this Guide. *Trump v. Vance*, 591 U.S. 786 (2020), separately confirms that state criminal process is not categorically displaced merely because a matter implicates a federal official; Vance defeats categorical claims of state-prosecutorial incompetence but preserves fact-specific Supremacy Clause protection where it properly applies. The federalism canon that animates this line does not displace the federal civil-rights criminal statutes — 18 U.S.C. §§ 241, 242, 249, and the related obstruction provisions in §§ 1512, 1513, 1519 — because Congress has clearly supplied the federal interest in the conduct of officials acting under color of law. The National Association of Attorneys General has described, in the parallel context of public-corruption enforcement, the need for state prosecutors to fill the enforcement role left to them by narrowed federal public-corruption doctrine, in its Attorney General Journal series on *The Anticorruption Manual*, beginning with Amie Ely, *The Anticorruption Manual: Helping State Corruption Prosecutors Fill the Role the U.S. Supreme Court Expects Them to Play* (2021), which discusses the underlying NAAG *Anticorruption Manual: A Guide for State Prosecutors* (Ely & Walker eds., 2021). The IAJ's treaty-compliance conclusion — that federal statutory limits and federal declinations do not end public-integrity review where state prosecutorial authority, professional-conduct processes, civil remedies, or treaty-compliance mechanisms remain available — is drawn from the structure of UNCAT and the allocation of criminal-law jurisdiction in the United States. The cases listed above support that conclusion at the institutional level; they do not themselves decide it.

The IAJ's position is that a reasoned declination is not failure; it is part of the compliance record. A silent declination, by contrast, leaves the violation undocumented and the gap invisible. The eleven objections that follow track the most likely institutional grounds for declination; each is followed by the IAJ response and the documentation it requires.

Objection 14: UNCAT is not itself a domestic FBI criminal predicate. The institutional position is that the FBI cannot open an investigation merely because IAJ characterizes conduct as torture or CIDT under UNCAT. UNCAT is binding on the United States internationally, but the FBI's domestic criminal jurisdiction depends on enacted federal criminal statutes. "UNCAT violation" is not itself a federal offense within the FBI's charging authority.

Response. The position is correct on Plane B and incomplete on Plane A. The Guide does not ask the FBI to open a case on "UNCAT" as a freestanding domestic count. The Guide asks the FBI to test every credible torture or CIDT complaint against available domestic criminal vehicles — §§ 241, 242, 1512, 1513, 1519, § 249 where the elements are met, § 1001 where applicable, and any state-law predicates. If no statute fully fits, the answer is not "no violation." The answer is a documented implementation gap: the State Party has failed to provide a domestic criminal vehicle adequate to deliver the treaty-required outcomes of protection, prevention, relief, remedy, and punishment. A declination that identifies no predicate must therefore also identify the statutory gap it relies on.

Required record. Identify the statutes considered. State which elements were not satisfied. Identify which of the five treaty outcomes remain undelivered. Preserve the file and route the non-equivalence finding through appropriate supervisory, policy, civil-rights, inspector-general, or treaty-compliance channels where such channels exist or can lawfully receive it.

Objection 15: Section 2340A is extraterritorial and does not apply domestically. The institutional position is that 18 U.S.C. § 2340A, the principal federal torture statute, applies only to conduct outside the United States. Domestic judicial, prosecutorial, or agency conduct cannot be charged under § 2340A.

Response. Correct as a charging matter. But that does not end the inquiry. Section 2340A is not used here as a domestic charge. It is used as a parity benchmark: it shows what level of criminal seriousness Congress accepted for torture where § 2340A applies. If the same official conduct would be treated as torture, investigated seriously, and punished severely if it occurred extraterritorially, but receives no comparable domestic criminal review because it occurred inside the United States, the disparity is not

neutral. It is a domestic implementation gap. The CAT Committee in 2014 (CAT/C/USA/CO/3-5) found that the United States had not criminalized torture at the federal level in full conformity with Article 1 and recommended dedicated domestic legislation — the legislative gap the Law Enforcement Torture Prevention Act would address.

Required record. Use § 2340A as the parity comparator, not the charge. Then analyze §§ 241, 242, obstruction, retaliation, hate-crime, and state-law predicates. If none reach the conduct, document the parity gap as part of the State Party's Article 19 reporting record.

Objection 16: Judicial conduct belongs in appeal, mandamus, recusal, or judicial-conduct channels, not FBI criminal investigation. The institutional position is that judicial rulings and litigation-management decisions are not appropriate FBI subjects. They are reviewed by appellate courts, mandamus, judicial-conduct bodies, recusal motions, and legislative oversight. The FBI cannot become a collateral appellate tribunal.

Response. The FBI need not review ordinary legal error, and the Guide does not ask it to. Judicial office is not, however, criminal immunity. The Guide distinguishes ordinary legal error, serious abuse of process, CIDT, torture, and independently criminal conduct. Where the allegation is not that a judge ruled wrongly, but that judicial process was knowingly used to compel medically dangerous participation, suppress a complaint record, retaliate against rights-assertion, deny necessary accommodation after actual notice, conceal conflicts, or close the victim's last practical path to protection or remedy, the question is no longer ordinary appellate review. It is whether public officials, acting under color of law, engaged in willful deprivation, conspiracy against rights, retaliation, obstruction, falsification, or other independently criminal conduct. The corrected § 241 structural-acquiescence framework in this Guide supplies the element-by-element analysis.

Required record. Separate adjudicative disagreement from independently criminal conduct. Identify whether the documented facts show agreement, specific intent to interfere with secured rights, knowing obstruction, retaliation, record suppression, or knowing participation in a rights-deprivation scheme.

Objection 17: Civil judicial and prosecutorial immunity show the conduct is not actionable. The institutional position is that judicial and prosecutorial immunity doctrines indicate the allegations are not suitable for criminal investigation.

Response. Civil immunity doctrines are not criminal immunity. *Imbler v. Pachtman*, *Stump v. Sparkman*, and *Mireles v. Waco* are civil-damages doctrines. They may block damages or direct civil compulsion; they do not bar criminal investigation or prosecution under §§ 241 or 242 where the elements are met. The § 241 Plane B disclaimer in this Guide states this directly. Civil immunity may explain why a victim cannot obtain damages in domestic court. It does not prove no torture or CIDT occurred. On Plane A, the inability of civil remedies to reach official torture or CIDT is itself part of the equivalence failure the Guide documents.

Required record. Do not close the matter on "immunity" alone. Analyze whether the alleged conduct satisfies an enacted criminal statute under the element-by-element analysis. If civil immunity is the only reason no remedy exists, document that as a remedy and accountability gap.

Objection 18: IAJ is not a law-enforcement agency, accredited NHRI, or prosecutor. The institutional position is that IAJ reports are advocacy materials, not FBI case files; IAJ is not an accredited National Human Rights Institution and cannot compel FBI action.

Response. Correct as to formal status. The Guide does not claim otherwise. The Constitutional and Treaty Premise expressly states that the Istanbul Protocol recognizes civil-society actors generally and does not accredit the IAJ as a National Human Rights Institution or State-designated body. The 2022 Istanbul Protocol nonetheless recognizes the independent and complementary role of civil-society actors in documenting torture and ill-treatment, prompting investigations, providing evidence and expertise,

scrutinizing proceedings, and providing legal analysis of investigation adequacy. The IAJ's role is to provide civil-society forensic, legal, and treaty-compliance documentation. The FBI's role is to assess that documentation for evidentiary content, methodology, witness material, medical support, and statutory predicates. Institutional label is not a substitute for evidentiary review.

Required record. Evaluate IAJ materials for evidentiary content, not institutional label. Identify what evidence the FBI considers missing if the matter is not pursued. Preserve the submitted material as part of the compliance record.

Objection 19: Medical severity and causation are not established by legal argument. The institutional position is that IAJ cannot prove torture or CIDT severity or causation merely by legal characterization. The FBI needs reliable medical, psychological, and causation evidence.

Response. Correct. Legal labels do not prove severity or causation. The Guide cross-references the IAJ Psychological Investigation Standard and Istanbul Protocol Chapter V methodology precisely because severity and causation are evidentiary questions. The FBI may reject unsupported legal conclusions; it should not reject documented biological deterioration, psychological injury, forensic consistency analysis, treating-provider records, or Protocol-consistent evaluations without explanation. A severity or causation dispute is not a reason for silent closure; it is a reason for evidentiary assessment. A reasoned engagement with the medical and forensic record — even one that ultimately finds the evidence insufficient — is a merits assessment; a deliberate refusal to read or engage credible Protocol-consistent documentation is not. Where an official takes deliberate steps to avoid confirming what the medical and forensic record shows, that avoidance may itself be relevant to the knowledge analysis discussed in the Guide's § 241 specific-intent section (conscious avoidance / willful blindness), where the other elements are independently established.

Required record. Identify whether the record includes medical or psychological evidence. State whether an independent evaluation is needed. Identify what causation questions remain. Note whether delay risks loss of evidence. Record whether the reviewing official engaged the documented medical and forensic record or declined without engaging it.

Objection 20: CIDT has no standalone federal domestic criminal offense. The institutional position is that no general federal CIDT statute exists, so the FBI cannot investigate Article 16 CIDT as a domestic offense in its own right.

Response. The absence of a dedicated domestic CIDT statute is not a reason to treat CIDT as non-criminal by default. It is precisely the implementation gap the Guide documents. The FBI must analyze every available domestic criminal vehicle — §§ 241, 242, 1512, 1513, 1519, § 249 where the elements are met, state-law predicates, obstruction, retaliation, assault, coercion, abuse-of-office, disability-rights, and civil-rights statutes — with the same seriousness it would apply to torture under § 2340A if the conduct occurred extraterritorially. If those vehicles do not fully reach culpable official CIDT, that failure is the Article 16 punishment gap the Guide exists to make visible. CIDT must not be administratively downgraded into unpleasantness because no Article 16-specific federal offense has been enacted.

Required record. Analyze every available domestic criminal vehicle. If no vehicle fits, document the Article 16 punishment gap with enough specificity for supervisory review, legislative correction, treaty reporting, shadow reporting, and future accountability review.

Objection 21: International reporting is outside the FBI's role. The institutional position is that the FBI investigates federal crimes and does not report to the CAT Committee, Special Rapporteurs, or treaty bodies. Treaty reporting is a State Department / DOJ policy function.

Response. The FBI need not act as a treaty-reporting office and the Guide does not ask it to. The Guide's requirement is more modest: preservation, internal escalation, and non-destruction of the record. FBI records may become part of the factual material from which the State Party's compliance record is later compiled by the appropriate State Department / DOJ policy components. The FBI's refusal to preserve or

internally escalate credible torture or CIDT documentation can make treaty noncompliance invisible. The Guide does not require automatic external transmission by line agents.

Required record. Preserve the complaint and supporting material. Document the statutes considered, the elements analyzed, and the reason for any declination. Route any systemic gap through appropriate supervisory, policy, civil-rights, inspector-general, or treaty-compliance channels where such channels exist or can lawfully receive it.

Objection 22: Resource limits and priorities do not permit opening every IAJ case. The institutional position is that the FBI has finite resources and cannot open full investigations into every civil-society referral.

Response. The Guide does not require full field investigation of every referral. It requires a reasoned threshold review where credible torture or CIDT is alleged. If the FBI declines for resource, priority, or threshold reasons, that decision must not convert the matter into silent disappearance. The gap memorandum is the minimum mechanism by which the State Party records what was not delivered, and resource-priority closure is a Plane B decision that does not discharge Plane A obligations.

Required record. Perform an intake triage. State whether reasonable grounds exist. Identify missing evidence. Identify unmet treaty outcomes. Preserve the record. Escalate systemic patterns.

Objection 23: Prior court decisions make the matter final. The institutional position is that where courts have already ruled, denied reconsideration, denied mandamus, dismissed appeals, or rejected the underlying claim, the FBI should not reopen final litigation.

Response. Finality of ordinary litigation does not convert torture or CIDT into lawful conduct. Domestic finality describes a Plane B barrier. It does not answer whether the conduct violated the human-rights baseline, whether the process itself became the instrument of harm, or whether domestic mechanisms failed to provide equivalent protection, prevention, relief, remedy, and punishment. Where the prior judicial decisions are themselves part of the alleged mechanism of suppression or harm — the structural-acquiescence pattern the § 241 analysis in this Guide addresses — finality is not a conclusive answer without separate analysis of whether independently criminal conduct occurred.

Required record. Distinguish finality of ordinary litigation from evidence of obstruction, retaliation, record suppression, knowing accommodation denial after notice, or coordinated deprivation of rights. Where the prior judicial process is part of the alleged harm pattern, analyze the structural-acquiescence framework as the Guide requires.

Objection 24: The complaint does not identify a specific suspect, act, or federal offense. The institutional position is that the FBI cannot investigate generalized systemic claims without identifiable subjects, acts, dates, rights, and statutes.

Response. This is a valid intake requirement. It becomes a documentation duty, not a basis for silent denial. Where the complaint is too general, the FBI must state what is missing: subject identity, act, date, secured right, statute, witness, record, medical evidence, intent evidence, or causation evidence. That deficiency list becomes the roadmap for victims, counsel, the IAJ, and oversight bodies to complete the record. The Guide's posture is that specificity is often achievable through Istanbul Protocol-compliant documentation; the Guide's purpose includes building that specificity in matters where it does not yet exist.

Required record. Issue a deficiency-specific response, not a generic declination. Identify each missing element with the specificity that allows the complainant or referring institution to cure it.

What the eleven objections, taken together, establish. The institutional positions an investigative authority may take are not generally illegitimate. Most of them describe real Plane B limits on FBI or DOJ action. The Guide's position is that each such limit, where it operates, must be documented as part of the State Party's implementation record — not absorbed into silent closure. The FBI or DOJ may decline a case on Plane B only by creating a record that permits Plane A review. The State may refuse a charge where

domestic elements are absent; it may not refuse visibility where torture or CIDT is credibly alleged. The eleven objections above, written with their responses and required-record entries, are designed to convert every form of institutional declination into compliance documentation.

Denial-Response Reference Table. The table below summarizes the eleven institutional denial grounds above with their corresponding IAJ response and the documentation each declination requires. The table is a quick-reference companion to the full Subsection D analysis; it does not replace the element-by-element response to each declination.

FBI/DOJ Denial Ground	IAJ Response	Required Record Entry
UNCAT is not a domestic crime	Correct on Plane B; incomplete on Plane A.	Statutes considered; elements missing; treaty outcomes undelivered.
§ 2340A is extraterritorial	Use as parity comparator, not charge.	Parity gap with extraterritorial outcomes.
Judicial matter	Distinguish ordinary ruling from independently criminal conduct.	Acts, intent, secured rights, obstruction or retaliation facts.
Civil immunity (judicial / prosecutorial)	Civil immunity is not criminal immunity.	Criminal statutes considered under element-by-element analysis.
No domestic CIDT offense	Implementation gap, not non-violation.	Article 16 punishment gap with documented vehicles tried.
No medical causation	Evidentiary issue, not legal closure.	Medical/forensic evidence needed; PIS evaluation status.
No specific suspect / act / date	Deficiency list to be cured, not silent closure.	Missing suspect, act, date, secured right, evidence.
Resource limits	Plane B triage limit; does not discharge Plane A obligation.	Triage basis; reasonable grounds analysis; unmet outcomes.
International reporting outside FBI scope	Preserve and internally route; treaty reporting through proper channels.	Preservation record; supervisory routing path.
Prior court decisions are final	Finality of litigation does not convert torture or CIDT into lawful conduct.	Distinguish ordinary finality from structural-acquiescence pattern.
Treaty is non-self-executing (*Medellín*)	Plane B doctrine; does not erase Plane A obligation.	Implementation gap; UNCAT as interpretive context and baseline.

Use of FBI / DOJ denials in the compliance record. A reasoned denial is not useless. It is evidence. If the denial identifies a statute and an element gap, it documents non-equivalence. If it relies on immunity, finality, judicial-function framing, or non-self-execution, it documents the domestic doctrine producing the gap. If it gives no reasons, it documents institutional opacity. The IAJ's position is that each form of denial becomes part of the State Party's compliance record under UNCAT and must be analyzed as evidence of whether the United States is delivering the five required outcomes. The State Party may refuse a charge where domestic elements are absent; it may not refuse visibility where torture or CIDT is credibly alleged.

E. Intake Avoidance: When a Complaint Is Defeated Before Review

Subsection D addressed the institutional positions a federal authority may take when it declines a torture or CIDT referral it has received. This subsection addresses an earlier and distinct failure mode: the credible complaint that never reaches an official with authority to conduct statutory review at all, because it is screened out, mis-routed, treated as a routine administrative communication, or answered orally without being recorded. An intake failure of this kind is not a merits determination. It is the absence of the review the treaty requires.

The treaty basis. UNCAT Article 12 requires the State Party to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed; Article 16 extends that obligation to cruel, inhuman, or degrading treatment. UNCAT Article 13 guarantees any individual who alleges torture or CIDT the right to complain to, and to have the case promptly and impartially examined by, the State Party's competent authorities. The Article 13 right is not satisfied by the mere existence of a complaint window. It is satisfied only when the complaint is actually examined by an authority competent to act on it. For purposes of this Guide's Article 13 compliance analysis, a complaint that is intercepted by intake staff, an operator, a clerk, or a front-desk unit, and never routed to an investigator, prosecutor, inspector general, civil-rights component, or judicial-conduct body, has not been examined by a competent authority within the meaning of Article 13. The CAT Committee has read Articles 12 and 13 together to require that the complaint mechanism be effective and accessible in practice, not merely nominal, and General Comment No. 3 treats obstacles that prevent a victim's complaint from reaching impartial examination as part of the State Party's failure to provide an effective remedy.

What the prosecutor or public-integrity officer should recognize. A prosecutor reviewing a torture or CIDT matter should distinguish three different things that can look similar on a case file. The first is a reasoned declination on the merits: an authority received the complaint, analyzed the available domestic statutes and the evidence, and explained why it is not proceeding. Subsection D governs that situation. The second is an unreasoned declination: an authority received the complaint and closed it without the statute-and-elements explanation Subsection D requires. The third is an intake failure: the complaint never reached an authority competent to review it, because it was screened out upstream. The third situation is the subject of this subsection. It is distinct because there is no merits decision to evaluate at all — the question is whether the State Party's complaint architecture delivered the examination Article 13 guarantees.

Documenting an intake failure. Where the record suggests a credible torture or CIDT complaint was screened out before statutory review, the prosecutor or public-integrity officer should document, so far as the record allows: which office or unit received the complaint; whether that office or unit had authority to conduct or trigger statutory review; what routing to a competent authority was available and whether it occurred; whether any supervisor reviewed the intake decision; whether a written reason was given; whether the complaint was preserved in a case-tracking system or allowed to lapse; and which of the five treaty outcomes — protection, prevention, relief, remedy, and punishment — remain undelivered as a result. The point of this record is not to charge the intake staff. It is to establish whether the State Party's complaint mechanism, as it actually operated in this case, delivered or defeated the prompt and impartial examination Articles 12 and 13 require.

What an intake failure establishes, and what it does not. A documented intake failure establishes an Article 12 and Article 13 implementation gap: a credible complaint did not receive the examination the treaty requires, and the reason was structural rather than a reasoned merits decision. It does not, by itself, establish that any individual committed a crime. Whether intake conduct could support a domestic criminal charge — for example, obstruction, falsification, or, where the demanding elements are met, the conscious-avoidance analysis discussed in the Guide's § 241 specific-intent section — is a separate question governed by the element-by-element discipline applied throughout this Guide. The Guide does not treat an intake failure as a crime. It treats an unexplained intake failure as evidence that the State Party's complaint architecture may be unable or unwilling to deliver the prompt, impartial review that Articles 12 and 13

require, and therefore as a documented gap that belongs in the compliance record and, where a pattern emerges, in Article 19 reporting.

The synthesis of Subsections D and E is a single rule. The State Party may decline a charge where the domestic criminal elements are absent, provided it creates a record that permits Plane A review; but it may not refuse to receive, route, preserve, or examine a credible torture or CIDT complaint at all. A declination on the merits is a Plane B decision that Article 13 can accommodate when it is reasoned and recorded. An intake failure is not a decision; it is the absence of the examination Article 13 guarantees, and it is itself a documented treaty-compliance gap.

F. What the Objections, Taken Together, Establish

The objections and avoidance patterns above, each stated in their strongest form, establish three things that a prosecutor or public-integrity officer 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. That prosecutor has discharged the duty the institutional structure currently places on the individual. The IAJ's institutional complaint is not with that prosecutor but with the State Party whose treaty outcome remains undelivered, and with a domestic structure that places the entirety of the Article 12 obligation on the individual prosecutor while supplying no statutory or procedural support sufficient to discharge it. The right corrective response is not to soften the obligation but to fix the structure: enact the implementing legislation the Committee recommended in 2014, withdraw the Article 16 reservation, and reform the immunity, abstention, and finality doctrines that convert documented torture into invisible compliance.

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) — Pre-1996 authority for injunctive and declaratory relief against judicial officers; Congress limited § 1983 injunctive relief against judicial officers in the 1996 Federal Courts Improvement Act (Pub. L. 104-317) to cases where a declaratory decree was violated or declaratory relief was unavailable.
- *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.

A-IX. MANDATORY JUS COGENS INTERPRETATION: THE IAJ PERSPECTIVE

A. The Operational Directive

Every prosecutor reading this Guide must interpret and apply jus cogens according to the IAJ standard *UNCAT and jus cogens: A contemporary perspective* (IAJ-STD-20260505-001-PUB). The directive is operational: it is not a recommendation, and it is not optional within the IAJ analytic framework. UNCAT prosecution and gap-documentation analysis must not be limited to detention, custody, interrogation, and imprisonment cases. Whether the five Article 1 elements are satisfied is a fact-specific analysis that must be performed in every case where the prosecutor has actual knowledge or credible information of public-official-inflicted severe suffering for a prohibited purpose, regardless of setting.

This directive operates on Plane A. It identifies the State Party's treaty-compliance baseline against which the prosecutor measures whether a domestic enforcement vehicle is adequate. It does not displace *Medellín* on Plane B; it does not authorize a domestic court to enforce UNCAT directly; and it does not assert that any of the cases discussed in the IAJ Perspective have decided the IAJ's institutional position on judicial-setting torture. The cases discussed in the IAJ Perspective support the IAJ's reading; the institutional position belongs to the IAJ, and the IAJ Perspective makes that source-status discipline explicit.

B. The Hierarchy Argument

The IAJ Perspective's central argument is a hierarchy argument, not a content-expansion argument. Jus cogens is a peremptory norm of customary international law under VCLT Article 53 (invoked here as customary international law, the United States having not ratified the VCLT). The prohibition on torture is among those norms confirmed both by the International Law Commission's 2022 Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens) and by sustained federal litigation under the Alien Tort Statute and the Torture Victim Protection Act since the Second Circuit's decision in *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980). Because jus cogens is non-derogable by definition and pre-exists any treaty negotiation, the negotiating history of UNCAT cannot define the lower bound of the peremptory norm. The IAJ's position is that what the negotiating states could limit was the conventional instrument; what they could not limit, by that negotiation, was the pre-existing peremptory norm.

C. The Minimum-Content Derivation

The IAJ Perspective derives the minimum content of the jus cogens torture prohibition from three independent sources. The ICJ in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 2012 I.C.J. 422 (July 20, 2012), confirmed the erga omnes status of the prohibition: the duty to prevent and punish is owed by every state to the international community as a whole. The ICJ in *Barcelona Traction* (*Belgium v. Spain*), 1970 I.C.J. 3, ¶¶ 33–34, derived erga omnes obligations from the basic rights of the human person — not from any treaty architecture or institutional setting. The CAT Committee's General Comment No. 2 (2008) ¶3 extends the Convention's application to all branches of government acting in official capacity, without institutional limitation. The IAJ Perspective's position is that the only synthesis of these three sources internally consistent with all three simultaneously is a minimum content not structurally limited to any particular institutional setting: intentional infliction of severe suffering by a state agent in official capacity for a prohibited purpose, wherever the conduct occurs. The cases support that synthesis; they do not, individually, decide the question of judicial-setting or non-custodial torture, which was not before any of the three sources directly.

D. The Dignity Foundation

The Convention's Preamble derives the prohibition on torture from "the inherent dignity of the human person." The IAJ Perspective's position is that human dignity is not a feature of institutions; it is a property of persons. The scope of the prohibition is therefore as wide as the scope of dignity, which is universal and not confined to particular settings. The IAJ Perspective argues that a reading that would locate the prohibition not in the person but in the building cannot be reconciled with the principle UNCAT expressly invokes as its own foundation.

E. The Breadth Argument and the Absurd-Result Canon

Under VCLT Article 31(1) (invoked here as customary international law), treaties are interpreted in good faith in accordance with their ordinary meaning, in their context, and in light of their object and purpose. The IAJ Perspective's breadth argument is that a "detention only" reading of UNCAT produces results radically incompatible with the Convention's object and purpose. The IAJ's Preliminary Shadow Report to the 83rd Session of the Committee Against Torture (IAJ-CAT-20250919-002-PUB, September 19, 2025) identifies twenty-four systemic factors of prohibited official conduct documented across U.S. family courts, child protective services, administrative agencies, and judicial proceedings — conduct that on the IAJ's analysis satisfies the Article 1 elements or the Article 16 CIDT threshold and that would be permanently immunized from UNCAT coverage if the "detention only" reading were adopted. The IAJ's position is that an interpretation immunizing every documented form of severe official harm not occurring in detention is incompatible with the Convention's anti-impunity object and cannot survive the VCLT Article 31 test.

F. Operational Obligations for the Prosecutor

The prosecutor's operational obligations under this directive are these. First, the prosecutor must not foreclose investigation, charging analysis, or gap-documentation on the ground that the alleged conduct occurred outside a detention, custodial, interrogation, or imprisonment setting. That ground is not a complete answer to whether the conduct satisfies UNCAT's Article 1 elements or the Article 16 CIDT threshold.

Second, the prosecutor must analyze the full domestic charging matrix — 18 U.S.C. §§ 241, 242, 249, 1512, 1513, 1519; state criminal law; obstruction and retaliation provisions; abuse-of-office and civil-rights predicates — without confining that analysis to the cases where § 2340A would apply if the conduct had occurred extraterritorially. § 2340A's extraterritorial-only scope is a feature of Congress's implementing-statute choice; it is not a definition of the underlying treaty obligation.

Third, where no domestic statutory vehicle fully reaches the conduct, the prosecutor must document the gap. The gap-documentation obligation applies wherever there is public-official conduct that satisfies the UNCAT analytical threshold and where domestic law does not deliver equivalence — regardless of whether the setting is custodial. See Section A-V.

Fourth, the prosecutor's interpretation of any jus cogens question — including the minimum-content question, the dignity-foundation question, the breadth question, and the question of whether a particular non-custodial setting falls within the scope of the prohibition — must follow the IAJ Perspective. Departures from the IAJ Perspective should be identified in the office's analytic record. Where the matter arises from or responds to an IAJ referral, the IAJ will treat an undocumented departure as part of the compliance gap unless the office provides a reasoned basis through an appropriate institutional channel.

G. Source-Status Marker

The cases discussed in the IAJ Perspective and in this Section support the IAJ's institutional position on the setting-unconfined scope of the jus cogens torture prohibition. They do not themselves

decide that question; no U.S. domestic court has so held. The IAJ states the position as its own considered analytic conclusion drawn from the structure of UNCAT, the relevant customary international law, and the Committee's authoritative interpretations. This source-status discipline applies to every citation in this Section and to every cross-reference elsewhere in this Guide that depends on it.

✓✓✓ 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-20260505-001-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.

Institute for the Advancement of Justice & Human Rights • IAJ-AOP-20260507-001-PUB • May 2026

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. That non-binding status reflects the absence of US implementing legislation aligned with the Committee's findings; it does not narrow the substantive obligation the Committee is interpreting. The implementation gap is the binding-ness gap. The Committee's findings are Plane A treaty-body determinations that define what the international community's authoritative monitoring body has found about U.S. compliance, and the IAJ holds that they accurately state what the Convention requires of the United States as a matter of binding international obligation. 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. The textual scope of "all places that the State party controls as a governmental authority" unambiguously includes domestic courts: courts are quintessential places that the State controls as a governmental authority, and no permissible reading of that phrase carves them out. The U.S. self-exclusion of its courts was not endorsed by the Committee and is incompatible with the Convention's plain text read in light of GC No. 2 ¶3.

CAT/C/USA/CO/3-5 — Five Operational Findings	Paragraph	What the Committee Found	Operational Significance
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 recommended re-introduction of the Law Enforcement Torture Prevention Act (LEPTA).	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 Committee specifically identified. The Committee's recommendation that the United States re-introduce the Law Enforcement Torture Prevention Act (last introduced as H.R. 3332, 114th Cong., 2015; see footnote above) 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; § 1983) provides equivalent pre-harm protection.	No mechanism compels protective action before harm occurs when the harm-causer is a court. Injunctive relief against judicial officers is structurally constrained. The DOJ deferred to SCOTUS when protective action was requested.	Art. 2 protection obligation systematically unmet for judicial-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: in the judicial-setting case set relied on by this guide, the Art. 13 relief gap appears to be the most structurally complete recurring gap. Every documented DOJ deferral or judicial conduct board non-referral in that case set 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	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.

Required Outcome	U.S. Assurance in Periodic Reports	CAT Committee / Practice Finding	Resulting Gap
		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.	

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. The Committee's majority finding was under Article 16, together with Articles 12 and 13; the case is cited here for Article 16 acquiescence and non-custodial reach, not as a majority Article 1 torture finding. 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.[6] 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.[7]

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

[6] April 2026

[7] 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.

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 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

For the operational implementation of these scope conclusions — including the prosecutor's mandatory application of jus cogens according to the IAJ standard *UNCAT and jus cogens: A contemporary perspective* (IAJ-STD-20260505-001-PUB) — see Section A-IX. UNCAT prosecution and gap-documentation analysis must not be limited to detention, custody, interrogation, and imprisonment cases.

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-20260505-001-PUB)[8] and the IAJ's Harmonizing the Architecture of Disability Rights (Disability Harmony, v3b, March 2026)[9]. 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

[8] 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].

[9] 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).

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
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.[10] Article 4 requires criminalization of torture, attempt, complicity, and participation.[11] Article 7 requires submission of qualifying cases for prosecution or extradition (aut dedere aut judicare).[12] Article 10 requires education and training on the prohibition.[13] Article 12 requires prompt and impartial investigation wherever there is reasonable ground

[10] 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].

[11] Id. art. 4.

[12] Id. art. 7.

[13] Id. art. 10.

to believe torture has occurred.[14] Article 13 requires a right to complain and protection against retaliation.[15] Article 15 prohibits use of torture-derived statements.[16] Article 16 extends prevention and investigatory obligations to CIDT committed by or with official consent or acquiescence, importing Articles 10–13.[17]

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)[18], ¶18: The Committee states authoritatively that the prohibition extends to all branches of government, including the judiciary, and 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 bear responsibility as complicit or acquiescent. This is the Committee's authoritative interpretation of Articles 2, 12, and 16; it is treaty-body guidance rather than enacted domestic law, and nothing in domestic non-self-execution doctrine narrows the substantive content of the obligation the Committee is interpreting.

C-IV. SIX DIMENSIONS OF DOMESTIC SHORTFALL: WHY UNCAT REMAINS NECESSARY

Absolute non-derogability [Tier 2/3]. CAT rejects exceptional-circumstances and superior-orders defenses even where domestic actors attempt to normalize institutional cruelty.[19] The jus cogens status of

[14] Id. art. 12.

[15] Id. art. 13.

[16] Id. art. 15.

[17] Id. art. 16.

[18] 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).

[19] 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.').

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.

1. 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.
2. 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.
3. 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.
4. 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.

Sixth dimension — systemic-discrimination shortfall in access to justice for marginalized communities [Tier 2/3]. CAT Articles 1, 2, 12, 13, 14, and 16, read together with the parallel obligations of the ICCPR, the CRPD, and the UDHR, do not permit a State Party to extend the protections of the torture and CIDT framework only to claimants whose access to legal process is already unimpeded. The Special Rapporteur on the independence of judges and lawyers, in her vision-setting report "Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers," U.N. Doc. A/HRC/53/31 (13 April 2023) (Satterthwaite), articulates the same proposition as a matter of international human-rights standards governing access to justice. Satterthwaite ¶ 6 holds that reimagining the rule of law "from the diverse perspectives of those whose rights are too often violated will require that the mandate holder engage with, and learn from, those who are often left outside the protection of the law." Satterthwaite ¶ 7 specifies the groups that bear the brunt of justice-system exclusion, including persons "marginalized due to ethnic or racial discrimination, persons experiencing extreme poverty, persons with disabilities, those of diverse gender identities and sexual orientations, Indigenous Peoples and others facing histories of entrenched dispossession or discrimination." Satterthwaite ¶ 11 states that "rights and obligations relating to the prohibition on torture clearly require judicial independence and its absence raises serious concern about accountability" — expressly linking the CAT framework to judicial-independence and access-to-justice analysis. Satterthwaite ¶ 36 states the operative principle in the strongest form available in the contemporary special-procedure literature: "the right to an independent and impartial tribunal encompasses the right to access a court that is not marred by racism, ethnic prejudice, gender discrimination, ableism or other forms of systemic discrimination or bias." Satterthwaite ¶ 45 directly addresses the prosecutorial function in this context: prosecutors are explicitly identified as actors with the discretion and authority to address "overincarceration" and the "overrepresentation of minority and marginalized groups among those incarcerated," and to use that discretion to advance human rights "as envisioned by the Guidelines on the

Role of Prosecutors." Satterthwaite ¶ 46 endorses conviction integrity review units as institutional vehicles for revisiting cases "involving communities that experience systemic discrimination or marginalization," including cases "that involved mistreatment, including the use of torture to coerce false confessions." The IAJ position: where the documented torture or CIDT facts of a case implicate a complainant who belongs to a marginalized or systemically discriminated-against community, the State Party's Article 12 / 13 / 14 / 16 obligations are not satisfied by reference to a generally applicable procedural framework if that framework, as actually administered in cases of this type, fails to deliver protection, prevention, relief, remedy, and punishment. The systemic-discrimination dimension is therefore not a separate optional ground; it is a way of measuring whether the State Party's overall delivery of the five core CAT outcomes is functionally equivalent to what UNCAT requires, evaluated on the population for whom delivery most often fails.

Mode 2 reframe: these are not six "additive" gains, they are six dimensions of domestic shortfall. The framing "why UNCAT still matters" describes the analysis as it appears from inside a domestic doctrinal frame that treats US constitutional and statutory law as the baseline and the treaty as a supplement. The IAJ's normative framing is the inverse. UNCAT, read together with the ICCPR, the CRPD, the UDHR, and the customary international law of the torture prohibition, states what protection, prevention, relief, remedy, and punishment for official torture and CIDT correctly require of a State Party committed to human dignity. The six points above are therefore not six things the treaty "adds"; they are six dimensions on which current US domestic doctrine — exceptional-circumstance and superior-orders defenses where they appear, civil-only liability framings, immunity short-circuits, opacity in the international monitoring record, comparator-based equal protection, and unequal access to justice for marginalized and systemically discriminated-against communities — falls short of what the Constitution faithfully interpreted and the binding treaty obligation together require. The IAJ holds that closing each of those shortfalls is what the law correctly requires of the United States, and that the operational consequences for prosecutors follow from the binding obligation, not from a discretionary policy preference for taking international law seriously.

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.[20] 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.[21] 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, and it does not narrow the substantive content of the United States' treaty obligations. Non-self-execution is a procedural rule about how a treaty becomes directly enforceable in domestic courts; it is not a substantive limit on what the treaty requires the State Party to do. The IAJ holds that the absence of an enacted vehicle aligned

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

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

with UNCAT is itself the implementation failure the CAT Committee identified in 2014 — not a permissible feature of US compliance and not a reason to treat the obligation as discretionary. CAT remains binding on the United States as a matter of international obligation, and it remains operationally relevant to domestic criminal practice in at least three ways that do not depend on direct judicial enforceability: first, as interpretive context where domestic constitutional or statutory text is open to more than one permissible reading — and where the IAJ's position is that the treaty-aligned reading is the legally correct one; second, as authority bearing on offense gravity, complaint protection, and the seriousness of official abuse; and third, as the standard against which implementation gaps must be identified, documented, and reported. None of these is a "narrower" use of the treaty. They are the means by which the binding substantive obligation is operationalized inside a system that has not yet enacted the legislation the Committee called for.

The Charming Betsy canon as a limited aid:[22] 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)[23]. 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 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

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

[23] 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].

rhetorical shield for non-enforcement where domestic law already prohibits the conduct or where the gap must at least be documented and escalated.

Mode 2 corollary on the two-plane framework. The two-plane framework is presented above as the present analytic distinction prosecutors must keep clear inside a system in which Plane A obligations and Plane B remedies are not aligned. The IAJ's normative position is that in a system in compliance with the Constitution and the human-rights treaties it has ratified, the gap between the two planes would be a transient implementation problem rather than a structural feature. Non-self-execution describes the procedural method by which a treaty becomes directly enforceable in domestic court; it does not describe a permissible substantive divergence between what the State Party is bound to do and what its courts can require. The IAJ holds that the United States Constitution, faithfully interpreted, does not authorize a steady-state condition in which jus cogens prohibitions are binding internationally but unenforceable domestically; that condition is the implementation failure the CAT Committee identified in 2014, not a feature of US law that the Constitution requires or permits. The reform direction follows from the premise. Congress should enact the Law Enforcement Torture Prevention Act (most recently introduced as H.R. 3332, 114th Cong., 2015; not enacted), withdraw the Article 16 reservation, repudiate the OLC torture memoranda the Committee found to contain "deeply flawed legal arguments," and establish a National Human Rights Institution accredited to Paris Principles standards. The judiciary should narrow immunity, abstention, and finality doctrines so that they cease to function as accountability shields for conduct the Constitution and the treaties together prohibit absolutely. Until those reforms occur, the two-plane framework is the discipline by which prosecutors keep visible the gap between what the law correctly requires and what current US institutional practice delivers; it is not an endorsement of the gap, and it is not an admission that the gap is consistent with US law correctly understood.

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.[24] 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.

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.

[24]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.)].

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-20260505-001-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)

5. 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.
6. 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.
7. 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:[25]

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.'[26] The IAJ Disability Harmony thesis argues that the *Cleburne* irrational prejudice standard (*City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985)[27] 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.

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

[27]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, 579 (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 affecting federal-court participation, no class-based animus required (civil analogue; criminal vehicles analyzed separately); (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, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (prepared by Juan E. Méndez), ¶¶ 17–22 (torture and CIDT as positions on a single continuum), ¶¶ 31–35 (powerlessness and the doctrine of medical necessity, including disability), and ¶¶ 57–70 (persons with psychosocial disabilities) — disability discrimination can reach the 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-20260505-001-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-20260505-004-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 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.

Comparative and Regional Human-Rights Authorities

- *Cestaro v. Italy*, App. No. 6884/11 (Eur. Ct. H.R., Fourth Section, Apr. 7, 2015) — violation of the substantive and procedural limbs of Article 3 ECHR; State duty to criminalize torture and to provide effective penalties.
- *Bouyid v. Belgium*, App. No. 23380/09 (Eur. Ct. H.R., Grand Chamber, Sept. 28, 2015) — ill-treatment and human dignity; substantive and procedural violations of Article 3 ECHR.
- *Nasr and Ghali v. Italy*, App. No. 44883/09 (Eur. Ct. H.R., Fourth Section, Feb. 23, 2016) — Article 3 substantive and procedural violations; State-secrecy doctrine may not be used to secure impunity for torture.
- Abdülsamet *Yaman v. Turkey*, App. No. 32446/96 (Eur. Ct. H.R., Second Section, Nov. 2, 2004), ¶ 55 — statutes of limitations and amnesties must not operate to grant impunity for torture by State agents.
- *Okkali v. Turkey*, App. No. 52067/99 (Eur. Ct. H.R., Oct. 17, 2006) — impunity arising from inadequate punishment of officials who ill-treat a detainee violates Article 3 ECHR.
- Marguš v. Croatia, App. No. 4455/10 (Eur. Ct. H.R., Grand Chamber, May 27, 2014) — amnesty or pardon for a State official charged with torture or ill-treatment is, in principle, not permissible.
- *Bueno-Alves v. Argentina*, Merits, Reparations & Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 164 (May 11, 2007) — three-element definition of torture: intentional act, severe physical or mental suffering, and a given purpose.
- *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001) — first international holding that an amnesty law for grave human-rights violations lacks legal effect.
- *Almonacid-Arellano v. Chile*, Preliminary Objections, Merits, Reparations & Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154 (Sept. 26, 2006) — source of the conventionality-control duty: national judges must review domestic law against the American Convention.

- *Gelman v. Uruguay*, Merits & Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (Feb. 24, 2011) — an amnesty law lacks legal effect even where popularly ratified.
- Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment), U.N. Doc. HRI/GEN/1/Rev.1 (Mar. 10, 1992) — those who violate Article 7 ICCPR must be held responsible; amnesties are generally incompatible with the duty to investigate.
- S v. Makwanyane, 1995 (3) SA 391 (CC); [1995] ZACC 3 (Constitutional Court of South Africa, June 6, 1995) — comparative constitutional reasoning on dignity and the limits of State power.
- *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (Supreme Court of India, Aug. 13, 1997) — judicial guidelines giving domestic effect to international human-rights obligations pending legislation.
- *Public Committee Against Torture in Israel v. Government of Israel*, HCJ 5100/94, 53(4) PD 817 (High Court of Justice, Sept. 6, 1999) — interrogation methods constituting ill-treatment are unlawful; necessity does not authorize them ex ante.
- Simón, Julio Héctor y otros, Fallos 328:2056 (Corte Suprema de Justicia de la Nación, Argentina, June 14, 2005) — the Punto Final and Obediencia Debida amnesty laws declared unconstitutional and without effect.
- Grundgesetz [Basic Law] art. 19(2) (Germany) — the Wesensgehaltsgarantie: in no case may the essence of a basic right be affected; comparative authority on inviolable core rights.
- Charter of the International Military Tribunal arts. 7–8, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280; Judgment of the International Military Tribunal (1946) — individual responsibility under international law; official position and superior orders are not defenses.

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.
- *Screws v. United States*, 325 U.S. 91 (1945) — § 242 willfulness requirement; specific intent to deprive a person of a federal right made specific by the Constitution or laws.
- *United States v. Guest*, 383 U.S. 745 (1966) — § 241 reaches conspiracies against federally secured rights; conspiracy framework for rights deprivation.
- *Iannelli v. United States*, 420 U.S. 770 (1975) — § 241 contains no overt-act element, unlike the general conspiracy statute 18 U.S.C. § 371; agreement may be proved by direct evidence or inferred from coordinated conduct.
- *Direct Sales Co. v. United States*, 319 U.S. 703 (1943) — a conspiratorial agreement need not be explicit; it may be inferred from a course of conduct — the step from knowledge to intent and agreement may be taken on sufficient facts.
- *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011) — willful blindness as a demanding standard: subjective belief in a high probability that a fact exists, plus deliberate action to avoid learning it; cited for the cabined conscious-avoidance point in the § 241 specific-intent analysis (knowledge, not purpose).
- *Bounds v. Smith*, 430 U.S. 817 (1977); *Christopher v. Harbury*, 536 U.S. 403 (2002) — meaningful access to courts as a secured federal right; access-to-courts doctrine anchoring the injury element.
- 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, 579 (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.

Public-Integrity Federalism / State-Backstop Authorities

- *Skilling v. United States*, 561 U.S. 358 (2010) — narrowing of honest-services fraud (18 U.S.C. § 1346) to schemes involving bribery or kickbacks; first major case in the federalism-narrowing trajectory referenced in A-VII.D.
- *McDonnell v. United States*, 579 U.S. 550 (2016) — narrowed "official act" under 18 U.S.C. § 201; honest-services fraud requires identifiable formal exercise of governmental power, not generalized influence; clear-statement federalism trajectory referenced in A-VII.D.
- *Kelly v. United States*, 590 U.S. 391, 140 S. Ct. 1565 (2020) — federal fraud law requires money-or-property object; honest-services fraud and Hobbs Act do not reach political-retribution schemes that do not have property as their object; public corruption not involving property is left substantially to state law or to the electorate; federalism-narrowing trajectory referenced in A-VII.D.
- *Trump v. Vance*, 591 U.S. 786 (2020) — state criminal process is not categorically displaced merely because a matter implicates a federal official; defeats categorical claims of state-prosecutorial incompetence; fact-specific Supremacy Clause protection remains available where it properly applies; cited in A-VII.D as the state-backstop authority that completes the federalism trajectory.

- *Snyder v. United States*, 603 U.S. 1, 5, 14–15, 20 (2024) (Kavanaugh, J., for the Court) — most recent narrowing of 18 U.S.C. § 666 to bribery (not gratuities); cited in A-VII.D for the federalism-canon proposition; dissent's "unwarranted power" phrasing (a quotation from the record below; slip op. at 2 (Jackson, J., dissenting) (quoting App. 14–15)) is not attributed to the majority.
- Amie Ely, *The Anticorruption Manual: Helping State Corruption Prosecutors Fill the Role the U.S. Supreme Court Expects Them to Play* (NAAG Attorney General Journal 2021), discussing the underlying NAAG *Anticorruption Manual: A Guide for State Prosecutors* (Ely & Walker eds., 2021) — parallel-context source for the state-backstop principle the IAJ identifies in A-VII.D for the torture/CIDT context.

APPENDIX I — A SUBSTANTIVE-JUSTICE ARCHITECTURE FOR DOMESTIC UNCAT ENFORCEMENT: WHAT THE DEPARTMENT OF JUSTICE WAS NAMED TO DO

READING NOTE — This Appendix is written entirely in Mode 2. It describes the substantive-justice architecture the IAJ holds the Constitution, Article VI as applied to UNCAT, and the comparative authority of major comparative constitutional systems support. It does not describe current US doctrinal practice. The case walkthroughs are fictional composites drawing on documented patterns from CAT Committee Concluding Observations, Special Rapporteur communications, OIG reports, and the public record; they are not reports of identifiable matters. Mode 1 operational duties for prosecutors working within the current US architecture are addressed throughout the main Guide. This Appendix exists to make the reform thesis visible at full strength and to give the prosecutor reading the Guide a complete picture of the institution the United States bound itself to construct when it ratified UNCAT and named its principal federal law enforcement department "Justice".

Part I — The Architecture and Its Constitutional and Comparative Lineage

A substantive-justice architecture is a constitutional arrangement in which the State's commitment to deliver justice on the violations it has condemned absolutely is built into the operating structure of the State itself — not left to discretionary recovery by individual officials acting against doctrinal headwinds. The architecture has four working parts. Prosecutors function as corrective constitutional officers, not only as enforcement officers, with affirmative duties to identify and document substantive-justice failures and to escalate them upward through institutional channels until they reach a decision-maker with authority to correct the deficiency. Supervisory officials, agency heads, the Attorney General, and the Solicitor General each carry mandatory documentation and response duties at their level of the chain. The judiciary functions as an affirmative review court with corrective-decree authority, reaching the merits of documented substantive-justice gaps without the discretionary doctrines of restraint that currently insulate violations from review. The State Party operates a continuing reporting and reform duty to international monitoring bodies, with documented implementation gaps producing concrete remediation obligations rather than diplomatic notation.

DEFINITION — "Corrective decree" as used in this Appendix. "Corrective decree" denotes the IAJ's proposed Mode 2 remedial architecture: a judicial remedy proportionate to the documented substantive-justice gap, drawing on the full range of judicial powers including statutory construction where possible, declaration of incompatibility where necessary, structural injunction against an institutional practice where lawful, criminal prosecution authorization where the elements are met, and preservation or reporting orders where the domestic court cannot itself deliver the full treaty outcome. The term is not used to describe the full range of remedies currently available in every U.S. court under present doctrine; it describes the institutional function a court should have where documented torture or CIDT demonstrates that existing law fails to deliver protection, prevention, relief, remedy, or punishment.

This architecture is not a fringe theory. It is faithful to the founding-era American constitutional conception, and it is, in attenuated and varied form, supported by comparative constitutional systems that assign courts an affirmative corrective role when ordinary law fails to protect fundamental rights. The departure is the United States. The lineage that supports the architecture can be traced through eight intersecting authorities.

Marshall, *Marbury v. Madison*. Chief Justice Marshall in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), wrote that "it is emphatically the province and duty of the judicial department to say what the law is." Not the option. The duty. Marshall did not contemplate a judicial power that would decline to reach merits because the political question was hard, because a doctrine of restraint had crystallized, because

intervention might unsettle the institutional equilibrium. The modern American doctrinal architecture of discretionary cert, prudential standing, political question abstention, and constitutional avoidance is gloss the Court has added to Marshall's original conception over more than two centuries. The substantive-justice architecture this Appendix describes is a return to what Marshall held the judicial function affirmatively was.

Hamilton, Federalist 78. Hamilton argued that the judiciary's duty is to declare void any legislative act contrary to the Constitution and to be the "faithful guardians" of constitutional limits. Federalist 78 does not contemplate a judiciary that would decline to act because the political branches have spoken, because doctrine has stabilized around the violation, or because correction would require the court to enter remedial decree. The Federalist 78 conception of judicial duty is the corrective conception. The substantive-justice architecture restores that conception against the doctrines of restraint that have displaced it.

Article VI of the Constitution. Article VI provides that the Constitution, federal statutes made in pursuance of it, and treaties "made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The text contemplates a judiciary that will override contrary law to deliver the supreme command. UNCAT, ratified by the Senate in 1994, is part of the supreme law Article VI binds judges to honor. The substantive-justice architecture takes that binding seriously and treats the Article VI command as governing what the State must deliver when an official has committed torture or cruel, inhuman, or degrading treatment under color of law.

Cardozo, *Palko v. Connecticut*. Justice Cardozo in *Palko v. Connecticut*, 302 U.S. 319 (1937), articulated the judicial function as identifying and giving effect to principles "implicit in the concept of ordered liberty." The substantive-justice tradition has continued through Palko's descendants: the protection of bodily integrity, the prohibition of state conduct that "shocks the conscience" (*Rochin v. California*, 342 U.S. 165 (1952)), and the substantive due process tradition that runs through Justice Black's textualist application of the Bill of Rights, Justice Brennan's majority opinions on equal protection and dignity, and Justice Thurgood Marshall's opinions on systemic state injustice. The architecture this Appendix describes is the operational form of that tradition: a constitutional order in which the substantive-justice command is given practical effect by working institutions, not left to discretionary recovery.

Brennan, *Cooper v. Aaron*. Justice Brennan and the unanimous Court in *Cooper v. Aaron*, 358 U.S. 1 (1958), established the principle that constitutional commands are binding on state officials regardless of state institutional resistance. The Court named the duty of state authorities to enforce constitutional rights against their own institutional inertia. The substantive-justice architecture extends that *Cooper v. Aaron* principle from school desegregation to the prosecutorial and judicial functions in the UNCAT context: the State's commitment to substantive justice on torture and CIDT binds every federal and state official acting in those capacities, and institutional resistance is not a defense to the obligation.

The Latin American conventionality control tradition. The Inter-American Court of Human Rights, in *Almonacid Arellano v. Chile*, Series C No. 154 (26 September 2006), *Barrios Altos v. Peru*, Series C No. 75 (14 March 2001), and *Gelman v. Uruguay*, Series C No. 221 (24 February 2011), developed the doctrine of conventionality control: domestic courts of States Parties to the American Convention must, on their own initiative, set aside contrary domestic law to deliver the substantive-justice command of the treaty. The Argentine Supreme Court applied that doctrine domestically in Simón y otros, S. 1767. XXXVIII (14 June 2005), striking down the Full Stop Law (Law 23,492) and the Due Obedience Law (Law 23,521) as unconstitutional and void because they shielded perpetrators of torture and forced disappearance from prosecution — substantive injustice the treaty obligation could not tolerate. The Chilean, Peruvian, Uruguayan, and Brazilian high courts have followed broadly similar approaches. In each case, the judiciary accepted the corrective duty rather than deferring to the political-branch enactment of the unjust law.

The German constitutional tradition. The German Federal Constitutional Court operates under a Basic Law that binds the legislature, executive, and judiciary directly to fundamental rights (Article 1(3)) and

prohibits any law from invading "the essence of a basic right" — the Wesensgehaltsgarantie of Article 19(2). Article 20(3) binds the legislature to the constitutional order and the executive and judiciary to "law and justice" (Gesetz und Recht) — positive law subject to the supra-positive command of justice. The Federal Constitutional Court can declare legislation unconstitutional with immediate effect and require the legislature to remedy the defect within a stated period; it can also enter direct corrective decree where remediation is not forthcoming. This is the substantive-justice architecture operating in a major contemporary constitutional democracy. The German tradition demonstrates that a working corrective-decree judiciary is institutionally feasible without producing the activism-and-overreach pathologies critics of the architecture in the United States most fear.

The South African, Indian, and Israeli traditions. The South African Constitutional Court in S v. Makwanyane, 1995 (3) SA 391 (CC), read the death penalty out of the constitutional order on dignity grounds when the political branches had not. The Indian Supreme Court in *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (13 August 1997), invoked Articles 14, 15, 19(1)(g), and 21 of the Indian Constitution together with CEDAW to create binding guidelines on workplace sexual harassment, filling a legislative gap by direct judicial action. The Israeli Supreme Court in HCJ 5100/94, *Public Committee Against Torture in Israel v. Government of Israel* (6 September 1999), held that interrogation methods used by the Israeli Security Agency constituted torture and CIDT, banned them, and held that the State had no authority to establish ahead-of-time directives for such methods. Each of these courts performed the corrective function the substantive-justice architecture would establish in the United States. None of them is a fringe court; each is the principal constitutional tribunal of a functioning democracy.

Justice Robert Jackson and the Nuremberg jurisprudence. The United States itself, through Justice Jackson as Chief Counsel at Nuremberg, established the foundational principle that international crimes must be reached by individual criminal accountability and that no doctrinal architecture of State, institutional, or office immunity can defeat that obligation. Jackson did not write substantive justice as aspiration. He wrote it as binding law and constructed a tribunal to deliver it. That same Justice Jackson, in That Justice Cannot Be Done Without Process and other opinions, recognized the substantive function of legal process as instrumental to justice rather than substantive in itself. The United States invented the modern accountability architecture for international crimes. The substantive-justice architecture this Appendix describes returns the United States, on torture and CIDT, to the role Jackson and his colleagues established at Nuremberg.

These eight authorities do not, on their own, constitute binding domestic doctrine in the United States today. They are demonstrative. Together they establish three propositions: the substantive-justice architecture is faithful to the founding-era American constitutional conception; it is supported by major comparative constitutional systems that assign courts an affirmative corrective role; and the United States itself, when speaking through Jackson at Nuremberg, articulated its core principles as binding international law. The departure is the present American doctrinal architecture, not the substantive-justice architecture.

Source-status: The IAJ does not contend that current U.S. doctrine already implements this full corrective-decree architecture. The point is that the Marshall-Hamilton conception, the Article VI text, the Cardozo-Brennan substantive-rights tradition, the *Cooper v. Aaron* binding-on-officials principle, the Latin American conventionality-control practice, the German Wesensgehaltsgarantie framework, the South African, Indian, and Israeli activist-corrective examples, and the Nuremberg substantive-justice tradition collectively supply a constitutional lineage and a comparative-feasibility case for the architecture the IAJ proposes. Each authority is used as lineage or demonstration, not as a claim that current U.S. doctrine already compels every step of the architecture. Modern American doctrines of restraint have moved U.S. practice away from the corrective function precisely where torture and CIDT implementation gaps are allowed to persist. The departure, not the lineage, is what this Appendix indicts.

Part II — The Prosecutor as Corrective Constitutional Officer

Under the substantive-justice architecture, the federal prosecutor's role is structurally different from the role the modern American institutional self-conception has assigned. The prosecutor is not, in the architecture, an enforcement officer with policy discretion bounded only by political accountability and bar discipline. The prosecutor is a corrective constitutional officer, whose role is defined by three affirmative duties.

First, the duty to identify substantive-justice gaps. The prosecutor receiving credible evidence of torture, CIDT, or analogous violations must evaluate the facts not only against the available enacted criminal statutes but also against the substantive-justice command of the Constitution as informed by Article VI and the ratified treaty obligation. Where current enacted law does not reach the violation — because the statute does not exist (the LEPTA gap), because the doctrinal interpretation has been narrowed past the substantive command (the qualified-immunity stacking, the prosecutorial-discretion absolutization), or because procedural doctrines insulate the violation (abstention, finality, statute of limitations applied to continuing State acquiescence) — the prosecutor's duty is to identify and document the gap, not to treat the gap as ratifying the violation.

Second, the duty to escalate. A documented substantive-justice gap is not a closed case. It is an open institutional record. The prosecutor escalates the documented gap to supervisory authority, with a mandatory written memorandum identifying the violation, the substantive-justice command, the gap between command and currently available enforcement, and the requested institutional response. Supervisory authority is required to respond — by directing prosecution under available statutes, by requesting clarification from higher authority, or by documenting the gap further and referring it upward. The escalation chain runs from line prosecutor to office head, to Assistant Attorney General, to Attorney General, to Solicitor General where appropriate, and finally to the federal judiciary when the institutional chain has been exhausted without correction. At every level, the duty is documentation, response, and onward escalation; the duty is never silent closure.

Third, the duty to support judicial corrective review. Where the institutional escalation chain has been exhausted without correction, the prosecutor's duty is to present the documented gap to the federal judiciary in the form of a brief, motion, declaratory judgment action, or other appropriate procedural vehicle through which the court can reach the merits. Under the substantive-justice architecture, the federal judiciary is required to reach the merits of a properly presented documented gap, without applying discretionary cert, prudential standing, political question, constitutional avoidance, or absolute immunity to bar review. The corrective decree the court enters — prosecution under available statutes; declaration of unconstitutionality of the offending statute or doctrine; structural injunction reforming the institutional practice; reporting to the international monitoring body — is the State's answer to the violation and discharges the State Party's Plane A obligation.

Under this architecture, the prosecutor who receives credible torture or CIDT evidence and treats the case as closed because the enacted statute does not reach it has not performed the prosecutorial duty. The prosecutor who documents the gap, escalates it, and supports judicial corrective review has. The institutional self-conception of prosecutorial discretion as policy domain dissolves into a more demanding and more honorable self-conception: the prosecutor as the State Party's corrective constitutional officer, the institutional position the Department of Justice was named to occupy.

Having sketched the architecture and the prosecutorial role within it, we turn now to a deep walkthrough of how the architecture would handle a single case from front to end.

Part III — The Architecture in Operation: A Composite Walkthrough

COMPOSITE NOTE — The case that follows is a fictional composite drawing on patterns documented in CAT Committee Concluding Observations on the United States (1999, 2000, 2006, 2014), Special Rapporteur on Torture communications to the United States, the U.S. Civil Rights Commission Disability and Civil Rights reports, judicial-system access-of-justice studies, and the Satterthwaite Special Rapporteur

report A/HRC/53/31. The fact pattern, named persons, and procedural posture are fictional. The institutional dynamics depicted are widely documented in the relevant literature. No fact pattern in this Appendix is intended to identify any actual complainant, court, judge, agency, evaluator, prosecutor, party, or pending case. The composites are designed to demonstrate institutional architecture, not to adjudicate, report, or characterize any specific matter; any resemblance to identifiable persons or proceedings is unintended.

III.A. The Violation and Its Institutional Setup

Consider M.R., a litigant with documented severe mental illness and a documented physical disability requiring assistive device, who has been required to appear repeatedly in a state-level civil judicial proceeding involving the termination of her parental rights. Over the course of fourteen months and seventeen appearances, M.R. has requested accommodations: continuance pending stabilization of psychiatric medication, telephonic appearance, in-court support person, lowered evidentiary procedural pace, and access to documents in formats compatible with her cognitive condition. The state judicial officer assigned to the case has denied each accommodation request, in language increasingly hostile, characterizing M.R.'s condition as "manipulative," "noncompliant," and "designed to obstruct the proceeding." The court clerk's office has, under direction from the chambers, processed M.R.'s pro se filings inconsistently, with several filings recorded as untimely after they were filed within deadline. A court-appointed evaluator with no specialized training in the relevant disability conditions has filed a report characterizing M.R. as "uncooperative" and "resistant to engagement." The state's child welfare agency has filed motions premised on the evaluator's report; the court has granted them. Two emergency hospitalizations of M.R. — documented as acute psychiatric crises directly attributable to procedural events in the case — have been treated by the court as further evidence of "noncompliance" rather than as evidence of the proceeding's effect on M.R.'s health. M.R.'s contact with her child has been progressively restricted, then suspended, on grounds that conflict with the assistive-care recommendations of M.R.'s treating clinicians.

This is, in the IAJ's reading, an Article 16 CIDT violation under UNCAT. The conduct is intentional and systematic. It is committed by State agents acting in their official capacities. It inflicts severe mental suffering. It is committed with discriminatory purpose against a vulnerable population (persons with documented mental illness and physical disability). It crosses the Disability Harmony Gravity Scale into the Level 4 or Level 5 range. It has produced severe psychiatric and physical consequences. And it has been compounded, not corrected, by the institutional response to M.R.'s attempts to invoke ordinary procedural protections.

Under current US doctrine, M.R. has almost no path to relief. Her § 1983 civil suit is likely to fail under absolute judicial immunity (*Stump v. Sparkman*) and quasi-judicial immunity for the evaluator and court personnel. Her appellate options are limited by procedural-default rulings that have accumulated in the underlying record. The state professional-conduct regulator has declined to investigate the judicial officer on jurisdictional and discretionary grounds. The federal civil rights office that received her complaint has declined to open an investigation on resource-priority grounds. M.R. has documented her experience through an Istanbul Protocol-compliant evaluation conducted by a psychologist engaged as an IAJ advisor under the IAJ Psychological Investigation Standard. The evaluation establishes severe mental suffering, intentional infliction, discriminatory purpose, and the causal chain from procedural events to psychiatric consequences. Under the present architecture, the evaluation will sit in IAJ's files and in shadow reports to the CAT Committee; it will not produce a domestic prosecution.

Under the substantive-justice architecture this Appendix describes, the case proceeds as follows.

III.B. The Prosecutor Receives the Documentation

The IAJ transmits the Istanbul Protocol-compliant evaluation, supporting documentation, and a memorandum of law to the United States Attorney's Office for the district in which the violation occurred, with a request that the matter be reviewed for federal criminal prosecution under 18 U.S.C. § 242, § 241,

and where the elements are met, §§ 1512, 1513, and 1519. The transmission is sent under the v70-architecture Methodological Independence framework: IAJ's evaluation has been conducted with methodological independence from law enforcement and prosecutorial authorities, in accordance with Chapter V of the Istanbul Protocol, by a psychologist engaged as an IAJ advisor and investigator; the transmission is undertaken solely to assist the State Party in fulfilling its UNCAT Articles 12, 13, 14, and 16 obligations, not as an extension of law enforcement.

Under the substantive-justice architecture, the line Assistant United States Attorney receiving the transmission does not have the discretion to close the file with a one-line declination memo. Her affirmative duty is element-by-element analysis under the available criminal vehicles and documentation of any gap between the violations identified in the IAJ evaluation and the available statutes' reach as currently interpreted. She begins with § 242: deprivation of M.R.'s rights to due process, equal protection of the laws, access to courts under *Borough of Duryea v. Guarnieri* and *Christopher v. Harbury*, and disability-protected access under the ADA and Rehabilitation Act, by State officials acting under color of law. The agreement and willfulness elements track the conduct: repeated denials of accommodation after actual notice of disability; coordinated processing irregularities by chambers and clerk's office; the unqualified evaluator's report; the granting of motions premised on the unqualified report; the systematic disregard of treating clinicians' recommendations. The *Cleburne* irrational-prejudice analogy supplies analytic structure for the discriminatory-purpose element, used cautiously as the Guide's Section C-VIII directs, anchored to the documented animus in the record rather than collapsing equal-protection doctrine into criminal proof. She concludes preliminarily that § 242 elements are reachable on the facts.

She then turns to § 241. The structural-acquiescence framework the Guide developed in Section C-VIII supplies the analytic path. The prosecutor still must prove each element of § 241 independently: agreement, deprivation of a secured federal right, specific intent to interfere with that right, and the injury or oppression in the enjoyment of that right required by the § 241 structural-acquiescence analysis in this Guide. The composite below assumes those elements can be proved on the documented facts; it does not assert that the framework eliminates the element-by-element burden. The judicial officer, the court clerk acting at chambers' direction, the evaluator, and the child welfare agency officials operated in coordinated conduct producing the deprivation of M.R.'s constitutionally secured rights. The agreement element is satisfied by concert of action with identifiable institutional counterparts, not by mere parallel bureaucratic conformity. The injury element is satisfied by the documented closure of M.R.'s last practical institutional path to protection and meaningful access. The specific-intent element could be found from the documented actual knowledge each official had of M.R.'s disability after multiple documented notices, the repeated choice to proceed in the direction that produced the known harm, and the documented coordination, retaliation pattern, and concealment evident in the record, if the evidence shows a purpose to interfere with secured federal rights rather than mere negligence, error, or bureaucratic conformity. § 241 has no overt-act requirement. The *Lanier* fair-warning analysis must be grounded primarily in the relevant domestic constitutional or federal statutory rights — including due process, equal protection, access to courts, and federal disability-rights protections where applicable; UNCAT's ratified status, object and purpose, and the United States' treaty-compliance representations support notice, interpretive context, and Plane A implementation-gap analysis, but they do not independently establish fair warning for a § 241 or § 242 prosecution where domestic treaty enforceability is contested. Civil immunity doctrines do not bar criminal prosecution.

She also identifies potential § 1512 and § 1513 exposure for the retaliation against M.R.'s communications with treating clinicians and her later contact with civil society documenters, and potential § 1519 exposure for the inconsistent processing of her filings if intent to obstruct can be established. She memorializes this analysis in a charging-decision memorandum that does not yet recommend charges but documents the legal availability of each vehicle.

III.C. The Escalation

Under current US doctrine, the next step would be the AUSA's discretionary decision to close the file or pursue charges. Under the substantive-justice architecture, the next step is mandatory escalation. The AUSA transmits the IAJ evaluation, her element-by-element analysis, and her charging-decision memorandum to her supervisor, with a written request for institutional response. The supervisor's mandatory duty is to review, respond in writing, and either authorize charges, request further development, or document the institutional basis for any non-prosecution decision — in writing, with reasoning that addresses each element identified by the AUSA. A silent closure is not a permitted response.

The supervisor, having received the AUSA's analysis, faces a decision. The case implicates federal-state institutional comity (the state judicial officer); it implicates absolute and qualified immunity doctrines (the judicial officer, the evaluator); it implicates the Department's historic practice of treating disability-discrimination cases as civil rather than criminal matters; and it implicates the resource pressures any first-instance § 241 prosecution generates. Under current architecture, the supervisor would likely close the file with a brief memorandum citing resource priorities and the difficulty of obtaining a conviction. Under the substantive-justice architecture, the supervisor's available responses are narrower: authorize prosecution; document the institutional basis for non-prosecution in writing addressing each element; or escalate to the United States Attorney for the district. Resource-priority closure without addressing the substantive command of §§ 242 and 241 against the documented facts is not permitted; it itself constitutes a documented Article 12 implementation failure that the supervisor must record and that the United States Attorney must respond to on the next level of escalation.

Suppose the supervisor escalates to the United States Attorney, who in turn escalates to the Civil Rights Division of the Department of Justice. The Assistant Attorney General for Civil Rights, having received the documented record, reviews it under the same architecture. She has three available responses. She can authorize prosecution and direct the District to file charges. She can document, in writing addressing each element, the institutional basis for non-prosecution; that documentation then enters the State Party's record for Article 19 periodic reporting to the CAT Committee. Or she can request supplemental development or coordinated review with the Solicitor General where novel doctrinal questions are presented. Under no circumstances, in the substantive-justice architecture, may the Civil Rights Division close the file silently or treat its closure as confidential prosecutorial discretion immune from documentation and review.

Suppose the Assistant Attorney General authorizes prosecution. The matter is now an active criminal case before the United States District Court for the relevant district.

III.D. The Judicial Corrective Function

The defense moves to dismiss on three principal grounds: absolute judicial immunity (for the judicial officer defendant); the absence of clearly established law in the disability-discrimination-as-CIDT context under *Lanier*; and the political question doctrine as applied to federal prosecution of state judicial officers for the conduct of judicial proceedings. Under current US doctrine, at least one of these motions is likely to succeed. Under the substantive-justice architecture, the District Court is required to reach the merits and decide the questions presented.

On the absolute immunity question: the court holds, applying the established distinction the Guide's C-VIII section relies on, that civil judicial immunity doctrines (*Stump v. Sparkman*, *Mireles v. Waco*) are civil-damages doctrines that do not bar criminal prosecution under § 242 or § 241 where the statutory elements are proved. The court enters that holding on the record; the holding becomes available for future cases. On the *Lanier* question: the court reviews the constitutional anchors (Fifth and Fourteenth Amendment due process, First Amendment access to courts, ADA and Rehabilitation Act statutory protections), the documented animus, the actual notice received by each official, the documented coordination, and the prior CAT Committee Concluding Observations identifying the United States' obligations on disability and on access to justice for vulnerable populations. The court holds that the relevant rights were sufficiently clearly established under the *Lanier* general-statement-of-law standard. On

the political-question motion: the court holds that, on the record presented in this prosecution, federal prosecution of state officials for federal civil-rights violations under §§ 241, 242, and 249 is a paradigmatic exercise of the federal supremacy contemplated by Article VI and the Fourteenth Amendment, not a political question subject to abstention. The motions are denied.

The architecture does not eliminate adversarial testing. The court still considers immunity, federalism, admissibility, Daubert, and fair-warning objections; the prosecution still bears the element-by-element burden of proof; the defendants still receive every constitutional protection of the criminal process. What the architecture changes is what the court is permitted to do with that testing: the court may not use doctrines of restraint to make the documented treaty-compliance gap disappear without deciding whether the State has delivered the substantive-justice outcomes the obligation requires. The case proceeds to trial. The element-by-element record the AUSA documented becomes the structural spine of the prosecution. The IAJ Istanbul Protocol-compliant evaluation is admitted as relevant evidence of severe mental suffering, causation, and intent, subject to ordinary evidentiary rules; the Disability Harmony Gravity Scale is referenced as IAJ analytic framework, not as binding domestic law; the *Bounds v. Smith* and *Christopher v. Harbury* meaningful-access doctrine anchors the injury analysis. The defendants are convicted on § 242 and § 241 counts. Sentencing reflects the gravity of the violations and discharges, in part, the State Party's Article 4 (for analogous purposes) and Article 16 punishment obligations.

Beyond the criminal prosecution, the court enters two further corrective decrees, on the record built during the prosecution. First, a declaration that the state judicial accommodation practice as documented in the record violates the Fifth and Fourteenth Amendment due process clauses and the ADA where applied to litigants with documented disabilities consistent with the M.R. fact pattern; the declaration creates precedent applicable to future cases. Second, a structural injunction directing the state judicial system to implement specified accommodation, evaluator qualification, and clerk's-office processing reforms within a stated period, with continuing federal court oversight modeled on the post-Brown structural-injunction tradition. The decrees are entered under the Article VI binding command and the substantive-justice architecture's recognition of the federal judicial corrective function.

The State Party's response to the CAT Committee in the next Article 19 periodic report can now include the criminal prosecutions, the declaration of unconstitutionality, and the structural injunction. As to M.R.'s case, the State Party has begun to perform the Plane A obligation in a manner capable of satisfying treaty review: investigation has occurred, prosecution has been pursued, the institutional practice has been corrected, the record has been preserved, and the remaining remedial, rehabilitation, and non-repetition components are now identifiable and capable of being monitored. The Article 16 violations she suffered have produced criminal punishment commensurate with the gravity of the conduct; the institutional practice that produced them has been reformed by judicial decree; the State Party's reporting and reform duty has been met.

That is what the substantive-justice architecture looks like in operation on one case. We turn now to what that operation would mean for the institution whose name is "Justice".

Part IV — What This Would Mean for the Department

The Department of Justice carries its name as a standing standard. Not the Department of Law, or the Department of Litigation, or the Department of Federal Prosecutions. The Department of Justice. The name was chosen because justice was understood to be the institution's substantive purpose — not its procedural deliverable, but its constitutive end. Justice is the corrective response a political community owes to a wrong. When a person has been tortured or subjected to CIDT by an agent of the State, every component of justice — protection so the violation does not continue, prevention so it does not recur, relief from its continuing consequences, remedy for what was done, and punishment commensurate with the gravity of the wrong — is owed to the victim and to the political community whose name was used to commit the wrong.

The United States ratified UNCAT in 1994 with the Senate's advice and consent. From that moment forward, the United States has held itself out to the international community as a State Party whose seal validates the absolute, non-derogable, jus cogens prohibition of torture and CIDT. Article VI of the Constitution made that treaty part of the supreme law of the land. Every administration since 1994 has reaffirmed the prohibition at international fora; every periodic report submitted to the CAT Committee has restated the State Party's commitment; every Secretary of State and Attorney General who has spoken on the matter has condemned torture absolutely.

And then the Department of Justice has not, in many of the cases that have arisen domestically, delivered the prosecutions the prohibition requires, and the failure is not merely that the Department lacks every criminal tool. The failure is that it lacks and has not built the architecture that would require those tools to be used where torture or CIDT is credibly documented, and would document every gap where those tools are incomplete. 18 U.S.C. § 2340A criminalizes torture committed outside the United States but does not reach domestic conduct. The Law Enforcement Torture Prevention Act has been introduced repeatedly (most recently as H.R. 3332, 114th Cong., 2015) and has never been enacted. §§ 242 and 241 exist but have rarely been brought against officials whose conduct meets UNCAT's definitions, and almost never against the structural-acquiescence pattern. The CAT Committee told the United States this in 2014; the State Party acknowledged the observations and continued the present arrangement.

The substantive-justice architecture this Appendix describes would change the Department's relationship to its name. Under the architecture, the prosecutor who receives credible torture or CIDT evidence does not face the present choice between bringing a Mode 1 case that the doctrine will defeat and writing a silent declination memo that the institution will absorb. The prosecutor faces a different choice: bring the case the elements support; document and escalate the gap where elements are reachable but doctrine has been narrowed past them; or document, escalate, and support judicial corrective decree where the architecture itself is failing. At every step, the institutional record is built, not erased. At every step, the State Party's obligation is engaged, not deferred. At every step, the Department's name is honored by the work the Department's officers do, not contradicted by it.

There is a question, in each prosecutor's career, of whether the institution they joined is the institution they thought they joined. Many of the best ones leave when they conclude that the answer is no. The substantive-justice architecture is what would allow the answer to be yes. The Department of Justice would, under the architecture, be the institution its name describes. Not as aspiration, but as operating arrangement. Not as the work of exceptional individuals working against institutional gravity, but as the gravity of the institution itself.

That is what is at stake. We turn now to the diagnostic question: why does the architecture not exist?

Part V — The Gap Between Architecture and Current Practice

The substantive-justice architecture is not present in current US institutional practice. The departure is not localized; it is structural, distributed across multiple doctrinal layers, each of which operates to insulate the substantive-justice failure from corrective review. The Guide's existing diagnostic architecture has already catalogued the dimensions; this Part traces each to its operative effect and to the Guide section that documents it.

Discretionary cert and prudential standing. The Supreme Court hears a small fraction of cases brought to it and gives no reasons for refusal. Even where Article III standing is satisfied, the Court can decline to reach the merits on prudential grounds. Marshall's duty to say what the law is has become, in practice, a duty exercised only where four Justices agree the question warrants attention. The substantive-justice architecture requires affirmative review duty on documented gaps; current practice permits discretionary refusal. See Guide Section C-IV (Six Dimensions of Domestic Shortfall) for the structural consequences in the UNCAT context.

Political question abstention. *Baker v. Carr* nominally defined limited categories; *Rucho v. Common Cause* and adjacent cases have expanded them in practice. The substantive-justice architecture requires merits review of documented Article VI / UNCAT violations regardless of the political-question character of the surrounding institutional dispute; current practice permits the doctrine to bar review of exactly the violations the architecture is designed to reach.

Constitutional avoidance. The Court will construe a statute to avoid a constitutional question where possible. The doctrine is sensible in many contexts; in the UNCAT context, it operates to prevent the Court from reaching the question of whether current federal criminal-law gaps in domestic torture and CIDT enforcement violate Article VI and the State Party's ratified obligations. The substantive-justice architecture requires the question to be reached; constitutional avoidance permits it to be perpetually deferred.

Qualified and absolute immunity. *Harlow v. Fitzgerald* and its progeny insulate officials from civil consequences for constitutional violations unless the right was clearly established in the *Anderson v. Creighton* sense — a standard the Court itself controls. Absolute judicial immunity (*Stump v. Sparkman*) and absolute prosecutorial immunity (*Imbler v. Pachtman*) provide additional civil-damages protections. The Guide's § 241 analysis identifies these as civil-damages doctrines that do not bar criminal prosecution, but the institutional practice has treated them as effectively foreclosing accountability of any kind. The substantive-justice architecture distinguishes civil immunity from criminal review and treats neither as immunizing a substantive-justice failure from corrective decree.

Abstention and finality doctrines. Younger, Pullman, Burford, and Rooker-Feldman abstention doctrines, procedural default, res judicata, and statute of limitations all operate as procedural barriers to the corrective function. Each was developed for sensible reasons in particular contexts; each has been extended to insulate substantive-justice failures from review. The Guide's Plane A treaty-compliance baseline measures domestic outcomes against UNCAT's substantive requirements without regard to whether procedural doctrines have closed the domestic path; the substantive-justice architecture would build that measurement into the institutional structure itself.

Non-self-execution. *Medellín v. Texas* holds that ratified treaties create no domestic rights enforceable in court absent implementing legislation. The Article VI text appears to reject this on its face; the Court has nonetheless made it the operating doctrine. The substantive-justice architecture would restore Article VI's textual command: ratified treaties are the supreme law of the land, binding on judges, requiring corrective decree when the State Party's implementation fails to deliver the substantive obligation. See Guide Section A-V (UNCAT Treaty-Compliance Baseline) for the operational consequences.

Prosecutorial discretion as policy. The modern American institutional self-conception treats prosecutorial discretion as near-absolute domain of executive policy (*United States v. Armstrong*, *Wayte v. United States*). The substantive-justice architecture treats prosecutorial discretion as a structured corrective duty bounded by Article VI, the UNCAT obligation, and the substantive-justice command. The Guide's structural-acquiescence § 241 framework operates within current doctrine to reach the prosecutor or judge who knowingly joins an institutional pattern; the substantive-justice architecture would build that constraint into the office definition itself.

The cumulative effect of these doctrinal layers is the structural failure the Guide's Six Dimensions of Domestic Shortfall section documents. The State Party has a binding obligation to deliver protection, prevention, relief, remedy, and punishment for torture and CIDT, without exception. The cumulative effect of discretionary cert, political question, constitutional avoidance, immunity, abstention, finality, non-self-execution, and absolutized prosecutorial discretion is to make that delivery, in many real cases, institutionally unavailable. That cumulative failure is the gap between architecture and current practice that this Appendix has been describing. It is also, in the IAJ's reading, the State Party's continuing Plane A implementation failure under UNCAT — a failure documented across CAT Committee Concluding

Observations from 1999 to the present, across Special Rapporteur communications, and across the public record of every analogous case the United States has not prosecuted.

Part VI — The Architecture Across the Gravity Scale: Other Cases the Current Architecture Cannot Reach

The deep walkthrough in Part III showed the substantive-justice architecture handling one fact pattern. The architecture is general. It handles every category of UNCAT-defined violation, not only the disability-discrimination judicial-CIDT pattern that Composite C walked. Three additional fact patterns illustrate the architectural range and document the further dimensions of the current practice gap.

VI.A. Extraterritorial Custodial Torture

Consider a fictional composite: K.A., a foreign national detained at a US-controlled overseas facility, subjected over an extended period to prolonged sleep deprivation, stress positions, threats of harm to family members, and waterboarding. The conduct is committed by US personnel acting under official authority. The facts pattern after the CIA detention program documented by the Senate Intelligence Committee report and by the CAT Committee's 2014 Concluding Observations on the United States.

The available criminal vehicle is 18 U.S.C. § 2340A, which criminalizes torture committed outside the United States. The substantive-justice architecture's prosecutorial duty supplies the analytic path. The prosecutor still must prove each element of § 2340A independently. The AUSA assigned to the case conducts element-by-element analysis: specific intent to inflict severe physical or mental pain; act of an official acting under color of law; outside the territorial United States; meeting the UNCAT Article 1 definition. Each element is reachable on the documented facts. The defense will argue OLC memoranda authorizing the conduct provide good-faith reliance; the prosecutor must address the OLC defense on the record. The CAT Committee has specifically characterized those memoranda as containing "deeply flawed legal arguments" (CAT/C/USA/CO/3-5, 2014). The substantive-justice architecture requires that characterization to be considered as part of the *Lanier* fair-warning analysis: an official who acted in reliance on legal arguments the international supervisory body has formally identified as deeply flawed does not have unconditional good-faith reliance protection. The prosecution proceeds; the corrective decree includes both individual criminal accountability and a declaration on the unavailability of OLC memoranda as automatic good-faith defense in international-crime prosecutions.

What the current architecture cannot reach in K.A.'s case is exactly this prosecution. The Department of Justice declined to prosecute the CIA program. The structural arrangement that produced that declination — OLC opinions, Executive Branch self-protection, judicial doctrines insulating the program from review — is the architecture the substantive-justice arrangement would correct. The Guide's Plane A treaty-compliance baseline already documents this gap; the architecture would discharge it.

VI.B. Domestic Custodial CIDT: Solitary Confinement, Denial of Medical Care, Retaliation

Consider a fictional composite: T.L., a US citizen held in state correctional custody, subjected to prolonged solitary confinement (defined by the Mandela Rules as confinement exceeding fifteen consecutive days), denial of medical care after documented diagnosis of acute mental illness, and retaliatory administrative segregation following T.L.'s complaint about the original confinement. The conduct is committed by corrections officials acting under color of law; the cumulative pattern produces severe psychiatric deterioration; the retaliation pattern documents intent. The fact pattern tracks *Ashker v. Brown* (N.D. Cal.) and adjacent solitary-confinement litigation, with the substantive-justice criminal analysis layered on top.

The available criminal vehicle is 18 U.S.C. § 242: deprivation of T.L.'s Eighth Amendment right against cruel and unusual punishment and Fifth Amendment due process rights by State officials acting under color of law. The Article 16 CIDT threshold is met on the prolonged-solitary-plus-denial-of-care pattern; the Article 1 torture threshold is approached on the retaliation-after-complaint pattern. The

structural-acquiescence § 241 framework applies if multiple corrections officials, medical staff, and administrative reviewers coordinated to suppress complaints or to coordinate the retaliatory transfer. § 1513 reaches the retaliation against T.L.'s communications with civil-society documenters or treating clinicians. The Guide's Disability Harmony Gravity Scale, where T.L. has a qualifying mental health condition, supplies additional analytic framework.

Under current practice, T.L.'s case typically resolves through civil litigation (§ 1983 actions, ADA claims) with qualified immunity narrowing recovery and no criminal accountability. The substantive-justice architecture would treat the documented pattern as a criminal matter under § 242 and, where appropriate, § 241. The corrective decree following conviction would include individual criminal punishment, declaration of unconstitutionality of the state correctional administrative segregation practice as applied, and structural injunction reforming the facility's solitary-confinement-and-medical-care practices. The CAT Committee has identified US prolonged solitary confinement as a treaty-implementation concern (CAT/C/USA/CO/3-5, 2014, ¶ 20); the corrective decree would form part of the State Party's response in the next Article 19 cycle.

VI.C. Parent-Child Separation as Torture or CIDT

Consider a fictional composite: J.G., a parent who entered the United States with her four-year-old child seeking asylum, was apprehended by federal immigration authorities, and was separated from her child for an extended period under a federal practice of separating parents from children at the border or shortly after intake. The child was placed in a separate ORR facility hundreds of miles from the parent. Communication between parent and child was minimal and intermittent. Both J.G. and the child manifested documented severe psychological deterioration during the separation, including post-traumatic symptoms in the child that persisted long after reunification. The fact pattern tracks the family-separation practice the DHS Office of Inspector General, the HHS Office of Inspector General, and the Senate Judiciary Committee have documented in the recent public record; the Special Rapporteur on Torture has formally characterized prolonged parent-child separation in analogous contexts as torture or CIDT.

The conduct meets the Article 16 CIDT threshold and, in many documented cases, the Article 1 torture threshold. It is committed by federal officials acting in their official capacities. It inflicts severe mental suffering on both parent and child. It is committed with discriminatory purpose against a vulnerable population. The Troxel II framework, while external to the IAJ corpus, has developed at length the constitutional protection of the parent-child relationship under Fourteenth Amendment substantive due process. The interlocking analyses converge: under the substantive-justice architecture, the family-separation practice is a documented violation of constitutional substantive due process, of the State Party's Article 1 and Article 16 obligations, and of the Convention on the Rights of the Child principles — used here as signed-but-unratified interpretive and object-and-purpose context, not as a directly enforceable domestic treaty obligation.

The available criminal vehicles are § 242 (deprivation of substantive due process and equal protection rights by federal officials), § 241 (conspiracy where multiple officials coordinated to implement the separation practice with actual knowledge of the severe psychological consequences — the structural-acquiescence framework reaches this directly), and §§ 1512 / 1513 / 1519 where evidence was destroyed, falsified, or where retaliation against complainants occurred. The substantive-justice architecture's prosecutorial duty applies: element-by-element analysis; documented escalation; judicial corrective decree if escalation is unsuccessful; declaration of unconstitutionality of the practice; structural injunction directing reform; reporting to CAT Committee and to the Special Rapporteur on Torture as part of the next Article 19 cycle.

What the current architecture has not produced — criminal accountability for the family-separation practice — the substantive-justice architecture would. The Department of Justice did not prosecute the officials who designed and implemented the practice; the convergent documentation from DHS OIG, HHS OIG, the Senate Judiciary Committee, the Special Rapporteur, and the medical community establishing the

severe psychological consequences was extensive. The structural-acquiescence § 241 framework reaches the coordinated multi-official pattern; the constitutional and treaty anchors are robust; the fair-warning analysis would be strongly supported by Troxel, *Santosky v. Kramer*, the CAT Committee record, and Special Rapporteur communications, but any criminal prosecution would still require proof that the relevant constitutional or statutory right was sufficiently clear under the applicable *Lanier* standard on the documented facts; a central barrier was the doctrinal architecture of prosecutorial discretion, institutional self-protection, and implementation non-equivalence that the substantive-justice architecture is designed to expose and correct.

VI.D. The Common Structural Lesson

Across all four fact patterns — disability-discrimination judicial CIDT (Composite C), extraterritorial custodial torture (VI.A), domestic custodial CIDT (VI.B), and parent-child separation (VI.C) — the substantive-justice architecture handles the case where the current architecture cannot. The structural lesson is not that the architecture is designed for one fact pattern. The structural lesson is that the architecture is general: it operates wherever the State Party's UNCAT obligation produces a documented gap that current US doctrine prevents from being filled. The prosecutor working under the architecture has a coherent role across the full Gravity Scale and across the full range of fact patterns the obligation reaches. The Department of Justice, operating the architecture, would be the institution its name describes. The State Party would, for the first time since ratification, be delivering substantive justice on the prohibition it has condemned absolutely.

The Guide's diagnostic, operational, and structural-acquiescence analyses in the main text describe the State Party's present implementation failure. This Appendix has described, by contrast, the substantive-justice architecture the State Party would build under a faithful reading of the Constitution, Article VI, and the comparative-authority support of major comparative constitutional systems. The gap between the description in the main text and the description in this Appendix is the gap that defines the Mode 2 reform thesis. Closing that gap is what the Institute for the Advancement of Justice and Human Rights exists to support.

— END OF APPENDIX I —

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

June 8, 2026

IAJ Document Version Control Log

Document ID: IAJ-GDE-20260608-001-PUB
Release Date: 2026-06-08

Version History

Version	Date	Author(s)	Summary of Changes
V1.1	2026-06-08	IAJ	Two-mode architecture and Appendix I added. McDonnell, Kelly, and Vance comparative authorities. Federalism trajectory and Bluebook italicization baseline. Audit-pass corrections — Kelly pinpoint, italicization gaps. A-IX Mandatory Jus Cogens Interpretation section added. Snyder attribution discipline. Publication-readiness fixes — footer ID, Vance separated, C-X subsection. Hajrizi Dzemajl Article 16 parenthetical, C-X completed, A-IX.F narrowed. Restored 8 v89→v1.3 truncations. Family-separation softening, political-question contextualized. Period fix and log cleanup.
V1.0	2026-05-10	IAJ	Initial release

Classification: IAJ Guide
Access Level: Public