

INSTITUTE FOR THE ADVANCEMENT OF JUSTICE & HUMAN RIGHTS

COLLABORATIVE PROSECUTION FRAMEWORK

Joint State–Federal Enforcement of the Prohibition of Torture and Cruel, Inhuman, or Degrading Treatment in the United States

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

I. THE GOVERNING CANON

The United States ratified the Convention against Torture through a combined federal–state execution architecture. The Federal Government alone ratified the treaty and remains the State Party responsible internationally. But the ratification record represented that domestic torture and cruel, inhuman, or degrading treatment were already reachable through existing federal and state law together, while new federal legislation was needed only to complete the Article 5 extraterritorial jurisdiction that the States could not supply. Domestic enforcement is therefore neither exclusively federal nor exclusively state. It is a joint state–federal prosecution responsibility, and no domestic torture or CIDT implementation gap may be declared by one sovereign acting alone: a true gap exists only after the combined state–federal architecture has been tested to its maximum fair reach, referral or coordination has been considered, and the residual non-reach has been documented.

“Joint prosecution responsibility” in this Framework means mandatory combined screening, referral, coordination, and gap documentation. It does not mean that every case must be co-indicted or tried in a single joint proceeding. Cases may lawfully proceed state-only, federal-only, sequentially, or in coordination; what may never occur consistently with the ratification architecture is unilateral closure — a declination by either sovereign that never tested, referred, or documented the other sovereign’s available role.

II. THE RATIFICATION-RECORD FOUNDATION

Four passages of the ratification record, read together, state the architecture. First, the federal–state reservation: the United States implements the Convention to the extent the Federal Government exercises legislative and judicial jurisdiction, and “to the extent that constituent units exercise jurisdiction over such matters, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Convention” — with the Senate report’s express statements that the reservation “would not exempt State or local officials from the prohibitions against torture in the Convention,” S. Exec. Rep. No. 101-30, at 8 (1990), and “would not exclude state or local officials from the prohibitions on torture contained in the Convention,” *id.* at 13; see also *id.* at 29 (reservation text in the resolution of ratification). Deposited with the United Nations, the federal–state provision took final form as Understanding (5).

Second, the Article 4 analysis: acts of torture committed in the United States “would appear to violate criminal statutes under existing state or federal law”; where the acts are subject to state jurisdiction, “the offense would presumably be a common crime such as assault or murder”; where federal jurisdiction exists, similar common crimes are defined by federal law, state offenses are assimilated in the special maritime and territorial jurisdiction (18 U.S.C. § 13), and federal law supplies two “constitutional crimes,” 18 U.S.C. §§ 241 and 242. The report anchors those crimes in the Eighth, Fifth, and Fourteenth Amendments, notes Fourth and Sixth Amendment applications, cites a § 242 coerced-confession prosecution (*Williams v. United States*, 341 U.S. 97 (1951)), and concludes that torture within the United States “will violate some federal or state criminal law” and that existing law is “sufficient to implement Article 4, except to reach torture occurring outside U.S. jurisdiction.” *Id.* at 18–19.

Third, the Article 5 analysis: existing federal and state law sufficed for territorial jurisdiction; implementing legislation was needed only for Article 5(1)(b) jurisdiction over United States nationals abroad and Article 5(2) jurisdiction over foreign offenders later found in United States territory. *Id.* at 20. Section 2340A is accordingly the extraterritorial completion statute of the architecture — not the domestic master statute, not a displacement of state responsibility, and not the boundary of federal domestic responsibility.

Fourth, the administration’s ratification-era correspondence: any prosecution in the United States for torture “will necessarily be pursuant to existing or subsequently enacted Federal or State law,” and existing federal and state law appeared sufficient. *Id.* at 41. The equivalence representation on which the United States ratified was therefore, in substantial part, a representation about state criminal law — including the ordinary common crimes of the States — operating jointly with the federal constitutional crimes.

III. THE STATE ARCHITECTURE

The state inquiry never ends with asking whether a statute is titled “torture.” The competent state authority must test the whole state criminal-law architecture: enacted criminal statutes (homicide, assault and aggravated assault, battery, false imprisonment, kidnapping, criminal threats and coercion, stalking, dependent-adult, elder, and child abuse, official misconduct and abuse of office, obstruction, witness intimidation, retaliation, and conspiracy); retained common-law crimes, in the jurisdictions that preserve them — the common-law offense of misconduct in office, as retained for example in Maryland, is a paradigm public-office vehicle — and common-law definitions that persist within codified offenses elsewhere; state constitutional provisions on cruelty, due course of law, personal security, and equality, as interpreted by the State’s courts; and state civil-rights or color-of-law offenses where enacted. In jurisdictions that have abolished common-law crimes — California Penal Code § 6 is the express example — the same work is done by the statutory architecture, and its adequacy to the conduct is itself part of the equivalence record.

The state prosecutor holds what the federal prosecutor constitutionally lacks: the ordinary police-power criminal law, including, where retained, the common law — the gap-filling stratum available where statutes imperfectly track the conduct and courts properly decline to construct offenses from constitutional text alone. A state declination that answers only “no torture statute” without testing this architecture is an incomplete execution-architecture analysis.

IV. THE FEDERAL ARCHITECTURE

There are no freestanding federal common-law crimes (*United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) 32 (1812)); that is a boundary inside the architecture, not the architecture. The federal authority must test: the constitutional crimes, §§ 241 and 242, whose right-anchors include the Fifth, Eighth, and Fourteenth Amendments and, in appropriate cases, Fourth and Sixth Amendment and federal statutory rights; the obstruction and retaliation statutes, §§ 1512 and 1513, and the falsification statute, § 1519, where their elements are met; § 249 where its bodily-injury or instrumentality elements and jurisdictional requirements are independently satisfied — noting that § 249 incorporates the bodily-injury definition of § 1365(h)(4), which includes physical pain, illness, and impairment of a bodily member, organ, or mental faculty, while excluding solely emotional or psychological harm, and that no single statute’s element structure is the boundary of UNCAT enforcement; federal common crimes where federal jurisdiction exists, and state offenses assimilated under 18 U.S.C. § 13 in the special maritime and territorial jurisdiction; and § 2340A for the extraterritorial categories. A federal declination that answers only “no domestic § 2340A analogue” or “local matter” without testing the constitutional-crimes pathway and without a state-referral analysis is an incomplete execution-architecture analysis.

V. THE JOINT ENFORCEMENT ANALYSIS

Every credible domestic torture or CIDT allegation triggers a joint state–federal enforcement analysis. No prosecuting office may close such a matter by analyzing only its own most obvious charging vehicle. The receiving office — state or federal — must complete, and its declination or gap memorandum must record, the following seven determinations:

1. State statutory vehicles: which state criminal statutes were tested against the conduct, element by element, and with what result.
2. State common-law vehicles: whether the State retains common-law crimes or common-law definitions, and, if so, which were tested.
3. State constitutional and public-office doctrines: which state constitutional provisions and public-office offenses were tested.
4. Federal constitutional-right vehicles: whether §§ 241 and 242 were tested on the applicable right-anchors, under the fair-warning standards of *Screws* and *Lanier*.
5. Federal statutory vehicles: which of §§ 1512, 1513, 1519, 249, the assimilated and common-crime provisions, and any custodial, enclave, or federal-officer jurisdiction were tested.
6. Referral and coordination: what referral to, or coordination with, the other sovereign’s competent authority occurred, and, where none occurred, why coordination was not possible or was lawfully ruled out.
7. The residual: why the combined architecture fails to reach the conduct, stated element by element, with the residual documented as an implementation gap of the combined system — never of one sovereign alone.

A state declination without federal-rights referral, or a federal declination without state-law referral where state law may reach, is not a completed UNCAT response. It is an incomplete execution-architecture analysis, and, under the IAJ Prosecutorial Misconduct Standard, a form of execution-architecture abandonment.

VI. THE COORDINATION MACHINERY

The Framework proposes no novel procedure; it organizes machinery that exists. The constitutional foundation is the dual-sovereignty doctrine: successive or parallel state and federal prosecutions of the same conduct are permitted because each sovereign vindicates its own offenses (*Gamble v. United States*, 587 U.S. 678 (2019)). Dual sovereignty, ordinarily discussed as a limit on double-jeopardy protection, functions here as the treaty-performance enabler — the constitutional feature that makes the combined architecture executable.

On the federal side, the Department’s dual and successive prosecution policy (the *Petite* policy, Justice Manual § 9-2.031) governs federal prosecution following state action; its inquiry into a substantial federal interest left demonstrably unvindicated is precisely where the Article 4 gravity analysis and the parity discipline of the companion Guide operate. A federal declination reciting the policy without the treaty-gravity analysis is an incomplete record. Operational instruments include cross-designation of state prosecutors as Special Assistant United States Attorneys and of federal prosecutors under state appointment; the Federal Bureau of Investigation’s color-of-law jurisdiction (28 C.F.R. § 0.85); joint task forces and parallel-investigation practice among the Civil Rights Division, United States Attorneys, and district attorneys; and, on the state side, attorney-general supersession, special-prosecutor, and grand-jury

authorities where a local office is implicated or conflicted — the functional-independence requirement of the IAJ Prosecutorial Misconduct Standard, Part VI, applied across sovereigns.

VII. THE GAP-DECLARATION GATE; SOURCE STATUS

The gate: no domestic torture or CIDT implementation gap may be declared by one sovereign alone. The combined state–federal execution architecture must be tested first, the seven determinations of Part V completed and recorded, and the residual documented as a failure of the combined system. Gap documentation then proceeds under the companion Guide’s two-plane discipline: fair-warning, lenity, and ex post facto limits remain Plane B constraints honored in full; the residual shortfall is recorded on Plane A as an implementation gap of the United States, never converted into judicial permission, and never attributed to a single sovereign’s isolated view of its own statutes.

Source status. The ratification-record propositions of Part II are verified against S. Exec. Rep. No. 101-30 and the Senate resolution of ratification. The joint-responsibility canon, the seven-determination analysis, and the gap-declaration gate are the IAJ’s institutional determinations, reached by independent investigation of that record; authorities support, and do not decide, these determinations. The IAJ’s interpretive standard for the Convention and the peremptory norm is stated in UNCAT and *jus cogens*: A contemporary perspective, a companion to this Framework. Where this Framework states what the combined architecture requires, it speaks in the register of the companion Guide’s source-status discipline, and nothing in it authorizes any office to disregard governing domestic law.

VIII. THE JOINT PROSECUTION COVERAGE MATRIX

This Part states the joint enforcement analysis of Part V as a single coverage matrix, so that a state and a federal prosecutor reading the same credible torture or CIDT matter can see, at a glance, what each sovereign’s architecture reaches, what the combined architecture covers, and what gap is created when either office reviews the matter alone. The forum rule frames the matrix: under 18 U.S.C. § 3231, federal offenses are prosecuted exclusively in the United States district courts, while the courts of the States retain jurisdiction over state offenses; the dual-sovereignty doctrine permits parallel or successive prosecution of the same conduct by both sovereigns; and in federal enclaves and the special maritime and territorial jurisdiction, the Assimilative Crimes Act, 18 U.S.C. § 13, carries state offenses into federal court. There may accordingly be two fora. Neither is subordinate to the other; they are concurrent components of one execution architecture.

Conduct pattern	State prosecutor — state court	Federal prosecutor — U.S. district court	If the offices coordinate	If either office acts alone
Physical torture by a state or local official	Homicide, assault, aggravated assault, battery, kidnapping, false imprisonment; official misconduct and abuse of office; retained common-law crimes where preserved.	§§ 242 and 241 on the Eighth, Fifth, and Fourteenth Amendment anchors; §§ 1512–1513 and 1519 for the concealment conduct.	The act, the official-capacity abuse, the rights deprivation, and the cover-up are all charged; Article 4 gravity is documented across both records.	Undercharging or loss of the constitutional-rights framing — a punishment and classification gap the ratification record does not permit.
Psychological torture and CIDT (touchless infliction)	Criminal threats, coercion, stalking, harassment; false imprisonment; dependent-adult, elder, and child abuse; official oppression and misconduct — often the only enacted offenses whose elements track touchless infliction.	§§ 242 and 241 on the mental-harm branch of the U.S. Understanding; § 249 only where its § 1365(h)(4) bodily-injury element — including impairment of a mental faculty — is independently met. Section 249’s exclusion of solely emotional or	The perishable psychological record is preserved early, to the standard of the 2022 Istanbul Protocol, and the conduct is charged to its gravity.	The matter is misclassified as noncriminal “misconduct”; the psychological evidence degrades before either sovereign tests its vehicles. The highest-risk row of this matrix.

Conduct pattern	State prosecutor — state court	Federal prosecutor — U.S. district court	If the offices coordinate	If either office acts alone
		psychological harm limits § 249, never the architecture.		
Disability-targeted coercion and accommodation-denial CIDT	Abuse and neglect of dependent and disabled adults; state bias-crime offenses where enacted; official misconduct and abuse of office.	§§ 242 and 241; § 249(a)(2) where its elements are met; the obstruction and retaliation statutes.	The conduct, the disability-bias dimension, and the rights architecture are charged together.	The matter collapses into “civil only” — a disability-equality gap.
Cover-up, record falsification, witness intimidation, retaliation	Obstruction, evidence and public-records tampering, perjury, false report by an officer, witness intimidation and retaliation.	§§ 1512, 1513, 1519, 1001, 371; §§ 241–242 where the concealment is itself a deprivation.	The primary abuse and the impunity conduct are both charged; Article 13’s protection values are enforced on both sides.	The abuse is documented but never chargeable to its full extent — an impunity and accountability gap.
Torture or CIDT by a federal officer	State authority exists but is constrained by Supremacy Clause federal-officer immunity where the officer acted within federal authority; state vehicles revive where the conduct exceeds that authority.	§§ 242 and 241; federal violence offenses where federal jurisdiction lies; §§ 1512–1519.	Federal lead, with a documented state referral record.	Each sovereign assumes the other is acting — a federal-actor impunity gap.
Torture outside United States jurisdiction	None; Article 5 extraterritorial reach is federal.	§§ 2340–2340A, the extraterritorial completion statute of the architecture.	The federal route proceeds; the state role is evidentiary and protective support.	An Article 5 jurisdictional gap.

The matrix teaches one rule. A prosecution gap does not mean that no sovereign held a charge; most often it records that one sovereign tested only its own vehicles and never engaged the other’s. State-only review forfeits the constitutional-rights framing and the national accountability record; federal-only review forfeits the ordinary police-power criminal law — including, where retained, the common law — that the federal side constitutionally lacks. Coordination closes the gap, and the gap-declaration gate of Part VII exists so that the failure to coordinate can never be committed silently. The propositions of this Part carry the source status stated in Part VII, and their operational application is governed by A Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States and the IAJ Prosecutorial Misconduct Standard.

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Version History

Version	Date	Author(s)	Summary of Changes
v1.3	2026-07-10	IAJ	Add missing reference to IAJ guide on the evolved scope of jus cogens and UNCAT
V1.2	2026-07-09	IAJ	Publication-readiness build. Running header corrected to this Framework’s own title (previously carried the companion Misconduct Standard’s header, a template-inheritance defect). Cover control line expanded with release date and public-release marking. Version-control log and classification block added. Coverage-matrix header row marked as a table header (accessibility; repeats across page breaks). Package metadata (page count, subject) corrected. No doctrinal text altered.
V1.1	2026-07-09	IAJ	Part II ratification-record quotation corrected to the two exact statements of S. Exec. Rep. No. 101-30 (at 8: “would not exempt”; at 13: “would not exclude ... prohibitions on torture contained in”), replacing a conflated rendering; deposited final form recorded as Understanding (5), verified against the UN depositary record. New Part VIII: The Joint Prosecution Coverage Matrix (forum rule; six-row state–federal coverage matrix; the closing coordination rule). Document ID revised.
V1.0	2026-07-08	IAJ	Initial version: governing canon; ratification-record foundation; state and federal architectures; the seven-determination joint enforcement analysis; coordination machinery; the gap-declaration gate and source status.

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