

# Enhanced Constitutional Framework for Judicial Torture: An IAJ review

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## Executive Summary

This constitutional framework establishes the legal foundation for judicial torture claims by integrating five critical doctrines of constitutional and international law: Article VI supremacy, *jus cogens* peremptory norms, *Charming Betsy*<sup>1</sup> treaty interpretation, *Ex parte Young*<sup>2</sup> sovereign immunity exceptions, and constitutional Due Process protections. The framework demonstrates that the United States Constitution, in harmony with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>3</sup> (UNCAT), creates binding obligations on federal and state judiciaries to prevent, investigate, and remedy torture and cruel, inhuman, or degrading treatment (CIDT) committed by or with the acquiescence of state officials.

The constitutional foundation rests on Article VI's declaration that treaties constitute "supreme Law of the Land,"<sup>4</sup> binding judges in every state. When integrated with *jus cogens* peremptory norms prohibiting torture, the *Charming Betsy* doctrine's interpretive requirements, *Ex parte Young*'s remedial pathways, and substantive due process protections, a comprehensive framework emerges that obligates courts to recognize, investigate, and provide relief for torture claims—regardless of traditional doctrines of abstention, sovereign immunity, or judicial deference.

## 1. Constitutional Foundation Analysis

### 1.1 Article VI Supremacy Doctrine: Treaties as Supreme Law

#### Historical Evolution and Binding Character

The Article VI Supremacy Clause establishes that "this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be 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." [1]

The foundational case of *Ware v. Hylton*<sup>5</sup> (1796) established the supremacy of federal treaties over conflicting state laws. The Court held that the 1783 Treaty of Peace nullified a Virginia statute that purported to discharge American debtors who had paid into the state loan office rather than to British creditors. Justice Chase emphasized that treaties, by the Constitution's Supremacy Clause, stand as "supreme Law of the Land," binding judges in every state regardless of contrary state constitution or laws. [1] This principle directly applies to UNCAT obligations, which must supersede conflicting state laws or judicial practices.

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<sup>1</sup> *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)

<sup>2</sup> *Ex parte Young*, 209 U.S. 123 (1908)

<sup>3</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

<sup>4</sup> Defined in Article VI of the US Constitution

<sup>5</sup> *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796)

*Missouri v. Holland*<sup>6</sup> (1920) further expanded federal treaty power by holding that Congress can implement treaties even in areas beyond its enumerated powers. Justice Holmes wrote that the treaty-making power "*is not limited to what Congress can do unaided by treaty*," and that the Tenth Amendment does not constrain powers expressly delegated to the federal government, including treaty-making. This principle is crucial for UNCAT implementation, as it establishes that treaty obligations can reach matters traditionally within state judicial authority.

### Contemporary Application to Human Rights Treaties

The tension between treaty supremacy and domestic implementation was addressed in *Medellín v. Texas*<sup>7</sup> (2008), which distinguished between self-executing and non-self-executing treaties. While the Court held that certain treaty provisions require implementing legislation for direct domestic enforcement, it preserved the obligation under the *Charming Betsy* doctrine to interpret domestic law consistently with treaty commitments.[5] Critically, *Medellín* did not absolve the United States of its binding international obligations or eliminate judicial interpretive duties.

The Committee Against Torture (CAT), recognized by the United States as the authority on torture and CIDT, determined in 2014 that the United States does not comply with the UNCAT and its international obligations. The CAT traced the failure to the U.S. reservations, understandings and declarations (RUDs), which are contrary to international law, and also identified the U.S. failure as caused by virtue of the absence of implementing domestic legislation. Thus the domestic pathways to protection, relief, and remedy from torture and its punishment are **inequivalent** to the UNCAT's direct enforcement in US Courts.

## 1.2 *Jus cogens*: Peremptory Norms and Hierarchical Supremacy

### The Prohibition of Torture as Peremptory Law

*Jus cogens* norms represent the highest tier of international law—peremptory norms from which no derogation is permitted under any circumstances. The prohibition of torture has achieved universal recognition as a *jus cogens* norm, accepted by domestic courts, international tribunals, and legal scholars worldwide. As the European Court of Human Rights noted in *Al-Adsani v. United Kingdom*<sup>8</sup>, the prohibition of torture has achieved the status of a peremptory norm in international law.

The Vienna Convention on the Law of Treaties (VCLT), which codifies customary international law, provides that treaties conflicting with *jus cogens* norms are void (Article 53). This principle directly impacts the validity of U.S. reservations, understandings, and declarations (RUDs) to UNCAT that purport to limit or modify the absolute prohibition of torture. Any RUD that undermines UNCAT's object and purpose—the absolute prohibition of torture—is invalid under international law.

### Domestic Application of *jus cogens* Norms

U.S. federal courts have recognized torture as a violation of the law of nations actionable under the Alien Tort Statute, acknowledging its *jus cogens* character. The principle that no domestic law can authorize what international law prohibits as *jus cogens* creates a constitutional imperative: American courts cannot validate or acquiesce in torture, regardless of domestic legal justifications.

This principle has profound implications for judicial conduct. When state or federal courts engage in practices that constitute torture or CIDT—such as systematic family separation, denial of fundamental procedural

<sup>6</sup> *Missouri v. Holland*, 252 U.S. 416 (1920)

<sup>7</sup> *Medellín v. Texas*, 552 U.S. 491, 504–05 (2008)

<sup>8</sup> *Case of Al-Adsani v. the United Kingdom*, European Court of Human Rights, Application no. 35763/97, (2001)

rights, or discriminatory treatment—they violate not only constitutional guarantees but peremptory norms of international law that admit no exception.

### 1.3 Charming Betsy Doctrine: Treaty-Consistent Interpretation

#### Foundational Interpretive Canon

The *Charming Betsy* doctrine, established in *Murray v. The Charming Betsy* (1804), holds that "*an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.*" Chief Justice Marshall's principle extends beyond congressional statutes to all governmental action, requiring interpretation of domestic law in harmony with international obligations.

This interpretive canon serves multiple constitutional functions: it respects the political branches' foreign affairs prerogatives, avoids international law violations that could trigger state responsibility, and ensures faithful execution of treaty commitments. The doctrine applies with particular force to human rights treaties, where violation risks both international responsibility and harm to fundamental rights.

#### Application to Human Rights Claims

Modern courts have applied *Charming Betsy* to human rights contexts, requiring interpretation of ambiguous statutes consistently with treaty obligations. Even in the post-*Medellín* era, courts retain the obligation to construe domestic law harmoniously with treaty commitments unless Congress has clearly expressed contrary intent.

For judicial torture claims, *Charming Betsy* requires courts to interpret procedural rules, jurisdictional doctrines, and remedial provisions consistently with UNCAT obligations. Courts cannot invoke domestic procedural barriers—such as abstention doctrines or sovereign immunity—in ways that effectively nullify treaty protections against torture and CIDT.

### 1.4 *Ex Parte Young* Doctrine: Sovereign Immunity Exceptions for Constitutional Violations

#### Foundational Sovereign Immunity Exception

The *Ex parte Young* doctrine (1908) established a critical exception to Eleventh Amendment sovereign immunity, holding that federal courts may enjoin state officials from enforcing unconstitutional laws. The Court reasoned that an official attempting to enforce an unconstitutional statute acts without state authority, is "stripped of his official or representative character," and becomes subject to federal judicial authority.

The doctrine rests on constitutional supremacy: the state cannot confer immunity from the supreme authority of the United States Constitution. When state officials violate federal constitutional or treaty rights, they lose the protection of sovereign immunity and may be enjoined in their individual capacity.

#### Extension to Treaty-Based Claims

Legal scholarship has demonstrated that *Ex parte Young* establishes an implied right of action under the Supremacy Clause for injunctive relief against state officials who violate federal statutes or treaties, including treaty-based human rights claims. This remedy is available unless Congress or treaty makers explicitly foreclosed it—which was not done for ratified human rights treaties.

The doctrine's application to human rights treaties is particularly significant because it provides a remedial pathway independent of statutory implementation. Even if a treaty is deemed non-self-executing for damages purposes, *Ex parte Young* relief remains available for ongoing violations of treaty-protected rights.

### **Procedural Requirements and Scope**

*Ex parte Young* relief requires: (1) ongoing violation of federal law, (2) some connection between the official and the enforcement of the challenged conduct, and (3) prospective relief that will end the violation. The doctrine permits injunctive relief against state officials but prohibits retrospective monetary relief from state treasuries.

For judicial torture claims, these requirements are typically satisfied when state judicial or administrative officials engage in systemic practices violating UNCAT protections. The prospective nature of available relief—such as injunctions requiring independent investigations, procedural reforms, or cessation of discriminatory practices—aligns with UNCAT's preventive objectives.

## **1.5 Constitutional Due Process and UNCAT Intersection**

### **Substantive Due Process and Torture Prohibition**

The Fifth and Fourteenth Amendments' Due Process Clauses protect fundamental rights against arbitrary governmental interference. The Supreme Court has recognized that certain government conduct "*shocks the conscience*" and violates substantive due process even absent specific constitutional text. Torture and CIDT clearly fall within this category of conduct so severe that it violates substantive due process regardless of whether procedural safeguards are observed.

The intersection of constitutional due process and UNCAT creates mutually reinforcing protections. Where domestic constitutional protections might be interpreted narrowly, UNCAT's absolute prohibition provides interpretive guidance under *Charming Betsy*. Conversely, where treaty implementation faces obstacles, constitutional due process provides an independent basis for relief.

### **Procedural Due Process Requirements**

Procedural due process requires fair procedures before governmental deprivation of life, liberty, or property. UNCAT's procedural obligations—including prompt and impartial investigation of torture allegations, protection of complainants and witnesses, and punishment of perpetrators—harmonize with and elaborate these constitutional requirements.

The combination creates enhanced procedural protections: allegations of torture or CIDT trigger both constitutional due process requirements and UNCAT's specific investigative and remedial obligations. Courts cannot dismiss such allegations without satisfying both constitutional and treaty-based procedural requirements.

## **2. Doctrinal Integration Framework**

### **2.1 Hierarchical Relationship Among Legal Sources**

The enhanced constitutional framework establishes a clear hierarchy of legal obligations:

**Tier 1: *Jus cogens* Peremptory Norms**

- Absolute prohibition of torture and CIDT
- No derogation permitted under any circumstances
- Override conflicting domestic law and invalid treaty reservations

**Tier 2: *Constitutional Guarantees and Treaty Obligations***

- Article VI supremacy of treaties as supreme law
- Fifth and Fourteenth Amendment due process protections
- UNCAT obligations as ratified treaty law

**Tier 3: *Implementing Legislation and Judicial Interpretation***

- Federal statutes implementing constitutional and treaty obligations
- State laws consistent with federal supremacy
- Judicial interpretations harmonizing domestic and international law under *Charming Betsy*

**Tier 4: *Procedural Rules and Administrative Practices***

- Court rules and administrative procedures
- Must conform to higher-tier obligations
- Cannot defeat substantive protections through procedural barriers

**2.2 Synthesis of Enforcement Mechanisms**

The integration of the five doctrines creates multiple, reinforcing enforcement mechanisms:

- Article VI Supremacy establishes the binding character of treaty obligations on all state and federal judges. No court may ignore or dismiss UNCAT obligations as non-binding.
- *Jus cogens* Principles provide the substantive foundation, establishing torture prohibition as non-derogable law superior to conflicting domestic provisions.
- *Charming Betsy* Interpretation requires courts to construe all domestic law consistently with UNCAT obligations, eliminating procedural or jurisdictional barriers that would effectively nullify treaty protections.
- *Ex Parte Young* Relief provides the remedial mechanism, enabling federal courts to enjoin state officials from ongoing treaty violations despite sovereign immunity claims.
- Constitutional Due Process supplies independent constitutional grounds for relief and procedural requirements that reinforce UNCAT obligations.

**2.3 Judicial Obligations Under Integrated Framework**

Under this integrated framework, federal and state courts have specific, non-discretionary obligations:

- Recognition Obligation: Courts must recognize UNCAT as binding supreme law under Article VI, subject to *Charming Betsy* interpretive requirements.

- Investigation Obligation: Allegations of torture or CIDT trigger UNCAT's mandatory investigation requirements, which cannot be avoided through abstention doctrines or procedural dismissals.
- Protection Obligation: Courts must protect complainants and witnesses from retaliation, consistent with both due process requirements and UNCAT Article 13.
- Remedy Obligation: Effective remedies must be provided, including prospective relief available under *Ex parte Young* and rehabilitative measures required by UNCAT.
- Prevention Obligation: Courts must ensure their own procedures and the conduct they oversee do not constitute torture or CIDT, consistent with both constitutional guarantees and UNCAT's prevention mandate.

### 3. Practical Application Guidelines

#### 3.1 Pleading Standards for Judicial Torture Claims

##### Essential Elements

Claims alleging judicial torture or CIDT should include:

- Constitutional Basis: Substantive and procedural due process violations under Fifth and Fourteenth Amendments
- Treaty Basis: Specific UNCAT articles violated (typically Articles 1, 12-14, 16)
- *Jus cogens* Foundation: Allegation that conduct violates peremptory norms of international law
- Official Action: State action under color of law satisfying § 1983 requirements
- Prospective Relief: Specific injunctive relief sought under *Ex parte Young*

##### Jurisdictional Foundations

Multiple jurisdictional bases support judicial torture claims:

- Federal Question Jurisdiction (28 U.S.C. § 1331): Constitutional and federal treaty law claims
- Civil Rights Jurisdiction (28 U.S.C. § 1343): Constitutional deprivations under color of state law
- Supremacy Clause Jurisdiction: Implied right of action under *Ex parte Young* for treaty violations

#### 3.2 Overcoming Procedural Barriers

##### Abstention Doctrines

Traditional abstention doctrines—including *Pullman*<sup>9</sup>, *Burford*<sup>10</sup>, and *Colorado River*<sup>11</sup> abstention—cannot defeat constitutional and treaty-based claims against ongoing violations. The Supreme Court has emphasized that abstention is inappropriate where federal constitutional rights are threatened, and this principle applies with equal force to treaty-protected rights that constitute supreme federal law.

<sup>9</sup> *Texas v. Pullman Co.*, 312 U.S. 496 (1941)

<sup>10</sup> *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)

<sup>11</sup> *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976)

*Younger Abstention*: Does not apply to ongoing civil rights violations or where state proceedings are brought in bad faith or to harass federal rights claimants. Systematic torture or CIDT claims typically satisfy the bad faith exception.

*Rooker-Feldman*<sup>12</sup> Doctrine: Does not bar challenges to ongoing unconstitutional practices or systemic violations, only specific state court judgments. Judicial torture claims typically challenge patterns of conduct rather than specific judicial decisions.

### Sovereign Immunity

- Eleventh Amendment: *Ex parte Young* provides established exception for prospective relief against ongoing constitutional and federal law violations.
- Legislative Immunity: Does not protect judicial conduct that violates clearly established constitutional rights or federal law.
- Judicial Immunity: Provides protection only for judicial conduct in the clear absence of jurisdiction. Systematic torture or CIDT exceeds jurisdictional authority and loses immunity protection.

## 3.3 Available Relief and Remedies

### Injunctive Relief

Federal courts may issue prospective injunctions requiring:

- Independent Investigation: Establishment of independent mechanisms to investigate torture and CIDT allegations, consistent with UNCAT Article 12
- Procedural Reforms: Implementation of procedures ensuring fair hearings and protection of vulnerable populations
- Training and Education: Judicial and staff education on constitutional and treaty obligations
- Monitoring and Compliance: Ongoing judicial supervision to ensure compliance with constitutional and treaty obligations

### Declaratory Relief

Courts may issue declaratory judgments:

- Declaring specific practices violative of constitutional and treaty obligations
- Clarifying the scope of UNCAT obligations as binding domestic law
- Establishing standards for future conduct

### Individual Protective Relief

Consistent with due process and UNCAT requirements:

- Protection orders preventing retaliation against complainants and witnesses
- Transfer of cases from judges engaging in violative conduct
- Independent investigation and oversight

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<sup>12</sup> *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)

## 4. Case Study Applications

### 4.1 Analysis of Systemic Judicial Practices

The framework applies to various forms of judicial conduct that may constitute torture or CIDT:

- **Systematic Family Separation:** Repeated, coercive separation of children from parents without due process may constitute CIDT where intended to inflict severe mental suffering. Under the framework, such practices would violate substantive due process, UNCAT Articles 1 and 16, and *jus cogens* norms.
- **Discriminatory Treatment of Vulnerable Populations:** Systematic bias against disabled, indigent, or pro se litigants that results in denial of fundamental rights may constitute CIDT. The framework requires courts to provide equal access and reasonable accommodations consistent with both constitutional and treaty obligations.
- **Denial of Independent Investigation:** Refusal to investigate credible allegations of torture or CIDT violates UNCAT Article 12 and procedural due process. Under *Ex parte Young*, federal courts may compel such investigations despite state court resistance.

### 4.2 Application to the Betts Case

The case of *Betts v. North Carolina*, referenced in in a complaint filed with the IAJ on August 4, 2025 by Amy Betts of North Carolina, illustrates the framework's practical application. Ms. Betts, an indigent disabled mother, alleged repeated arrests and forced separations from her child under a custody order she claimed was void for want of jurisdiction and judicial violation of her rights.

Under the enhanced constitutional framework:

- Article VI Supremacy requires federal courts to consider UNCAT obligations rather than dismissing the case as frivolous
- *Jus cogens* Analysis demands investigation of systematic family separation that may constitute CIDT
- Charming Betsy Interpretation prohibits procedural dismissals that effectively nullify treaty protections
- *Ex Parte Young* Relief enables federal injunctive relief against ongoing state violations
- Due Process Integration provides independent constitutional grounds for relief
- Constitutional Crisis and Federal Response

## 5. Requirement of federal jurisdiction, relief and remedy

### 5.1 Systematic Treaty Violation as Constitutional Crisis

When courts systematically refuse to recognize or enforce UNCAT obligations, they create a constitutional crisis under Article VI. The Supremacy Clause does not permit judicial nullification of treaty law, and patterns of systematic non-compliance undermine both constitutional structure and international legal obligations.



## 5.2 Federal Enforcement Authority

Federal courts possess inherent authority to enforce constitutional supremacy through:

- Mandamus Relief: Compelling state officials to comply with federal law
- Injunctive Relief: Preventing ongoing violations of constitutional and treaty obligations
- Supervisory Authority: Ongoing oversight of compliance with federal mandates
- Criminal Referrals: Referring systematic violations for potential prosecution

## 6. Implementation Strategy

### 6.1 Immediate Implementation Steps

- Pattern Documentation: Systematic documentation of judicial torture practices across jurisdictions
- Test Case Development: Strategic litigation establishing precedential authority
- Federal Court Education: Judicial education on constitutional and treaty obligations
- Professional Training: Legal profession training on human rights litigation
- International Coordination: Cooperation with UN bodies and international monitoring

### 6.2 Long-term Institutional Reform

- Independent Investigation Bodies: Establishment of permanent investigative mechanisms
- Judicial Ethics Reform: Integration of human rights obligations into judicial codes
- Legislative Implementation: Congressional action to clarify and enforce treaty obligations
- International Oversight: Enhanced cooperation with international monitoring bodies
- Civil Society Engagement: Support for NGO monitoring and advocacy

## 7. Conclusion

The enhanced constitutional framework demonstrates that existing U.S. constitutional and treaty law provides robust authority for addressing judicial torture and CIDT. The integration of Article VI supremacy, *jus cogens* norms, *Charming Betsy* interpretation, *Ex parte Young* relief, and constitutional Due Process creates a comprehensive legal framework that obligates courts to recognize, investigate, and remedy torture violations.

This framework eliminates traditional barriers to accountability by establishing that:

- Treaty obligations constitute supreme federal law binding all judges
- *Jus cogens* norms override conflicting domestic law
- Courts must interpret law consistently with treaty obligations
- Federal remedial authority extends to state judicial misconduct
- Constitutional due process reinforces international legal protections

The framework provides immediate, practical pathways for reform through existing legal mechanisms while establishing the foundation for broader institutional transformation. Implementation requires coordinated efforts across federal and state jurisdictions, supported by international cooperation and civil society engagement.

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