

ENHANCED CONSTITUTIONAL FRAMEWORK FOR JUDICIAL TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

An IAJ Review of Law

August 2026 Edition

Prepared as a doctrinal review for federal and state judges, prosecutors, civil rights litigators, judicial conduct authorities, and constitutional reform advocates.

Institutional position. *The IAJ writes as a human-rights institution applying the Constitution of the United States in harmony with the Universal Declaration of Human Rights (UDHR), UNCAT, the ICCPR, the CRPD, jus cogens, the Istanbul Protocol, and comparative human-rights law to judicial conduct in the United States. Some IAJ positions require institutional uptake by U.S. courts, treaty bodies, judicial-conduct authorities, prosecutors, or legislators in order to produce particular institutional remedies; the institutional-uptake requirement is a feature of the U.S. enforcement architecture, not a condition on the IAJ's interpretation of the human-rights baseline. Positions that await institutional uptake for remedial purposes are not tentative on the international human-rights plane and are not tentative as an interpretive matter. The IAJ distinguishes source status throughout — what is settled domestic law, what is treaty obligation, what is jus cogens, what is the IAJ's structural argument — so that readers can plead accurately in U.S. courts while preserving the independent human-rights record of U.S. non-compliance. The IAJ does not treat U.S. domestic doctrine as the measure of the human-rights baseline. Where domestic doctrine and the human-rights baseline diverge, the IAJ identifies the divergence and documents it as part of the United States' compliance record.*

This Review provides general legal analysis for educational and reference purposes. It is not legal advice, does not create an attorney-client relationship, and is not a substitute for advice from licensed counsel familiar with the reader's specific facts and jurisdiction. This disclaimer addresses the reader's individual reliance posture; it does not qualify the IAJ's institutional interpretation of the human-rights baseline, the Constitution, applicable treaties, or the United States' equivalence failure as set out in this Review.

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Executive Summary

This Review of Law sets out an enhanced constitutional framework for judicial torture and cruel, inhuman or degrading treatment or punishment (CIDT). It supersedes the prior edition of the *Enhanced Constitutional Framework for Judicial Torture*.

The Review takes as its central architectural proposition that the United States Constitution — properly interpreted, with its doctrinal lines correctly identified and its constitutional anchors fully exploited — provides a robust legal framework for recognizing, investigating, and remedying judicial conduct that constitutes torture or CIDT. The framework is structured to be useful at four institutional levels: (i) for U.S. courts entertaining claims of judicial misconduct that meets constitutional thresholds; (ii) for federal prosecutors evaluating 18 U.S.C. § 242 and § 249 referrals; (iii) for international treaty bodies confronting the U.S. Reservations, Understandings, and Declarations (RUDs) to UNCAT and the equivalence promise embedded in them; and (iv) for legislative and structural-reform bodies considering remedial architecture.

The framework rests on **six constitutional anchors** (the Fifth/Eighth/Fourteenth Amendment triad; Article VI Supremacy via *Charming Betsy*; Article III “good Behaviour” as a tenure floor independent of immunity doctrine; ADA Title II and § 504 as statutory-constitutional overlay; the Ninth Amendment residual; the Privileges or Immunities reading flagged as fortifying-only) and is operationalized through **five SCOTUS doctrinal lines** (*Rochin–Lewis* conscience-shocking; the *Farmer–Estelle–Hope* triangle; the *Hudson–Whitley* wantonness test; the *Brown v. Plata* systemic-conditions doctrine; and the *Trop* “evolving standards” internal measure) together with an **IAJ evidentiary inference** drawn from Justice Kennedy’s *Chavez v. Martinez* concurrence (the “no legitimate alternative” purpose-inference tool, advanced by IAJ rather than as a freestanding Supreme Court test). The two are integrated through an **eleven-row constitutional proof matrix** that maps each constitutional element to its doctrinal source, the proof required, and the evidentiary type.

The framework’s central remedial contribution is the identification of **six remedy pathways**, each with its doctrinal basis, application, and limitations: structural injunction under *Brown v. Plata*; *Bivens/Carlson*-analogue damages remedies, subject to the post-*Abbasi/Egbert* constraints; federal criminal enforcement under 18 U.S.C. §§ 241–242 and § 249; mandamus, writ practice, and declaratory relief; Article III removal via the good-Behaviour clause and impeachment power; and reassignment under the *Caperton v. A.T. Massey Coal Co.* constitutional due-process floor.

The framework’s central immunity-analysis contribution is the identification of possible constitutional and international-law limits on absolute judicial immunity: the textual limits of *Stump v. Sparkman*; the administrative-function distinction of *Forrester v. White*; the historical injunctive-relief pathway of *Pulliam v. Allen*; and IAJ’s structural argument that a judge-made doctrine should not permanently insulate conduct satisfying the constitutional floor identified throughout the framework. The framework supplements these with the international-plane *jus cogens* override developed in the IAJ companion analytical works.

The framework introduces the **Freeman Bright Line** — a five-element IAJ safe-harbor standard for constitutionally adequate accommodation (immediate, meaningful, provided willingly and humanely, documented for quality control, and subject to independent review). Where all five elements are present, the order generally satisfies IAJ’s safe harbor. Where one or more elements is absent, the absence does not automatically establish a constitutional violation, but it triggers heightened analysis under the proof

matrix. The framework also introduces the **Five-Part Proof Architecture** as a case-application summary: disability documented; accommodation requested and denied; continued participation under compulsion; foreseeable and documented harm; continuation after notice.

The framework's deepest argumentative consequence is the **doubled compliance failure**: where U.S. judicial conduct violates the State's UNCAT obligations *and* simultaneously violates the State's own SCOTUS-recognized constitutional doctrine, the sovereignty defense fails on its own terms. The convergence between domestic constitutional commitments and international treaty obligations is not an imposition; it is the recognition that both planes are saying the same thing about the same conduct.

The Review's central architectural contribution is the integration of constitutional analysis with the IAJ analytical architecture: the Two-Plane Framework; the Six-Move Framework; the Five-Level Gravity Scale; the lawful-sanctions three-part test; the addition of three constitutional anchors (Article III good Behaviour; Ninth Amendment residual; Privileges or Immunities); one new doctrinal line (the *Farmer–Estelle–Hope* triangle) and one new IAJ evidentiary inference (the *Chavez–Kennedy* “no legitimate alternative” purpose-inference tool); three remedy pathways (§ 249 bias-motivated injury; Article III removal; *Caperton* reassignment); the eleven-row constitutional proof matrix; the Freeman Bright Line; the Five-Part Proof Architecture; and the Doubled Compliance Failure argument.

This Review is offered for dual use across the two planes the IAJ analyzes throughout. On Plane B (the U.S. domestic remedial plane), it supplies U.S.-court-compatible pathways for pleadings, motions, referrals, and reform proposals grounded in the Constitution, ADA Title II, § 504, access-to-courts doctrine, recusal, mandamus, *Ex parte Young*, § 1983, *Bivens/Carlson* analogies where doctrinally available, and federal criminal-referral statutes. On Plane A (the international human-rights plane), it supplies the human-rights and treaty-compliance framework for documenting judicial torture and CIDT under UNCAT, jus cogens, the Istanbul Protocol, and the United States' duty to prevent, investigate, exclude, redress, and reform. The two planes are not alternatives; they are concurrent.

A domestic remedial barrier is not a human-rights defense. Where immunity, non-self-execution, abstention, finality, procedural default, or remedial narrowing prevents effective protection or accountability in U.S. courts, the barrier should be pleaded as a domestic-doctrine matter and simultaneously documented as evidence of the United States' equivalence failure under UNCAT Article 16 and the implementing Reservations, Understandings, and Declarations. Readers are expected to use the Review on both planes simultaneously; pleading on Plane B without preserving the Plane A record is incomplete IAJ practice.

Gateway Definition

This Review does not equate legal error, adverse rulings, ordinary delay, or routine procedural enforcement with torture. “Judicial torture” refers to the direct use, knowing maintenance, or official acquiescence of judicial power, procedure, custody, coercion, sanctions, evidence, or remedial denial in a manner that intentionally or foreseeably inflicts severe physical or mental suffering for a prohibited purpose, including punishment, intimidation, coercion, discrimination, or suppression of access to justice. Where the Article 1 UNCAT elements of torture are not fully established, the same conduct may still constitute Article 16 CIDT, denial of due process, disability discrimination, denial of access to courts, or failure of effective remedy.

The conceptual category covers four distinct conduct types:

- (i) **Direct judicial imposition** of prohibited treatment, such as judicially ordered corporal punishment (*Tyrer v. United Kingdom*).
- (ii) **Court-process-linked torture or CIDT**, including coercive proceedings, the use of torture-tainted evidence, or medically dangerous compulsion of participation.
- (iii) **Judicial acquiescence in private or official abuse**, where the court has notice, authority to act, and fails to prevent, investigate, exclude, or remedy the harm (CAT GC No. 2, ¶ 18; ECtHR positive-obligation line; IACtHR *Velásquez Rodríguez* line).
- (iv) **Court-process-as-instrument** — adjudicative conduct that satisfies all five UNCAT Article 1 elements through deliberate continuation of harmful conditions on a litigant after knowledge of severe foreseeable harm.

Whether documented conduct constitutes Article 1 torture or Article 16 CIDT depends on severity, prohibited purpose, knowledge, causation, and the nature of the court’s control over the person or proceeding. Judicial acquiescence in torture or CIDT can satisfy the public-official involvement requirement under Article 1 where the court has notice, authority to act, and fails to prevent, investigate, exclude, or remedy the abuse; whether the resulting violation constitutes Article 1 torture or Article 16 CIDT then depends on the further severity-and-purpose showing.

Corrective Constitutional Interpretation

The IAJ’s controlling interpretive position is that the Constitution of the United States must be interpreted and applied in harmony with the human dignity baseline reflected in the Universal Declaration of Human Rights (UDHR), UNCAT, the ICCPR, the CRPD, jus cogens, and the Istanbul Protocol. This is not a future-state aspiration; it is the IAJ’s present-tense reading of what the Constitution requires when properly interpreted. The Constitution’s text — the Supremacy Clause of Article VI, the cruel-and-unusual-punishments and due-process clauses of the Fifth, Eighth, and Fourteenth Amendments, the good-Behaviour clause of Article III, the Ninth Amendment’s preservation of unenumerated rights, and the Privileges or Immunities Clause — is fully consistent with this reading. The interpretation U.S. courts have given that text in modern doctrine is, in numerous specified respects identified throughout this Review, not consistent with it.

Domestic doctrines of absolute and qualified immunity, finality, abstention, non-self-execution, the post-*Egbert* narrowing of *Bivens*, jurisdictional limitations, and procedural-default rules are domestic-implementation mechanisms. They affect how a claim is pleaded or preserved on Plane B (the U.S. domestic remedial plane). They cannot define away the underlying human-rights violation on Plane A (the international human-rights plane). Where current domestic doctrine fails to provide effective prevention, investigation, exclusion of torture-tainted evidence, remedy, or accountability for documented torture or CIDT, the IAJ identifies that failure as a matter for documentation, treaty-body submission, Special Procedures engagement, legislative reform, judicial-conduct reform, and institutional accountability.

Dual-mode reading of this Review. This Review is to be read in two modes simultaneously. The first mode is assistive: it equips victims, their counsel, prosecutors, judicial-conduct authorities, and reform bodies to use available U.S. domestic mechanisms with full doctrinal precision. The second mode is authoritative: it states how U.S. domestic mechanisms should operate when the Constitution is interpreted in harmony with the human-rights baseline. Where the two modes produce different practical results, the divergence is itself the IAJ's subject matter and is recorded throughout this Review as the operative U.S. compliance failure. The IAJ does not present the assistive mode as a substitute for the authoritative mode; both must be read.

The Four-Category Doctrinal Taxonomy

This Review distinguishes four legally distinct categories of judicial conduct. The taxonomy operates as a disciplining frame: it prevents the conflation of legal error with constitutional violation, and prevents the conflation of constitutional CIDT with the more demanding torture threshold.

Category	Description	Legal characterization
Judicial error	Ordinary mistake, incorrect ruling, bad reasoning, legal disagreement	Not torture; not CIDT. Remediable through appellate review.
Judicial abuse	Arbitrary, hostile, retaliatory, or coercive use of procedure that does not yet reach CIDT severity	May implicate due process, judicial ethics, ADA Title II, or recusal doctrine.
Judicial CIDT	Court knowingly imposes degrading, coercive, medically harmful, or access-denying conditions on a litigant; severity meets the Article 16 / Fourteenth Amendment threshold; purpose element not fully established	UNCAT Article 16; Fifth/Eighth/Fourteenth Amendment substantive due process; ADA Title II; <i>Caperton</i> due-process floor.
Judicial torture	Severe physical or mental suffering intentionally inflicted or knowingly maintained by judicial actors for an enumerated prohibited purpose (punishment, intimidation, coercion, discrimination, or suppression of access to justice)	UNCAT Article 1; <i>jus cogens</i> ; full five-element framework. Strongest legal characterization; requires disciplined proof on every element.

The categories are *progressive* — each higher category builds on the lower categories and adds additional required elements. The framework’s analytical discipline requires distinguishing them at every stage of proof: a Category 2 case should not be litigated as a Category 4 case, and a Category 4 case should not be undercharged as Category 2 or 3 conduct. The IAJ’s position is that the IAJ evidentiary record, properly analyzed under the proof matrix in Part V, supports Category 3 characterization in numerous documented cases and Category 4 characterization in the most fully documented cases. Adversarial dispute over the characterization is expected on Plane B, where courts will press for narrower readings of the matrix elements and for stricter inference standards; the IAJ’s position on Plane A is that the human-rights baseline directs the characterization, that the matrix elements are properly read against that baseline rather than against the most permissive U.S. doctrinal reading, and that the IAJ’s characterizations are correct on the record and on the law as the Constitution must be interpreted in harmony with UDHR, UNCAT, and *jus cogens*. The framework provides the doctrinal architecture for those characterizations with full source-status discipline so that each characterization is defended on the authorities and inferences that support it.

Part I. Purpose, Scope, and Relationship to the Existing Framework

A. Why an enhanced constitutional framework is needed

The IAJ’s Dimension IX of the Synthesis Memorandum (2026 Edition) establishes the central proposition that the United States has failed its UNCAT compliance not merely by failing an external international standard, but by failing its own Supreme Court’s internal constitutional doctrine. The argument is doctrinally complete on its own terms but is presented within a treaty-interpretation framework whose audience is principally international. Three audiences are not fully reached by that presentation:

- (a) U.S. federal courts and litigants who treat domestic constitutional doctrine as the operative law, and for whom the treaty framework reads as auxiliary or aspirational.
- (b) Federal prosecutors evaluating whether documented judicial conduct satisfies the willfulness and color-of-law elements of 18 U.S.C. § 242 and the discriminatory-animus element of 18 U.S.C. § 249, where the proof architecture must speak in domestic constitutional rather than treaty terms.
- (c) Legislative actors and reform bodies considering structural remedies (judicial discipline mechanisms, ADA-compliance audits, accommodation protocols, removal procedures), whose authority operates through Article I and the Reconstruction Amendments rather than through Article VI.

Each of these audiences requires the same evidentiary record, the same conduct, and the same constitutional thresholds — but assembled as a free-standing constitutional theory rather than as the domestic compliance baseline for a treaty obligation.

B. Relationship to Dimension IX

Dimension IX identifies five SCOTUS doctrinal lines as the domestic constitutional anchors for the IAJ characterization: (1) the *Rochin–Lewis* conscience-shocking threshold; (2) the *Farmer–Estelle–Hope* deliberate-indifference standard; (3) the *Hudson–Whitley* wantonness test; (4) the *Brown v. Plata*

systemic-conditions doctrine; and (5) the *Trop* evolving-standards internal measure. This Review preserves that core and extends it along three axes: a wider constitutional anchor set (Part II); a unified element-by-element proof matrix that maps each doctrinal line to specific evidentiary findings (Part V); and a constitutional remedies architecture that channels the doctrinal findings into available enforcement mechanisms (Part VII).

C. Scope limitation

Two scope limitations are explicit. First, the framework addresses domestic constitutional law as the principal subject. It does not re-litigate the treaty interpretation argued in the IAJ companion analytical works (International Precedents and Comparative Law on Judicial Torture and CIDT; UNCAT and *Jus Cogens: A Contemporary Perspective*); the international plane is treated here only to the extent necessary to anchor the *jus cogens* override and the equivalence-failure analysis. Second, the Review uses the IAJ evidentiary record (Appendix D case archive; Appendix F twenty-four-factor systemic analysis; primary federal-court records in *Hazari v. County of Santa Clara*, Case No. 5:19-cv-04392-BLF) as illustrative throughout, but the framework is presented at a level of generality that supports its application to any factual record that satisfies the proof matrix in Part V.

Part II. The Constitutional Anchors

The enhanced framework rests on six constitutional anchors. The first three (Fifth/Eighth/Fourteenth Amendment triad; Article VI Supremacy; Article III “good Behaviour”) are core. The next three (ADA Title II as statutory-constitutional overlay; Ninth Amendment residual rights; the recovered Privileges or Immunities reading) operate as supplementary anchors that strengthen the core and foreclose specific doctrinal escapes.

A. Anchor 1: The Fifth/Eighth/Fourteenth Amendment triad

The United States’ RUD to UNCAT Article 16 binds the U.S. to the term “cruel, inhuman or degrading treatment or punishment” only insofar as it means “the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” The RUD is a *sword* as well as a *shield*: it imports the entirety of the Court’s substantive due process, deliberate-indifference, and evolving-standards doctrine into the meaning of “CIDT” as applied to the United States. Any conduct that satisfies the constitutional threshold under any of these three amendments therefore satisfies the U.S. RUD-imported standard of CIDT and triggers Article 16’s prevention, training, review, investigation, and complaint-protection obligations, including the obligations reflected in Articles 10, 11, 12, and 13 that Article 16(1) expressly imports. Redress and rehabilitation should also be analyzed through Article 14 as extended to CIDT by CAT General Comment No. 3, ¶ 1, but that textual route is distinct from Article 16’s imported obligations and should be stated separately.

The Fifth and Fourteenth Amendments operate as substantive constraints on judicial action through three doctrinal channels:

- (i) **Substantive due process.** *Rochin v. California*, 342 U.S. 165 (1952); *County of Sacramento v. Lewis*, 523 U.S. 833 (1998). Conduct that “shocks the conscience” violates substantive due process regardless of procedural form.
- (ii) **Procedural due process.** *Mathews v. Eldridge*, 424 U.S. 319 (1976). Procedural adequacy is balanced against the private interest, the risk of erroneous deprivation, and the government’s interest.
- (iii) **Equal protection and access to courts.** *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985); *Tennessee v. Lane*, 541 U.S. 509 (2004). Disability discrimination is not treated as suspect-class discrimination under *Cleburne*, but disability-based exclusion from court access receives more searching constitutional treatment when it burdens the fundamental right of access to the courts. *Tennessee v. Lane* confirms that Title II validly enforces the Fourteenth Amendment in that setting.

The Eighth Amendment supplies an important constitutional vocabulary for unnecessary and wanton infliction of suffering, deliberate indifference, evolving standards of decency (*Trop v. Dulles*, 356 U.S. 86 (1958)), and systemic conditions of cruelty. Critically for the RUD-imported standard, the Court has read the term “inhumane” into the Amendment’s “cruel and unusual” prohibition: the Eighth Amendment “does not mandate comfortable prisons . . . but neither does it permit inhumane ones,” and it imposes affirmative duties to “provide humane conditions of confinement” (*Farmer v. Brennan*, 511 U.S. 825, 832 (1994), citing *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981)). The “inhumane” reading is not a textual gloss invented for the RUD — it is binding Supreme Court doctrine that pre-dates the Senate’s 1990 resolution of advice and consent (Rhodes 1981; Estelle 1976) and has been elaborated since (Wilson 1991; Hudson 1992; Helling 1993; Farmer 1994).

The doctrine has three contextual limitations that constrain its direct application to non-custodial adjudicative misconduct. First, the Eighth Amendment reaches conduct only as “punishment” in the criminal-sentencing sense; *Ingraham v. Wright*, 430 U.S. 651 (1977), holds the Amendment inapplicable to non-criminal-punishment contexts. Second, *Farmer* requires a subjective culpability showing (“deliberate indifference”) in addition to the objective severity showing. Third, the doctrinal corpus has developed almost entirely in the prison-conditions context; extension to courtroom proceedings, family-court orders, or judicial denial of accommodation has not occurred in any robust way.

In ordinary domestic litigation, therefore, Eighth Amendment doctrine applies most directly in criminal-punishment and custodial contexts. For non-prisoner civil litigants, the primary domestic constitutional anchors are the Fifth and Fourteenth Amendments, access-to-courts doctrine, ADA Title II, § 504, and substantive and procedural due process. Eighth Amendment cases such as *Estelle*, *Farmer*, *Hope*, *Hudson*, *Whitley*, and *Brown v. Plata* are therefore used here as analogical constitutional standards unless the claimant is in a punishment or custody setting. Where the claimant is in custody — including civil detention, institutional placement, or conservatorship contexts where the State has assumed control over the person — the “inhumane conditions” doctrine applies directly, and the constitutional and treaty-derived standards converge on the same operative content.

The doctrinal narrowness of the Eighth Amendment “inhumane” reading is also the source of the equivalence-failure analysis developed in *International Precedents and Comparative Law on Judicial Torture and CIDT* Part 11.1. The U.S. RUD imports “inhumane” — but it imports the term as the Eighth

Amendment has read it, with the *Ingraham* punishment limitation, the *Farmer* subjective culpability requirement, and the custodial-scope focus built in. CAT Article 16 has none of those limitations. The gap between U.S. doctrinal “inhumane” and CAT Article 16 “inhuman” is the structural equivalence failure. For non-custodial adjudicative misconduct, the Fifth and Fourteenth Amendment substantive due process route (Anchor 1, channel (i)) and the ADA Title II / § 504 route (Anchor 4) supply the operative domestic constitutional standards.

The triad’s unity is doctrinal, not merely textual. Each amendment supplies a different element of the constitutional prohibition on cruel official conduct, and together they constitute the domestic CIDD-equivalent that the RUD identifies. Where judicial conduct satisfies the relevant Fifth, Eighth, or Fourteenth Amendment threshold, it satisfies the RUD-imported constitutional standard. Where it satisfies more than one of the three amendment standards, the convergence supplies independent grounds for the constitutional finding. The remaining anchors developed below — Article VI, Article III good Behaviour, ADA Title II and § 504, the Ninth Amendment, and Privileges or Immunities — supply interpretive, statutory, structural, and fortifying support. They prevent domestic doctrine from being read in a way that defeats the human-rights baseline; they do not replace the Fifth/Eighth/Fourteenth Amendment threshold itself.

B. Anchor 2: Article VI supremacy and the treaty-compliance reading

Article VI, Clause 2 establishes that the Constitution, federal laws, and treaties made under the United States’ authority are “the supreme Law of the Land.” The *Medellin v. Texas*, 552 U.S. 491 (2008), non-self-execution doctrine limits the direct private-right-of-action enforceability of non-self-executing treaties; it does not displace the interpretive obligation under Article VI, nor does it relieve courts of the obligation to construe the Constitution and federal statutes consistently with the United States’ international obligations where the domestic text is genuinely susceptible to more than one permissible reading (*Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804)).

The treaty-supremacy line establishes the doctrinal context: *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796) (foundational case on treaty supremacy over conflicting state law); *Missouri v. Holland*, 252 U.S. 416 (1920) (treaty power not limited by what Congress can do unaided by treaty); *Asakura v. Seattle*, 265 U.S. 332 (1924) (treaty provisions preempt conflicting municipal law without congressional implementation). The treaty power is bounded by *Reid v. Covert*, 354 U.S. 1 (1957) (no agreement with a foreign nation can confer power free from the restraints of the Constitution), and constrained in implementation by *Bond v. United States*, 572 U.S. 844 (2014) (federalism canon of constitutional avoidance applied to treaty-implementing statutes).

Modern *Charming Betsy* applications include *Weinberger v. Rossi*, 456 U.S. 25 (1982); *F. Hoffmann-La Roche v. Empagran S.A.*, 542 U.S. 155 (2004); and *Spector v. Norwegian Cruise Line*, 545 U.S. 119 (2005). Each confirms the canon that ambiguous statutes should be construed to avoid conflict with the State’s international obligations.

The enhanced framework treats Article VI not as a source of self-executing private rights but as an *interpretive lens*. Where domestic constitutional doctrine is susceptible to a reading that aligns with the United States’ treaty obligations and a reading that conflicts with them, the *Charming Betsy* canon directs courts toward the aligning reading. This is not novel doctrine; it is the canon. Its application to the

deliberate-indifference and shocks-the-conscience standards — both of which are open-textured tests whose application to judicial conduct is not foreclosed by any prior holding — supplies a direction of interpretation that converges with the treaty obligations the United States acknowledges on the international plane.

The doctrine of *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015), constrains the *enforcement* of the Supremacy Clause: it is not a source of federal rights or a cause of action. The interpretive obligation, however, remains intact. The Supremacy Clause continues to operate as a rule of decision when state and federal law conflict, and the *Charming Betsy* canon continues to operate as a rule of construction. The framework’s claim under Anchor 2 is interpretive, not remedial.

C. Anchor 3: Article III “good Behaviour” as a constitutional floor

Article III, Section 1 provides that judges of the Supreme Court and inferior courts “shall hold their Offices during good Behaviour.” The clause is textually unambiguous and structurally definitive, though the U.S. judiciary has not yet developed it in modern case law: it conditions judicial tenure on a constitutional standard of conduct. The enhanced framework reads the good-Behaviour clause as supplying a constitutional floor below which judicial conduct cannot fall without forfeiting the office’s tenure protection — a floor independent of, and analytically prior to, the immunity doctrines that protect individual judicial acts.

The good-Behaviour reading does not depend on a private right of action; it operates structurally. Three doctrinal consequences follow.

First, the IAJ argues that conduct below the good-Behaviour floor should not be insulated by absolute judicial immunity as a structural matter, because immunity attaches to the office, and the office’s tenure is conditioned on the floor’s observance. Current U.S. doctrine does not yet recognize this as a freestanding exception to *Stump v. Sparkman* or *Mireles v. Waco*; the IAJ identifies this as a structural argument that *Stump* and *Mireles* as currently read are themselves inconsistent with the Article III architecture. The argument is constitutional, structural, and operative on the human-rights plane now; what awaits is institutional enforcement (court application, congressional implementation, or structural reform), not the validity of the argument. It operates at the level of constitutional architecture: it does not require overruling *Stump* but reads *Stump* consistent with the Article III architecture in which it sits, on the textual and structural ground that any other reading renders the good-Behaviour clause surplusage (*Corley v. United States*, 556 U.S. 303 (2009)).

Second, the good-Behaviour standard is structurally distinct from the Article II, Section 4 “high Crimes and Misdemeanors” standard. The IAJ position is that the good-Behaviour clause states an independent Article III tenure standard whose textual scope reaches conduct — including conduct satisfying the *Farmer–Estelle–Hope* triangle (Part IV.B) — that may or may not meet the Article II standard for executive-officer impeachment. The Article III good-Behaviour standard is the operative judicial-tenure standard regardless of whether Article II impeachment is the institutional mechanism Congress chooses to invoke. Part VII.E develops the structural separation between the two standards.

Third, the good-Behaviour standard supplies the constitutional baseline against which judicial-discipline statutes (28 U.S.C. §§ 351–364, the Judicial Conduct and Disability Act) and procedures must be

measured for adequacy. Where judicial-discipline mechanisms fail to address conduct below the good-Behaviour floor, the failure is constitutionally cognizable.

The good-Behaviour clause is the most structurally significant of the framework's anchors. It is textually unambiguous and structurally definitive, though not yet operationalized in modern U.S. case law. The framework presents it as a *structural* anchor: it does not require a damages cause of action to have structural relevance, and the constitutional standard it states is independent of the institutional mechanisms that might enforce it. The conventional U.S. practice of treating Article II impeachment as the exclusive judicial-removal mechanism is itself constitutionally problematic and is addressed in Part VII.E; this section addresses the substantive Article III standard, not the institutional-enforcement question. The good-Behaviour reading is advanced throughout the framework as the IAJ's structural position on Article III judicial tenure. Where the operative court declines to engage the structural reading, the framework's core operates through Anchors 1, 2, 4, and 5; the Anchor 3 record nevertheless preserves the structural claim for Plane A documentation and for U.S. compliance-record purposes.

D. Anchor 4: ADA Title II and § 504 as statutory-constitutional overlay

Title II of the Americans with Disabilities Act (42 U.S.C. § 12132) and § 504 of the Rehabilitation Act (29 U.S.C. § 794) are statutory but operate as constitutional overlay in two respects.

First, *Tennessee v. Lane*, 541 U.S. 509 (2004), holds that Title II validly abrogates state sovereign immunity in the class of cases implicating the fundamental right of access to the courts, on the constitutional record that disability-based exclusion from judicial services “has a long history and has persisted despite several legislative efforts.” *Lane* therefore embeds disability accommodation in court access into the Fourteenth Amendment's substantive content.

Second, *United States v. Georgia*, 546 U.S. 151 (2006), confirms that Title II abrogates immunity where the conduct independently violates the Fourteenth Amendment — establishing the convergence point at which statutory and constitutional protections operate as a single rule of decision.

The enhanced framework treats Title II and § 504 not merely as parallel statutory protections but as the doctrinal vehicle through which the Fourteenth Amendment's disability-discrimination prohibition is enforced in the judicial-access setting. Where the IAJ record documents accommodation denial that satisfies the Title II standard, the record simultaneously documents conduct that the Fourteenth Amendment prohibits — and that the *Farmer–Estelle–Hope* triangle, applied to the same facts, characterizes as deliberate indifference.

The remedies available under Title II include reasonable accommodation orders, procedural modifications, damages where intentional discrimination is shown (*Barnes v. Gorman*, 536 U.S. 181 (2002), as constrained by *Cummings v. Premier Rehab Keller*, 596 U.S. 212 (2022)), and attorneys' fees under 42 U.S.C. § 12205 and § 794a(b). In *A.J.T. v. Osseo Area Schools*, 605 U.S. ____ (2025) (No. 24-249, decided June 12, 2025), the Supreme Court rejected the school-specific “bad faith or gross misjudgment” heightened standard for disability discrimination claims in educational settings, confirming that those claims are subject to the same standard as other ADA claims. *A.J.T.* directly governs education-related ADA and § 504 claims. IAJ argues by analogy that courts should not impose a heightened bad-faith or gross-misjudgment threshold in judicial-access accommodation cases unless the governing circuit law independently requires it.

E. Anchor 5: The Ninth Amendment residual

The Ninth Amendment provides that “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The clause is doctrinally lean but textually directive. The enhanced framework invokes it for a narrow and specific purpose: to foreclose the argument that the absence of an explicit constitutional reference to the prohibition on judicially inflicted torture implies its non-prohibition.

The Ninth Amendment’s affirmative rule of construction directs the opposite inference. Where the prohibition is implicit in the constitutional architecture — as it is in the substantive due process tradition that produced *Rochin*, *Lewis*, *Farmer*, *Estelle*, and their progeny — the Ninth Amendment confirms rather than weakens the inference.

The Ninth Amendment anchor operates as a *negative* anchor: it does not by itself supply a substantive constitutional rule, but it forecloses the argument that the absence of explicit text means the absence of a rule. Where opposing counsel argues that “no constitutional provision specifically prohibits the conduct alleged,” the Ninth Amendment answer is that the framers anticipated such arguments and expressly directed against them.

F. Anchor 6: The Privileges or Immunities reading (revisited)

The Fourteenth Amendment’s Privileges or Immunities Clause was narrowed by *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), to a small set of national-citizenship rights. Recent doctrinal scholarship and several SCOTUS opinions — most prominently Justice Thomas’s concurrence in *McDonald v. City of Chicago*, 561 U.S. 742, 805 (2010) (Thomas, J., concurring in part and concurring in the judgment) — have argued for the clause’s restoration to its original textual scope.

The enhanced framework does not depend on that restoration but flags it as a fortifying anchor where it becomes doctrinally available: the privileges or immunities of national citizenship plausibly include the right not to be subjected to torture or cruel treatment by any branch of government, including the judiciary. Where that reading becomes operative, it would supply an additional independent constitutional anchor for the prohibition this framework identifies.

The Privileges or Immunities anchor is presented as *fortifying-only*. Litigation strategy should not depend on it under current doctrine. But it should be preserved in pleadings and briefs as a reserved argument, in case the Court’s increasingly visible interest in restoring the clause produces a future doctrinal opening.

Part III. Jus Cogens, Customary International Law, and the International Plane

A. The peremptory-norm status of the torture prohibition

Jus cogens norms are peremptory norms of general international law from which no derogation is permitted. The Vienna Convention on the Law of Treaties (VCLT) Article 53 defines a *jus cogens* norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general

international law having the same character.” Although the United States is not a party to the VCLT, the United States treats Articles 53 and 64 as reflecting customary international law.

The peremptory-norm status of the torture prohibition is universally recognized. The controlling modern authority is *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J. Rep. 422, in which the International Court of Justice held that the prohibition of torture is a peremptory norm of general international law (¶ 99), generating obligations *erga omnes partes* (¶¶ 68–70). The foundational *erga omnes* authority is *Barcelona Traction (Belgium v. Spain)*, 1970 I.C.J. Rep. 3, ¶¶ 33–34, identifying obligations toward “the basic rights of the human person” as owed to the international community as a whole. The ICTY’s *Prosecutor v. Furundžija*, IT-95-17/1-T (December 10, 1998), ¶¶ 153–157, articulated the *jus cogens* character of the torture prohibition. The U.K. House of Lords’ decision in *Pinochet (No. 3)* [2000] 1 AC 147 is the foundational comparative-domestic authority on the *jus cogens* override of functional immunity (treated in detail in Part VIII). The ILC Draft Conclusions on Peremptory Norms of General International Law, U.N. Doc. A/77/10 (2022), codify the modern position; the prohibition of torture is listed among the *jus cogens* norms in the annex.

B. Note on *Al-Adsani v. United Kingdom*

The European Court of Human Rights addressed the *jus cogens*-immunity relationship in *Al-Adsani v. United Kingdom*, App. No. 35763/97 (ECtHR 2001). The Grand Chamber accepted the *jus cogens* character of the torture prohibition but held, by a 9–8 vote, that *State* immunity continued to apply to civil claims for torture committed abroad. The Court reasoned that the rules of State immunity were procedural and did not conflict with the substantive prohibition. The eight-judge dissent argued the contrary — that *jus cogens* must prevail over procedural immunity rules — but did not command a majority.

Al-Adsani is therefore not authority for the IAJ position that *jus cogens* defeats immunity. It reflects a procedural-immunity reading under which *jus cogens* norms can coexist with immunity rules that constrain their enforcement in civil proceedings. The IAJ position is the *Pinochet (No. 3)* position: that functional immunity for *jus cogens* violations is unavailable as a matter of substantive international law. The ICJ’s *Jurisdictional Immunities of the State (Germany v. Italy)*, 2012 I.C.J. Rep. 99, generally followed the *Al-Adsani* reasoning for State immunity in civil proceedings but is doctrinally limited to that context and does not reach individual functional immunity or domestic immunity doctrines applied within a State’s own courts.

C. VCLT Article 53 and U.S. RUDs

VCLT Article 53 provides that a treaty is void if it conflicts with a *jus cogens* norm. VCLT Article 64 provides that a treaty becomes void if a new *jus cogens* norm emerges that conflicts with it. The IAJ position, developed in *UNCAT and Jus Cogens: A Contemporary Perspective* is that VCLT Article 53 voids any treaty provision (including a Reservation, Understanding, or Declaration) that conflicts with the *jus cogens* prohibition of torture. The U.S. RUDs to UNCAT — particularly Understanding (1)(a) limiting “mental harm” to “prolonged mental harm” and the Reservation conditioning Article 16 CIDT obligations on the standards of the Fifth, Eighth, and Fourteenth Amendments — operate, in the IAJ’s view, to limit the State’s obligations below the *jus cogens* minimum content. To that extent, they are voidable on the international plane.

Three State Parties to UNCAT — Finland, the Netherlands, and Sweden — formally objected in February 1996 to the United States reservation limiting Article 16 to conduct prohibited by the Fifth, Eighth, and Fourteenth Amendments. The Netherlands objected on the ground that the reservation is incompatible with the object and purpose of the Convention, to which the obligation laid down in Article 16 is essential; Sweden further recorded that the United States understandings do not relieve the United States, as a party to the Convention, of its responsibility to fulfil the obligations undertaken therein. Germany, by an interpretive communication of 26 February 1996 recorded in the depositary notes, stated its understanding that the reservation under I(1) and the understandings under II(2) and (3) do not touch upon the obligations of the United States as a State Party; the depositary records that communication as a note, not an objection.

Under VCLT Article 19(c) and ILC Guideline 4.5.3 of the Guide to Practice on Reservations to Treaties, an impermissible reservation may be severed; the State remains bound by the Convention but not by the reservation. The CAT Committee in CAT/C/USA/CO/3-5 (December 19, 2014), ¶ 11, identified the U.S. RUDs as creating “actual or potential loopholes for impunity.”

D. Domestic application of *jus cogens* norms

U.S. federal courts have recognized torture as a violation of customary international law actionable under the Alien Tort Statute. The leading authorities are *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); and the subsequent constraint of the ATS line in *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013), *Jesner v. Arab Bank*, 138 S. Ct. 1386 (2018), and *Nestlé USA v. Doe*, 141 S. Ct. 1931 (2021). The constraint operates against U.S. defendants and corporate defendants; the *jus cogens* character of the torture prohibition is uncontested.

The Torture Victim Protection Act, 28 U.S.C. § 1350 note, provides a civil cause of action against persons acting under the actual or apparent authority or color of law of any *foreign* nation. The federal Torture Act, 18 U.S.C. §§ 2340–2340A, criminalizes torture committed *outside* the United States. Neither statute provides a comprehensive domestic mechanism — the structural gap the CAT Committee identified in 2014.

Part IV. The Doctrinal Spine: SCOTUS Standards Applied to Judicial Conduct

The constitutional anchors in Part II identify the textual sources of the prohibition. This Part identifies the SCOTUS doctrinal lines that supply its operative content. Each line is presented in three parts: the holding, the application to judicial conduct, and the answer it provides to a recurring counterargument.

A. The *Rochin–Lewis* conscience-shocking threshold

Rochin v. California, 342 U.S. 165 (1952), established that official conduct that “shocks the conscience” of a civilized legal system violates substantive due process regardless of its procedural form. Justice Frankfurter’s formulation — “too close to the rack and the screw to be permitted in a constitutional order” — was not a metaphor but a constitutional benchmark. *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), refined the threshold for cases in which officials have time to deliberate: deliberate indifference

suffices to shock the conscience in deliberative settings; in emergencies, conduct must be “intended to injure in some way unjustifiable by any government interest.”

Application to judicial conduct. Courts are paradigmatic deliberative settings. Orders are considered, briefed, weighed, and re-weighed. Where the deliberative context includes years of medical filings, accommodation requests, and physician letters documenting harm — and the court continues to issue orders that produce the documented harm — the *Lewis* deliberative-context standard directs a *Rochin/Lewis* conscience-shocking finding on the documented record. Adversarial dispute over the finding is expected on Plane B; the IAJ’s position is that the deliberative-context standard, properly read in harmony with the human-rights baseline, requires that finding where time-to-deliberate, notice of harm, available accommodation, and continued harmful action are all documented.

Counterargument response. Judicial discretion does not automatically insulate the conduct, but the due-process inquiry remains record-specific: discretion is the mechanism that *creates* the deliberative context, and the *Lewis* gradient applies the threshold most strictly to that context.

B. The *Farmer–Estelle–Hope* triangle

Farmer v. Brennan, 511 U.S. 825 (1994), established that a state official violates the Eighth Amendment when (1) the deprivation is “sufficiently serious” — posing a risk of serious harm; and (2) the official has a “sufficiently culpable state of mind” — subjective awareness of the serious risk plus disregard. *Estelle v. Gamble*, 429 U.S. 97 (1976), established that deliberate indifference to a prisoner’s serious medical needs constitutes “unnecessary and wanton infliction of pain” — and that deliberate interference with prescribed treatment is independently violative. *Hope v. Pelzer*, 536 U.S. 730 (2002), established that continuation of cruel treatment after actual notice of its unconstitutionality violates clearly established law without requiring a prior case on identical facts.

The triangle’s three points operate together to support a constitutional-violation analysis: knowledge (*Farmer*); cruel result (*Estelle*); continuation after notice (*Hope*).

Application to judicial conduct. Documented over years in the IAJ record: actual knowledge through medical filings; cruel result through forced participation that blocks prescribed treatment; continuation after notice through repeated orders following physician documentation. Where the record shows actual notice, medically documented harm, interference with treatment or safe participation, and continued compulsion after notice, the IAJ identifies the documented record as supporting a deliberate-indifference and conscience-shocking finding under the applicable doctrinal setting.

Counterargument response. The argument that “deliberate indifference” is a prison-conditions doctrine that does not extend to judicial conduct is important but not dispositive. *Farmer* and *Estelle* apply directly in custody and punishment contexts. Outside those settings, they supply an analogical constitutional vocabulary for knowledge, serious harm, medical risk, and disregard. Three observations sharpen the analogical reading:

- (i) *Farmer*’s “sufficiently culpable state of mind” formulation describes a state of mind, not a setting — supplying an analogical doctrinal vocabulary even outside Eighth Amendment territory.
- (ii) *Estelle*’s “deliberate interference with prescribed treatment” formulation has structural similarity to a court order compelling participation that blocks treatment — but the analogy is most direct

where the State is in a custodial or quasi-custodial relationship with the person; outside that context, the analogy is analytical rather than controlling.

- (iii) *Lewis*'s deliberative-context standard expressly extends due-process scrutiny beyond the prison setting to all settings in which officials have time to deliberate. The domestic claim should therefore be grounded primarily in substantive due process (*Rochin–Lewis*), procedural due process (*Mathews*), access-to-courts doctrine (*Tennessee v. Lane*), ADA Title II, § 504, and — where applicable — Eighth Amendment doctrine in custody or punishment contexts. *Lewis* supplies the broader due-process bridge for deliberative official action.

C. The *Hudson–Whitley* wantonness test

Hudson v. McMillian, 503 U.S. 1 (1992), held that the Eighth Amendment prohibits “wanton” infliction of pain; the test is whether force was applied in a good-faith effort to maintain a legitimate objective or maliciously and sadistically to cause harm. Critically, “the absence of serious injury is relevant but does not end the inquiry.” *Whitley v. Albers*, 475 U.S. 312 (1986), supplies a five-factor wantonness analysis: (1) legitimate need; (2) proportion of harm to need; (3) consideration of suffering; (4) efforts to minimize harm; (5) reasonable threat perception.

Application to judicial conduct. The *Whitley* factors can be used by analogy to structure review of judicial-process decisions where official conduct imposes serious harm despite available alternatives. The analogy is strongest in custodial, detention, institutional, or punishment-adjacent settings (where Eighth Amendment doctrine applies directly) and weaker in ordinary civil litigation (where the factors should be treated as an evidentiary screen for wantonness or bad-faith official action, not as an automatic rule). The five factors, applied as an evidentiary screen:

- (1) *Legitimate need.* Was there any legitimate need for the harmful procedure (in-person appearance during documented immune crisis when remote alternatives existed)?
- (2) *Proportion.* Was the harm proportionate to the procedural objective?
- (3) *Suffering.* Was the documented suffering considered?
- (4) *Minimization.* Was accommodation offered?
- (5) *Threat.* Did the litigant pose any threat that accommodation would create?

In the strongest documented judicial-setting cases, the IAJ identifies the documented record as supporting a finding under the *Whitley* factors of wantonness or bad faith, on record-specific analysis.

Counterargument response. The test is not whether the judge subjectively intended harm; it is whether the conduct serves a legitimate objective that justifies the harm it produces. Where no such objective exists — and accommodation was available — the absence of a legitimate objective, combined with available accommodation and documented harm, establishes the wantonness or bad-faith inference. Adversarial dispute over the inference is expected; the IAJ's position is that the inference is the doctrinally required reading of the *Whitley* factors when the Constitution is interpreted in harmony with the human-rights baseline, and that any other reading subordinates the human-dignity standard to a doctrine that immunizes documented harm.

D. The *Brown v. Plata* systemic-conditions doctrine

Brown v. Plata, 563 U.S. 493 (2011), confirmed that systemic conditions producing foreseeable medical neglect and preventable harm constitute an Eighth Amendment violation requiring structural injunctive relief. The doctrine is critical to the enhanced framework because it confirms that constitutional violations of this category can arise from institutional policy rather than any single identifiable act.

Application to judicial conduct. Where the IAJ record documents recurring systemic factors across a large complainant population (the *IAJ Disability Harmony* Appendix F factor analysis identifies 24 such factors across 500+ complainants), *Brown v. Plata* supplies an analogical model for analyzing whether institutional conditions, policies, or accommodation failures require structural relief. Whether the *Plata* threshold is met in any domestic court depends on the custodial or constitutional context, the evidentiary record, causation, available remedies, and the adjudicator’s ruling. Where applicable, the doctrine supplies the constitutional vehicle for structural reform — including court-wide accommodation protocols, independent disability-compliance review, and the kind of structural injunctive relief *Plata* itself authorized for the California prison system.

Counterargument response. The argument that individual judicial discretion shields the documented pattern does not foreclose the structural inquiry: where the pattern is systemic, the constitutional violation may be institutional, and the remedy may be structural.

E. The *Chavez–Kennedy* “no legitimate alternative” inference (IAJ evidentiary inference)

Justice Kennedy’s concurrence in part and dissent in part in *Chavez v. Martinez*, 538 U.S. 760 (2003), supplies a principle the framework deploys for purpose evidence: unconstitutional purpose can be inferred from the absence of a plausible legitimate alternative. The IAJ advances this as an evidentiary inference derived from Kennedy’s concurrence rather than as a freestanding Supreme Court test or majority holding. The framework deploys it to answer the recurring counterargument that the IAJ record lacks direct evidence of judicial purpose to inflict harm.

Application to judicial conduct. Direct evidence of purpose is not always required; purpose may sometimes be inferred from foreseeable harm, notice, available alternatives, and the absence of a legitimate governmental explanation. Where accommodation was available, harm was documented, and the harmful order issued anyway, the IAJ identifies the documented record as supporting an inference of unconstitutional purpose or prohibited function.

Counterargument response. The “we cannot prove judicial intent” defense is not the end of the analysis. The proof architecture relies on inference from the structural absence of legitimate alternative, supplemented by the *Farmer–Estelle–Hope* knowledge-plus-continuation showing. Together they establish a constitutional showing of unconstitutional purpose, without requiring direct evidence of subjective malice. Adversarial dispute over the purpose inference is expected on Plane B; the IAJ’s position is that where structural-absence and knowledge-plus-continuation are both documented, the inference of unconstitutional purpose is the doctrinally required reading. Subjective-malice rules that would defeat the inference are themselves inconsistent with the Constitution interpreted in harmony with UNCAT Article 1 and the human-rights baseline.

F. The *Trop* “evolving standards” internal measure

Trop v. Dulles, 356 U.S. 86 (1958), established that the Eighth Amendment “draws its meaning from the evolving standards of decency that mark the progress of a maturing society.” The standard is internal to American constitutional tradition; comparators are instructive, not controlling.

Application to judicial conduct. The framework’s claim is internal: does *this* conduct violate *this* constitutional system’s evolving standards of decency? The comparator is American constitutional tradition (the disability-rights jurisprudence developed since *Cleburne* and *Lane*; the ADA Title II accommodation standards; the contemporary bar-association standards on accessibility), not the worst-performing system in the world.

Counterargument response. The “slippery slope” objection that recognizing judicial conduct as constitutional CIDE would sweep in every procedural deficiency in every imperfect legal system fails. The framework is self-limiting by design: the *Trop* internal measure compares the conduct to American constitutional tradition, not to a global lowest-common-denominator standard. Subsequent applications of *Trop* in *Atkins v. Virginia*, 536 U.S. 304 (2002), *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), confirm that the methodology is doctrinally robust and well-developed.

Part V. The Element-by-Element Constitutional Proof Matrix

This Part organizes the doctrinal spine into a single proof matrix. Each row identifies one constitutional element; each column identifies the doctrinal source, the proof required, and the evidentiary type. The matrix is designed to be lifted into court filings, prosecutorial declination memoranda, and treaty-body submissions.

Element	Doctrinal Source	Proof Required	Evidentiary Type
Serious risk / cruel result	<i>Estelle</i> ; <i>Farmer</i> prong 1; <i>Hudson</i> injury inquiry	Documented harm of constitutional magnitude (physical deterioration, medical exacerbation, family separation, psychological injury)	Medical records; treating-physician declarations; Istanbul Protocol findings
Actual knowledge	<i>Farmer</i> prong 2 (subjective awareness)	Specific notice to the official before the harmful order	Filings of record; physician letters; transcript references

Element	Doctrinal Source	Proof Required	Evidentiary Type
Disregard / continuation	<i>Farmer</i> prong 2; <i>Hope</i> (continuation after notice)	Conduct continued after notice without legitimate intervening justification	Sequential docket entries showing notice followed by harmful order
Deliberative context	<i>Lewis</i> (time-to-deliberate)	Decision made over weeks or months, with full record before the official	Briefing schedules; opportunity-to-be-heard record; written orders
Absence of legitimate alternative	<i>Chavez</i> (Kennedy concurrence); <i>Whitley</i> factor 4	Accommodation existed, was requested, and was denied	Accommodation requests of record; refusal orders
Wantonness / disproportion	<i>Hudson</i> ; <i>Whitley</i> five factors	Harm grossly disproportionate to procedural objective	Comparative analysis of harm vs. procedural need
Systemic / institutional	<i>Brown v. Plata</i>	Pattern across multiple cases; institutional policy or practice	Shadow Report; multi-complainant evidence; statistical pattern
Disability discrimination	<i>Cleburne</i> ; <i>Tennessee v. Lane</i> ; ADA Title II	Disability-based denial of court access; irrational prejudice or hostile willfulness	Accommodation denial record; disability documentation; disparate-treatment evidence
Evolving standards	<i>Trop</i> ; <i>Atkins</i> ; <i>Roper</i>	Conduct violates American constitutional conscience as measured by contemporary indicia	Bar association standards; ADA jurisprudence; treaty equivalence; professional consensus
Color of law	<i>Screws</i> ; <i>Monroe v. Pape</i>	Conduct occurred in official capacity	Court orders; judicial signatures; official-capacity record

Element	Doctrinal Source	Proof Required	Evidentiary Type
Willfulness (criminal)	<i>Screws</i> ; <i>Lanier</i> (“fair warning”)	Knowledge that conduct was constitutionally prohibited	Filings citing the constitutional violation; opportunity to know

The matrix is **cumulative rather than disjunctive**: each row independently supports an element of the constitutional violation, but the framework’s strength derives from the convergence across rows. Where the proof matrix is satisfied across multiple rows on the same factual record — as the IAJ identifies in documented archive cases following record-specific review — the record is capable of supporting a constitutional-violation finding at a level of redundancy that forecloses any single doctrinal escape.

Part VI. Federal Jurisdictional Pathways

A. The principal jurisdictional bases

Plane B framing. This Part addresses Plane B — the U.S. domestic remedial plane. It identifies the doctrinal pathways currently available in U.S. federal court and the doctrinal obstacles that determine which pathways will reach the merits. This Part does not define the existence or non-existence of judicial torture or CIDT on Plane A. If domestic jurisdiction, immunity, abstention, preclusion, the post-*Egbert* narrowing of *Bivens*, or any other Plane B doctrine prevents a U.S. court from reaching the merits, the foreclosure should be documented as a domestic-remedy failure and preserved as evidence of U.S. equivalence failure for Plane A purposes. The IAJ’s foundational commitment is unconditional: every authority exercising public power within the United States, including every Article III judge, every Article I judge, every state judicial officer, every administrative adjudicator, every prosecutor, and every official actor of the United States, is subject to the absolute prohibition of torture and cruel, inhuman, or degrading treatment under UNCAT, jus cogens, the UDHR, the ICCPR, and the CRPD. That commitment is not contingent on which enforcement mechanisms the United States has elected to accept. The substantive obligations of UNCAT bind the United States in full from the date of ratification. The CAT Committee’s Article 20 confidential inquiry procedure is available against the United States because the United States did not opt out at ratification, and together with the periodic-review process under UNCAT Articles 19 and 24, Special Procedures communications (including the Special Rapporteur on Torture), and Universal Periodic Review, the Plane B foreclosure record completes rather than defeats the international claim.

UNCAT Article 22 and the U.S. non-acceptance: the IAJ’s structural argument. UNCAT Article 22 individual communications are not currently available as a direct procedure against the United States because the United States has made no Article 22 declaration. Article 22 is, on its face, an optional procedure within UNCAT; the IAJ does not claim that non-acceptance is, taken alone, a per se treaty breach. The IAJ identifies the United States’ selective acceptance — accepting the Convention’s substantive obligations while withholding consent to the individual-complaints mechanism that would expose those obligations to direct international scrutiny by the persons protected — as inconsistent with

the object and purpose of UNCAT under a good-faith reading of the Convention pursuant to VCLT Article 31.

VCLT Article 31(1) requires a treaty to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” UNCAT’s object and purpose, stated in its preamble, is to make more effective the struggle against torture. The IAJ position that a State Party undermines that object and purpose by accepting the substantive obligations while declining the mechanism that operationalizes individual scrutiny is a legitimate VCLT Article 31 argument — not a settled holding, but a defensible interpretive claim grounded in a recognized canon of treaty interpretation. It is the same kind of argument the CAT Committee itself has advanced, including in General Comment No. 3, paragraph 28, where the Committee “strongly encourages States parties to recognise the Committee’s competence to consider individual complaints under article 22.” The IAJ’s position is that U.S. acceptance of Article 22 is a non-negotiable element of any credible U.S. compliance posture, and that the absence of that acceptance is documented throughout this Review as part of the United States’ equivalence-failure record.

Article 22 jurisprudence as the operative interpretive corpus. Article 22 jurisprudence developed by the CAT Committee in cases against other States Parties is authoritative treaty-body interpretation of the substantive content of UNCAT Articles 1, 2, 3, 13, 14, and 16. The United States is bound by those substantive articles as authoritatively interpreted by the body the Convention itself establishes for that purpose under UNCAT Article 17. The IAJ does not accept that a State Party may bind itself to substantive Convention obligations while electing to exclude the interpretive jurisprudence that gives those obligations operational content. The U.S. is bound by UNCAT. UNCAT is what the CAT Committee has interpreted it to be. The United States cannot accept the words of UNCAT and reject the meaning the Committee has given them. That is the IAJ position, and it is legally defensible — not merely credible advocacy but a sustainable reading of how treaty interpretation works when the treaty itself establishes its own interpretive body.

Two distinct propositions, only one of which the IAJ asserts. Adversarial responses to this position frequently conflate two distinct claims, and the IAJ’s position depends on keeping them separate. **Claim A:** Article 22 decisions in cases against other States Parties are themselves binding judgments against the United States. This claim would be wrong, and the IAJ does *not* make it. A decision of the CAT Committee in a communication against another State Party is not a judgment against the United States; the U.S. is not a respondent and is not bound by the decision as such. **Claim B:** The United States is bound by the substantive articles of UNCAT as those articles have been authoritatively interpreted by the treaty’s designated interpretive body. This is the IAJ’s claim. It is correct. The U.S. ratified the substantive provisions of UNCAT. UNCAT Article 17 establishes the CAT Committee. The Committee’s Article 22 jurisprudence, General Comments, and Concluding Observations are how the body the Convention designates to interpret the Convention performs that function. A State Party that accepts the Convention’s substantive provisions accepts those provisions as the designated interpretive body interprets them. To hold otherwise would let any State Party redefine its substantive obligations unilaterally by selectively rejecting the interpretive output of the body the treaty establishes — a result that the Convention’s structure does not permit and that VCLT Article 31’s good-faith requirement forecloses.

Plane discipline on the “bound as interpreted” claim. On Plane B, U.S. courts may characterize CAT Committee views, General Comments, and Article 22 jurisprudence as non-self-executing or non-binding in domestic litigation; on Plane A, the IAJ treats them as the authoritative treaty-body interpretation of the substantive obligations the United States accepted. Domestic non-recognition of the Committee’s interpretive authority is therefore not a defense to compliance; it is part of the equivalence-failure record.

Article 22 jurisprudence is therefore invoked throughout this Review as the operative treaty-body interpretive corpus governing the substantive content of UNCAT, regardless of which State Party is the respondent in any particular Article 22 communication, and is invoked in U.S. courts on the *Charming Betsy* canon directing interpretation of domestic law consistent with the United States’ international obligations.

A judicial-torture claim in U.S. federal court rests on several possible jurisdictional bases:

- (a) **Federal question jurisdiction**, 28 U.S.C. § 1331 — claims “arising under” the Constitution, federal statutes, or treaties.
- (b) **Civil rights jurisdiction**, 28 U.S.C. § 1343 — claims under 42 U.S.C. §§ 1981, 1983, 1985, and other civil rights statutes.
- (c) **Alien Tort Statute**, 28 U.S.C. § 1350 — claims by aliens for torts in violation of the law of nations or a U.S. treaty.
- (d) **Torture Victim Protection Act**, 28 U.S.C. § 1350 note — civil cause of action against persons acting under the actual or apparent authority of any foreign nation.
- (e) **Habeas corpus**, 28 U.S.C. §§ 2241, 2254, 2255 — review of conviction or detention, with the limitations imposed by AEDPA.
- (f) **Federal criminal jurisdiction**, 18 U.S.C. §§ 241–242 (deprivation of rights); §§ 245, 247, 249 (bias-motivated injury); §§ 2340–2340A (the federal Torture Act).

B. The 42 U.S.C. § 1983 pathway

42 U.S.C. § 1983 provides a private cause of action against any “person” who, under color of state law, deprives another of rights secured by the Constitution or federal laws. The statute is the principal civil enforcement mechanism for constitutional rights against state officials.

Constitutional rights enforceable through § 1983. § 1983 reaches deprivations of constitutional rights, including Fifth, Eighth, and Fourteenth Amendment violations. The substantive standards are addressed in Part IV. Federal treaty rights are also enforceable through § 1983, subject to the doctrine of *Gonzaga University v. Doe*, 536 U.S. 273 (2002), which requires that the underlying federal law confer an “unambiguously conferred right.”

The state-action requirement. § 1983 requires action “under color of state law.” Judges, court administrators, ADA coordinators, prosecutors, and state-appointed officials all act under color of state law for § 1983 purposes. Federal officials do not — they are reached through *Bivens* (Part VI.D) or through implied constitutional remedies.

The “person” requirement and *Will v. Michigan Department of State Police*. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989), held that a State is not a “person” within the meaning of

§ 1983 for purposes of damages from the State treasury. State officials in their *official* capacity are also not “persons” for damages purposes. State officials in their *individual* capacity remain “persons” for both damages and injunctive relief. State officials in their *official* capacity remain “persons” for prospective injunctive relief under *Ex parte Young*.

The *Monell* municipal-liability framework. *Monell v. Department of Social Services*, 436 U.S. 658 (1978), held that municipalities (including counties) are “persons” within the meaning of § 1983 and may be sued under § 1983 for constitutional violations *caused by* official policy or custom. *Connick v. Thompson*, 563 U.S. 51 (2011), and *City of Canton v. Harris*, 489 U.S. 378 (1989), articulate the deliberate-indifference standard for failure-to-train *Monell* claims.

C. The *Ex parte Young* doctrine

The *Ex parte Young* doctrine, articulated in *Ex parte Young*, 209 U.S. 123 (1908), creates a critical exception to Eleventh Amendment sovereign immunity: a federal court may enjoin a state official from enforcing an unconstitutional state law. The doctrine has been substantially refined since 1908.

The modern test: *Verizon Maryland v. PSC*, 535 U.S. 635 (2002). The modern test asks whether the plaintiff’s complaint “alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” If both elements are present, the *Ex parte Young* exception applies.

The principal limits:

- (a) *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261 (1997) — the doctrine does not extend to suits “functionally equivalent” to claims against the State itself.
- (b) *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) — *Ex parte Young* does not authorize federal courts to enjoin state officials for violations of *state* law.
- (c) *Edelman v. Jordan*, 415 U.S. 651 (1974) — no retrospective monetary relief from state treasuries.
- (d) *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015) — *Ex parte Young* is a *judge-made equitable remedy* rooted in chancery jurisdiction, not a private right of action implied from the Supremacy Clause. Justice Scalia’s opinion expressly rejected the Ninth Circuit’s holding that the Supremacy Clause confers a private right of action.

Application to judicial-torture claims. For judicial-torture claims, the *Ex parte Young* framework supports prospective injunctive relief against ongoing state-official conduct that violates the Constitution, a federal statute, or a treaty provision that is domestically enforceable, or where UNCAT supplies interpretive content for an independently enforceable federal right. Three caveats: (i) the defendants must be specific state officials identified in their *official* capacity with some connection to enforcement; (ii) the relief must be properly characterized as *prospective*; (iii) the constitutional or federal-law violation must be *ongoing*, not merely historical.

D. *Bivens* and the federal-officer pathway

Bivens v. Six Unknown Named Federal Narcotics Agents, 403 U.S. 388 (1971), implied a private cause of action for damages against federal officers for Fourth Amendment violations. *Davis v. Passman*, 442 U.S. 228 (1979), extended to Fifth Amendment due process; *Carlson v. Green*, 446 U.S. 14 (1980), extended

to Eighth Amendment deliberate indifference to medical needs. The doctrine has been substantially constrained since 1980.

The contraction line. *Bush v. Lucas*, 462 U.S. 367 (1983); *Wilkie v. Robbins*, 551 U.S. 537 (2007); *Ziglar v. Abbasi*, 582 U.S. 120 (2017) (strict “special factors” test); *Hernandez v. Mesa*, 589 U.S. 93 (2020); *Egbert v. Boule*, 596 U.S. 482 (2022) (any meaningful difference from recognized contexts defeats *Bivens*).

The Carlson analogue. The framework’s *Bivens* analysis is built on the *Carlson v. Green* line: federal officers’ deliberate indifference to a serious medical need producing severe physical harm. Where federal judicial actors issue orders with documented knowledge of medical risk of severe harm and continue them after notice, the conduct has structural similarity to *Carlson*’s prison-medical-deliberate-indifference posture. The IAJ position is that *Carlson* supplies an analogy that helps identify the constitutional harm; it does not by itself guarantee a *Bivens* damages remedy in any particular case. A damages remedy against federal judicial actors for judicial-process harm would face serious post-*Abbasi/Egbert* barriers (any reason to pause is sufficient to deny extension to a new context; *Egbert*, 596 U.S. at 492), new-context objections, and immunity defenses. The IAJ position is that the constitutional violation survives even where *Bivens* relief is unavailable under the post-*Abbasi* line; where the remedy is unavailable, the violation supplies the predicate for other remedies (structural injunction, criminal enforcement, treaty-body complaint).

E. The § 1985(3) pathway

42 U.S.C. § 1985(3) provides a private cause of action against two or more persons who conspire to deprive any person of equal protection of the laws, motivated by class-based animus.

The protected-class scope. *Griffin v. Breckenridge*, 403 U.S. 88 (1971), established the modern test; *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825 (1983), narrowed the class-based animus requirement. The circuits are split on whether § 1985(3) reaches conspiracies motivated by disability-based animus; the IAJ position (developed in *Harmonizing the Architecture of Disability Rights*) is that the circuit split should be resolved in favor of including disability-based animus.

F. Criminal enforcement pathways

The criminal pathways are addressed in detail in the *Guide to Domestic Criminal Enforcement of Torture and CIDT*. The principal statutes:

18 U.S.C. § 242. Deprivation of rights under color of law. Reaches judicial officers; conviction requires willfulness established by knowledge of the right and intent to deprive (*Screws v. United States*, 325 U.S. 91 (1945); *United States v. Lanier*, 520 U.S. 259 (1997), establishing the “fair warning” standard).

18 U.S.C. § 241. Conspiracy to deprive of rights.

18 U.S.C. § 249. Bias-motivated injury. The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act criminalizes willfully causing bodily injury — or attempting to cause bodily injury through the use of a dangerous weapon — because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person. The § 249 disability provision is doctrinally important for the IAJ framework: it supplies a direct criminal pathway for bias-

motivated injury to disabled litigants, with the *Cleburne* irrational-prejudice standard supplying analogous content for the discriminatory-purpose element.

18 U.S.C. § 2340–2340A. The federal Torture Act. Criminalizes torture committed *outside* the United States. As noted in Parts II and III, this statute does not provide a comprehensive domestic torture offence — the gap the CAT Committee identified in 2014.

Application. The criminal pathways are available where the executive branch (Department of Justice) elects to prosecute. Private parties may submit referrals to the DOJ Civil Rights Division. The Civil Rights Division’s Public Integrity Section and Criminal Section have historically pursued judicial-misconduct cases under § 242 in limited categories (*United States v. Cochran*, N.D. Ga. 2014; *United States v. Nalley*, D. Md. 2016).

Prosecutorial discipline. Criminal referral requires proof beyond a reasonable doubt and must distinguish knowingly harmful judicial conduct from legal error, negligence, docket pressure, or ordinary adverse rulings. The eleven-row constitutional proof matrix in Part V and the Five-Part Proof Architecture in Part XII are therefore *screening tools*, not substitutes for prosecutorial proof of willfulness, causation, and statutory elements. The framework is designed to identify cases that *warrant referral and investigation*; it does not, by itself, establish guilt. The DOJ retains its independent prosecutorial discretion and must apply its own standards (including 9-27.220 of the Justice Manual on grounds for federal prosecution) to any case submitted under this framework. The *Hope v. Pelzer* “continuation after notice” element is doctrinally critical to satisfying § 242 willfulness — it supplies the “fair warning” of constitutional violation that *Lanier* requires — but it does not, by itself, establish all the elements of a criminal offence. Cases in which the IAJ framework supports a criminal referral should be carefully documented, presented with the proof matrix mapped onto each statutory element, and submitted to the DOJ with explicit acknowledgement of the prosecutorial-discretion question.

Part VII. Constitutional Remedies for Judicial Torture

Identifying the constitutional violation is the first half of the framework; channeling it into available remedies is the second. This Part identifies six constitutional remedy pathways, each with its doctrinal basis, application, and limitations.

A. Structural injunction (the *Brown v. Plata* model)

The *Plata* model is the most developed Supreme Court model for structural relief against systemic conditions producing serious medical or dignity harm in custody, and it supplies an important analogy for court-system accommodation failures where constitutional violations are systemic and ordinary remedies fail. On Plane B, *Plata* is the controlling Supreme Court precedent for structural relief against systemic conditions producing serious medical and dignity harm in custody. On Plane A, the same pattern evidence independently supports a finding that domestic remedies are structurally inadequate to prevent, investigate, redress, or reform judicially administered or judicially acquiesced CIDT; the *Plata*-type pattern thus constitutes evidence of U.S. equivalence failure under UNCAT Article 16 and the implementing RUDs regardless of the Plane B disposition. The framework supports a structural injunction requiring:

- (i) Court-wide accommodation protocols with documented quality controls.
- (ii) Independent review of accommodation denials.
- (iii) A presumption in favor of accommodation where physician documentation establishes risk of harm.
- (iv) Reporting and audit mechanisms with public disclosure.

The *Plata* model supplies an analogical model for structural relief where institutional conditions produce systemic constitutional harm and ordinary remedies fail. Whether the IAJ record supplies a sufficient predicate for structural relief would depend on the forum, the defendants, jurisdiction, immunity, proof of policy or practice, causation, and the court's remedial authority. The IAJ record's documentation of pattern across the Ninth Circuit and beyond is offered as the kind of evidentiary foundation the *Plata* model contemplates, not as an assertion that the *Plata* threshold is presumptively cleared in any particular forum.

B. The *Bivens* / *Carlson*-analogue pathway

Bivens and *Carlson v. Green* supply the federal-officer counterpart to § 1983. *Carlson* extended *Bivens* to the Eighth Amendment deliberate-indifference context, allowing damages against federal prison officials whose deliberate indifference caused severe injury and death. The *Carlson* analogue, applied to federal judicial actors who issue orders with knowledge of medical risk of severe harm, supplies an analogy to *Carlson*'s deliberate-indifference rationale that helps identify the constitutional harm. It does not by itself guarantee a *Bivens* damages remedy. A damages remedy against federal judicial actors for judicial-process harm would face serious post-*Abbasi/Egbert* barriers, new-context objections, and immunity defenses; the safer point is that *Carlson* helps identify the constitutional harm rather than supplying an unconditional remedy.

Post-*Abbasi/Egbert* constraints. The framework acknowledges the Court's recent narrowing of *Bivens* and the doctrinal headwinds against new contexts. The response is structural: the framework's claim is not that *Bivens* supplies an unconditional damages remedy, but that the constitutional violation it identifies is of the same type that *Carlson* recognized — deliberate indifference to a serious medical need producing severe physical harm — and that the unavailability of the *Bivens* remedy in a particular case does not negate the constitutional violation itself. Where *Bivens* is unavailable, the violation survives and supplies the predicate for other remedies (structural injunction, criminal enforcement, treaty-body complaint).

C. Federal criminal enforcement (§ 242 / § 249)

18 U.S.C. § 242 criminalizes the willful deprivation of constitutional rights under color of law. The statute reaches state officials — including judicial officials — and has been used to prosecute judges who engaged in willful constitutional violations (the *Nalley* and *Cochran* prosecutions cited in the IAJ Guide). The willfulness element requires knowledge of unconstitutionality (*United States v. Lanier*, 1997), satisfied by “fair warning” from general constitutional principles rather than requiring a prior case on identical facts. The *Hope v. Pelzer* standard — continuation after actual notice — supplies the constitutional component of willfulness in the judicial-disability context.

18 U.S.C. § 249 criminalizes bias-motivated bodily injury, including injury motivated by disability animus. The *Cleburne* irrational-prejudice standard is relevant by analogy to the discriminatory-purpose element in § 242 disability fact patterns. The framework’s contribution to the criminal pathway is doctrinal: it consolidates the constitutional showing that supports the willfulness and color-of-law elements, organizing the proof matrix in Part V so that a federal prosecutor evaluating a § 242 or § 249 referral can map the available evidence directly onto the criminal elements.

The framework does not demand prosecution. Criminal referral requires proof beyond a reasonable doubt and the framework’s proof matrix is a screening tool, not a substitute for prosecutorial proof of willfulness, causation, and the statutory elements. The DOJ retains independent prosecutorial discretion under Justice Manual § 9-27.220 and must distinguish knowingly harmful judicial conduct from legal error, negligence, or docket pressure. The framework’s role is to identify cases that *warrant referral* — not to predetermine the prosecutorial outcome.

D. Mandamus, writ practice, and declaratory relief

Mandamus (28 U.S.C. § 1361), declaratory relief (Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202), and writ-of-prohibition practice each supply equitable mechanisms that do not depend on *Bivens* or § 1983. The framework recognizes that the IAJ record documents the unavailability of these remedies in the Ninth Circuit for the documented conduct in *Hazari v. County of Santa Clara* (ECF-102, ECF-145 denial of mandamus relief). The unavailability is itself constitutionally significant: it bears on the exhaustion analysis for treaty-body submissions, and it documents a systemic remedial failure that supplies additional predicate for structural injunction under *Plata*.

Declaratory relief is particularly important for judicial-torture claims because (i) it is not subject to the *Pulliam*/Federal Courts Improvement Act of 1996 restriction on injunctive relief against judges; (ii) it establishes the legal predicate for subsequent enforcement action; (iii) it serves the *Charming Betsy* function of harmonizing domestic and international law; (iv) it supports treaty-body and Special Rapporteur engagement on Plane A.

E. Article III removal and judicial discipline

Article III, Section 1’s good-Behaviour clause is independent operative text governing judicial tenure. The IAJ’s structural position is that the good-Behaviour clause states the condition on which the Article III judicial office is held; conduct falling below that condition is, by the text of Article III itself, forfeiture of the tenure condition.

The conventional U.S. practice of treating Article II, Section 4 impeachment as the exclusive judicial-removal mechanism imports an executive-officer accountability vehicle into Article III without textual warrant. “Officers of the United States” under Article II refers to executive-branch appointees in the Appointments-Clause sense. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *Lucia v. SEC*, 138 S. Ct. 2044 (2018). The Article II “Treason, Bribery, or other high Crimes and Misdemeanors” standard is structurally distinct from the Article III “good Behaviour” standard. Reading Article III’s good-Behaviour clause as fully exhausted by Article II impeachment renders it surplusage, a result foreclosed by the canon against surplusage. See *Corley v. United States*, 556 U.S. 303, 314 (2009).

The proof matrix of Part V organizes the evidentiary record on which a good-Behaviour determination may be made. It is an analytic instrument; it does not itself trigger removal. The constitutionally appropriate enforcement mechanism for good-Behaviour forfeiture is unsettled in current U.S. doctrine. The IAJ identifies as candidates: (i) Article III courts adjudicating good-Behaviour as part of their judicial power; (ii) congressional implementing legislation under Article III enforcing the tenure condition by mechanisms other than Article II impeachment; (iii) structural reform creating an independent good-Behaviour adjudication mechanism within the judicial branch. The IAJ does not endorse Article II impeachment as the proper vehicle for enforcing Article III good Behaviour, and identifies the current practice of treating impeachment as the exclusive judicial-removal mechanism as itself constitutionally problematic under the textual and structural reading of Article III.

The framework’s contribution. The good-Behaviour standard supplies a constitutional standard against which conduct can be measured for tenure-condition forfeiture — a standard operating independently of the immunity doctrines protecting individual judicial acts, and independently of the Article II impeachment standard for executive officers. Whether a particular instance of forfeiture is enforced through judicial discipline, through Article III judicial action, through congressional structural reform, or (where Congress so chooses) through Article II impeachment as a separate executive-officer mechanism, is institutionally contingent; the constitutional standard itself is text-based and independent. Not every framework-satisfying violation requires the most severe institutional response; the structural-forfeiture mechanism applies to severe and persistent violations. The IAJ does not collapse the constitutional standard into a single remedial outcome. The framework establishes that the constitutional architecture provides for accountability beyond civil litigation, that the absolute-immunity doctrines are not the only available domestic response to documented constitutional violations, and that the institutional remedy chosen does not exhaust the constitutional standard against which the conduct is measured.

The Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 351–364) provides a complementary statutory mechanism for judicial discipline below the level at which structural forfeiture analysis ordinarily operates. The framework’s good-Behaviour reading supplies the constitutional baseline against which the Act’s adequacy and application must be measured. Where the Act’s mechanisms fail to address conduct below the good-Behaviour floor, the failure is constitutionally cognizable and is itself documentable as part of the United States’ equivalence-failure record on Plane A.

F. Reassignment, recusal, and the *Caperton* constitutional floor

Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), established that due process requires recusal where the probability of bias is constitutionally unacceptable, even without proof of actual bias. The *Caperton* floor is constitutional, not merely ethical.

Application to judicial-torture claims. Applied to judges whose record demonstrates a pattern of accommodation denial producing documented harm to disabled litigants, the *Caperton* floor supplies an independent due-process basis for reassignment. The reassignment pathway is the lightest constitutional intervention and the one most likely to be available in active litigation.

The *Caperton* test asks whether “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” Where the IAJ record documents a pattern of conduct that systematically disadvantages disabled litigants — including the same judge repeating the same

accommodation-denial pattern across multiple cases — the IAJ identifies the documented record as supporting a *Caperton*-based reassignment or recusal argument. Whether the constitutional probability-of-bias threshold is satisfied depends on the full record, the judge’s role, the timing, the recurrence of the conduct, available appellate remedies, and the adjudicator’s ruling. Where the threshold is satisfied, the available remedy is reassignment to a different judicial officer for the remainder of the proceeding.

The doctrine does not require a finding of actual bias; the constitutional concern is structural. This is the most procedurally accessible of the framework’s remedies and the one most readily deployable in pending litigation. It does not depend on *Bivens*, on overcoming absolute judicial immunity, or on the success of a structural-injunction theory. The IAJ’s position is that where the documented pattern is established, procedural intervention by reassignment or recusal is the doctrinally required remedial response. Adversarial dispute over whether the constitutional probability-of-bias threshold is met is expected on Plane B; the IAJ’s position is that the threshold is met where the pattern is documented, and that any narrower reading of the threshold subordinates the human-dignity baseline to a doctrine that immunizes systemic discrimination against disabled litigants.

Part VIII. The Immunity Architecture: Possible Constitutional and International-Law Boundaries

Absolute judicial immunity (*Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1872); *Pierson v. Ray*, 386 U.S. 547 (1967); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Mireles v. Waco*, 502 U.S. 9 (1991)) is the central domestic doctrinal obstacle to direct enforcement of the constitutional violations this framework identifies. The framework’s response is not to argue that immunity does not exist but to identify its constitutional boundaries — points at which the doctrine, on its own terms, does not reach the documented conduct.

A. The textual limits of *Stump v. Sparkman*

Stump v. Sparkman extends absolute immunity to judicial acts taken in the judge’s judicial capacity unless taken in the “clear absence of all jurisdiction.” The doctrine has been read broadly, but its text is narrow.

Where conduct may fall outside the scope of judicial action. Some conduct may fall outside *Stump* where it is administrative, ministerial, enforcement-related, or taken in the clear absence of all jurisdiction. The classification is fact-specific. The framework identifies several judicial actions documented in the IAJ record that may, after functional analysis, fall outside the *Stump* scope:

- (i) Ex parte communications with non-parties.
- (ii) Orders issued without notice to a party.
- (iii) Refusal to docket filings.
- (iv) Threats to “unfile” or strike papers.
- (v) Conduct after recusal motion that exceeds the procedural posture’s grant of authority.

- (vi) Statements made in official capacity but outside the adjudicative function (e.g., representations in administrative orders concerning case management protocol that do not adjudicate any party's rights).

These acts may be judicial, administrative, ministerial, or extra-judicial depending on context. The safer argument is not that *Stump* categorically does not apply, but that each act must be functionally classified under *Stump*, *Mireles*, and *Forrester*. Each category should be analyzed for possible accountability without assuming that *Stump* automatically controls or automatically does not apply.

B. Functional capacity and *Forrester v. White*

Forrester v. White, 484 U.S. 219 (1988), held that absolute judicial immunity attaches only to *judicial* functions, not to *administrative* functions performed by judges. Personnel decisions, court administration, and similar non-adjudicative acts are subject to qualified immunity at most.

Application. The framework applies *Forrester* to several IAJ-documented conduct categories:

- (i) Accommodation policy decisions (court-wide accessibility policies are administrative).
- (ii) Clerk-of-court directives (operational, not adjudicative).
- (iii) Courtroom administration (the day-to-day operation of the courtroom).
- (iv) Scheduling decisions that do not involve adjudication of a contested matter.
- (v) Failure to comply with court ADA Title II self-evaluation and dissemination requirements (28 C.F.R. § 35.105, § 35.106) — administrative obligations of the court, not adjudicative acts.

Each of these categories may fall within *Forrester*'s administrative-function category depending on function, context, and the nature of the act. They should be analyzed under *Forrester*'s functional approach rather than presumed to be protected or unprotected. Where the act is administrative, operational, ministerial, or policy-based rather than adjudicative, absolute judicial immunity is weaker or unavailable.. *Forrester* is therefore a critical doctrinal vehicle for accountability that *Stump* does not foreclose.

C. *Pulliam v. Allen* and injunctive relief

Pulliam v. Allen, 466 U.S. 522 (1984), confirmed that judicial immunity does not bar prospective injunctive relief against state judicial officers. The Federal Courts Improvement Act of 1996 narrowed *Pulliam* for § 1983 actions (the Act provides that “injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable”), but the underlying doctrinal principle — that absolute immunity is a damages doctrine, not a structural-injunction doctrine — remains operative for the federal-court analog under the framework's *Plata* pathway.

Application. Structural injunctive relief targeting institutional practices rather than individual judicial acts is constitutionally available. Declaratory relief is not subject to the FCIA restriction and operates as the prerequisite for injunctive relief where the FCIA applies.

D. The constitutional floor that immunity cannot penetrate

The framework's deepest immunity argument is *structural* rather than doctrinal: judicial immunity is a *judge-made* doctrine; the constitutional floor identified in Parts II–V is *constitutional* law. Where a judge-made doctrine produces a result inconsistent with the constitutional floor, the floor controls. The argument does not require overruling *Stump*; it requires reading *Stump* consistent with the constitutional architecture in which it sits.

The three structural anchors for this argument:

- (i) **Article VI Supremacy** — the Supremacy Clause makes the Constitution and treaty law supreme over conflicting state law and over inconsistent judicial doctrine. A judge-made immunity doctrine cannot lawfully override the constitutional floor.
- (ii) **Article III “good Behaviour”** — the good-Behaviour clause conditions judicial tenure on a constitutional standard of conduct. The IAJ argues that a doctrine that insulates conduct below the good-Behaviour floor should not operate consistent with the Article III architecture; this is identified as an IAJ structural argument that *Stump* and *Mireles* as currently read are themselves inconsistent with the Article III architecture. The IAJ does not characterize its position as awaiting recognition as an “exception” to those cases; it is a structural reading of the Article III text that the U.S. judiciary has not yet adopted.
- (iii) **The international-plane *jus cogens* override** — as developed in UNCAT and *Jus Cogens: A Contemporary Perspective* and in Part III above, VCLT Article 53 voids domestic immunity doctrines on the international plane to the extent they insulate documented torture from accountability. This is an IAJ analytical position grounded in international law authorities; it is identified as such and not represented as a settled holding of U.S. domestic courts.

The framework's modest claim. Read consistent with these three structural anchors, *Stump* does not insulate conduct that meets the proof matrix in Part V. The doctrine remains in force for the bulk of judicial conduct it was designed to address; what changes is its application to conduct that satisfies the constitutional floor — conduct that, by the framework's analysis, falls below the constitutional minimum that the Article VI, Article III, and *jus cogens* architectures all identify.

Part IX. The IAJ Two-Plane Framework

The IAJ Two-Plane Framework, developed in *UNCAT and Jus Cogens: A Contemporary Perspective*, provides the architectural foundation for analyzing the relationship between international obligation and domestic enforcement.

A. Plane A — the international plane

On Plane A, the State's obligations under UNCAT, customary international law, and *jus cogens* are intact regardless of the State's domestic procedural mechanisms. *Medellin* does not affect Plane A. The CAT Committee's authoritative interpretation, ICJ judgments, and *jus cogens* norms operate on Plane A. The Plane A test is *whether the documented conduct satisfies the international elements*, without regard to domestic procedural shields.

B. Plane B — the domestic plane

On Plane B, the State's mechanisms for implementing the international obligation are constrained by U.S. doctrines of non-self-execution, sovereign immunity, absolute judicial immunity, qualified immunity, abstention, and procedural defaults. The Plane B test is *whether the available domestic mechanism actually provides the protection, relief, remedy, and punishment that the international obligation requires* — that is, *equivalence*.

C. The equivalence problem

The U.S. RUDs to UNCAT were premised on the representation that existing domestic law would provide equivalence. The CAT Committee in CAT/C/USA/CO/3-5 (December 19, 2014) found that this equivalence has not been delivered. The principal gaps:

- (i) No comprehensive domestic torture offence (the federal Torture Act applies only to extraterritorial conduct).
- (ii) No domestic civil cause of action for torture by U.S. officials (the TVPA reaches only foreign officials).
- (iii) Absolute judicial immunity, absolute prosecutorial immunity, qualified immunity, the *Bivens* contraction, the captive-litigant problem, and abstention doctrines together create a domestic-immunity architecture that systematically insulates documented torture from accountability. The IAJ position is that this architecture is itself a violation of the United States' UNCAT Article 16, Article 13, and Article 14 obligations and constitutes the operative U.S. equivalence failure on Plane A.
- (iv) Non-self-execution doctrine constrains the domestic enforcement of treaty obligations even where the international obligation is unambiguous.

D. The captive-litigant problem and the seven-doctrine cascade

The structural challenge in judicial-torture litigation in U.S. federal court is the *captive-litigant problem*: the domestic forum that is the locus of the alleged violation is often also the forum that adjudicates the claim of violation. The federal courts have developed a sequence of doctrines that operate at progressively earlier procedural stages, each of which can foreclose merits review:

- (1) § 1915(e)(2)(B) screening (for IFP litigants, dismissal before service of process).
- (2) Younger abstention (post-*Sprint Communications v. Jacobs*, 571 U.S. 69 (2013), confining Younger to three categories).
- (3) Rooker-Feldman doctrine (post-*Exxon Mobil v. Saudi Basic Industries*, 544 U.S. 280 (2005), narrowing to direct appeals from state-court judgments).
- (4) Sovereign immunity (bars suits against the State and against state officials in their official capacity for damages).
- (5) Absolute judicial immunity (Part VIII).

- (6) Qualified immunity (*Pearson v. Callahan*, 555 U.S. 223 (2009)).
- (7) Pleading-stage dismissal under *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Each doctrine is grounded in legitimate federalism, comity, and separation-of-powers concerns. The IAJ position is not that the doctrines are illegitimate but that their cumulative effect, as applied to documented torture, produces a domestic-plane outcome that fails to satisfy the State’s international obligations.

E. Consequence for the constitutional framework

Each Plane B doctrine should be analyzed for its equivalence consequence. Where a Plane B doctrine produces non-equivalence — that is, where it forecloses domestic accountability that the international obligation requires — the doctrine is, on Plane A, an inadequate implementation of the State’s obligation. The international obligation is not extinguished by the domestic foreclosure; the Plane A obligation remains binding.

F. Implications for litigation strategy

A litigation strategy grounded in the Two-Plane Framework will:

- (i) Frame each domestic procedural obstacle as an equivalence issue, identifying the international obligation that the obstacle frustrates.
- (ii) Preserve the Plane A obligation as a separate object of analysis, available for treaty-body engagement even where domestic relief is unavailable.
- (iii) Advance the *Charming Betsy* canon as supporting interpretations of domestic procedure that preserve equivalence.
- (iv) Preserve the *jus cogens* override argument (*Pinochet (No. 3)* analogue) for situations in which the absolute domestic immunity is the only obstacle to merits review.

Part X. The IAJ Six-Move Framework Applied to Constitutional Claims

The IAJ Six-Move Framework, developed in *UNCAT and Jus Cogens: A Contemporary Perspective*, supplies an internal analytical architecture for evaluating whether documented conduct in a judicial setting satisfies the UNCAT Article 1 requirements. The Framework is a disciplining tool for systematic analysis, not a freestanding legal test binding on courts. As applied to constitutional claims, the Six Moves operate as follows.

Move 1 — The text contains no setting qualifier. Article 1(1) of UNCAT defines torture as “any act” — no setting restriction. CAT General Comment No. 2, ¶ 15, confirms that the obligations extend to “all branches of government.” The constitutional analogue is the absence of a setting limitation in the Fifth, Eighth, or Fourteenth Amendments — substantive due process and Eighth Amendment protections apply wherever state action satisfies the elements.

Move 2 — Five-element analysis of UNCAT Article 1. Each element analyzed individually against documented conduct. The constitutional analogue is the element-by-element analysis using the eleven-row proof matrix in Part V.

Move 3 — The lawful-sanctions carve-out three-part test. UNCAT Article 1 excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions.” The three-part test asks whether:

- (a) The harm arises *only* from the formal sanction, or also from deliberate continuation of harmful conditions after knowledge.
- (b) The process was genuinely lawful (proper jurisdiction, proper procedure, good faith) — court orders involving violations of internationally recognized ethics standards do not have the analytic character of “lawful sanctions” (Satterthwaite SR 2023).
- (c) The cumulative pattern defeats the characterization even where individual orders may be characterized as lawful sanctions.

Move 4 — Severity confirmation under the Istanbul Protocol (2022). The Istanbul Protocol is the international standard for documenting torture and ill-treatment. Its multi-modal clinical methodology is admissible expert evidence in U.S. federal proceedings under *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Move 5 — *Jus cogens* closes any residual architectural gap. Even accepting the strongest architectural argument that UNCAT’s drafting history points toward a custodial paradigm, the *jus cogens* prohibition operates independently of and above that architecture.

Move 6 — Functional custody analogy. The Optional Protocol to UNCAT (OPCAT) extends State obligations to “places of deprivation of liberty” understood functionally. A litigant whose continued participation in proceedings is compelled on pain of sanction, dismissal, and adverse judgment is in functional custody to the proceeding.

Part XI. The Freeman Bright Line: A Constitutional Test for Disability Accommodation in Courts

The IAJ record identifies a discrete moment at which a federal judge granted a one-year stay for medical accommodation under conditions that — properly generalized — supply a constitutional test for the line between accommodation and CIDT. The framework formalizes this moment as the **Freeman Bright Line**.

A. The test

A judicial order satisfies the Freeman Bright Line where it provides accommodation that is:

1. **Immediate** — granted without procedural delay that would itself produce the harm to be avoided.
2. **Meaningful** — proportionate to the documented medical need.
3. **Provided willingly and humanely** — without retaliatory conditions or coercive add-ons.

4. **Documented for quality control** — entered as a written order with stated findings.
5. **Subject to independent review** — appealable or auditable without retaliatory consequence.

Where one or more of the five elements is absent, the absence does not automatically establish a constitutional violation, but it triggers heightened analysis under the proof matrix: notice, control, compulsion, severity, purpose/function, and remedy failure must be evaluated.

B. The constitutional source

The Freeman Bright Line is not a free-standing standard. It is a synthesis of:

- (i) The Title II reasonable-accommodation standard as applied by *Tennessee v. Lane*.
- (ii) The *Farmer–Estelle* deliberate-indifference standard, read in reverse — the test for what conduct *avoids* the constitutional violation.
- (iii) The *Lewis* deliberative-context standard, which requires that deliberation produce accommodation when accommodation is medically indicated.
- (iv) The *Caperton* due-process floor for judicial conduct.

The five elements are the operational test for compliance with this convergence.

C. Application

Where a court’s conduct satisfies all five elements of the Freeman Bright Line, IAJ’s safe harbor is met. Where the conduct fails one or more elements, the framework’s proof matrix in Part V becomes operative: notice, control, compulsion, severity, purpose/function, and remedy failure must be evaluated rather than presumed.

The Bright Line therefore operates as a **constitutional safe harbor**: courts that meet it are protected; courts that fail it must justify the failure.

D. The diagnostic value

The Bright Line is doctrinally useful in three settings:

- (i) **In active litigation.** Counsel can use the five elements as a checklist for assessing whether a particular accommodation order is constitutionally adequate, and for framing motions to reconsider or to amend the order when the elements are missing.
- (ii) **In appellate review.** Appellate courts can use the five elements as a framework for reviewing accommodation rulings.
- (iii) **In structural reform.** Judicial conduct authorities and judicial-discipline bodies can use the five elements as the operational standard for evaluating individual judicial performance on accommodation matters.

Part XII. The Five-Part Proof Architecture (Case Application Summary)

The enhanced framework, applied to a specific case, produces a five-part proof architecture. The architecture is presented here as a summary tool for litigants, prosecutors, treaty-body submitters, and structural-reform advocates.

Part 1 — Disability or vulnerability documented

Medical records, treating-physician declarations, SSA determinations, or clinical evidence establishing the disability and its functional consequences.

Part 2 — Accommodation requested and denied

Filings of record documenting the accommodation request and the court’s denial, including informal or oral requests reflected in transcripts or orders.

Part 3 — Continued participation under compulsion

Evidence that the litigant continued participation under threat of dismissal, sanctions, or contempt — establishing the coercive frame within which the harm occurred.

Part 4 — Foreseeable and documented harm

Medical documentation of harm reasonably foreseeable from the participation, including pre-participation physician letters predicting harm and post-participation records confirming it.

Part 5 — Continuation after notice

Sequential docket entries demonstrating that the court received notice of the harm and continued the harmful pattern. **This is the dispositive evidentiary element under *Hope v. Pelzer***; continuation after notice supplies powerful evidence of deliberate indifference and willfulness on the domestic-law side, though the ultimate constitutional finding remains dependent on the full record, the applicable doctrinal context, and the adjudicator’s ruling.

Integration with the proof matrix

Where all five parts are documented in a single case record, the proof matrix in Part V is satisfied across multiple rows, and the record is capable of supporting a constitutional-violation finding at the level of redundancy that the framework targets. Each Part of the proof architecture maps onto multiple rows of the proof matrix:

- Part 1 corresponds to the “disability discrimination” row.
- Part 2 corresponds to the “absence of legitimate alternative” row.
- Part 3 corresponds to the “deliberative context” and “color of law” rows.

- Part 4 corresponds to the “serious risk / cruel result” and “wantonness / disproportion” rows.
- Part 5 corresponds to the “actual knowledge” and “disregard / continuation” rows, and supplies the “willfulness” element for criminal proceedings.

Part XIII. The Doubled Compliance Failure: Why the Sovereignty Defense Fails

The principal argumentative consequence of the enhanced framework is the **doubled compliance failure**. The United States has failed UNCAT compliance on two independent grounds:

- (a) On the treaty’s own terms — that is, on the international plane, as established by the *Belgium v. Senegal*, *Furundžija*, and ICJ *jus cogens* line, and as found by the CAT Committee in CAT/C/USA/CO/3-5 (2014).
- (b) On its own internal constitutional doctrine — that is, on the domestic plane, as established by the doctrinal spine in Part IV and the proof matrix in Part V.

The doubling is significant for international bodies in three respects:

A. It defeats the sovereignty defense in its strongest form

The argument that international standards inappropriately invade domestic constitutional space cannot succeed where the international standard *converges with* the United States’ own constitutional doctrine. The convergence is the point. The international obligation is not displacing a domestic prerogative; it is congruent with the domestic prohibition. Where both planes prohibit the same conduct, the sovereignty defense fails on its own terms.

The argumentative consequence is doctrinal, not rhetorical. The Court’s “evolving standards” methodology (*Trop v. Dulles*; *Atkins*; *Roper*) explicitly considers international consensus as evidence of the evolved domestic standard. Where international consensus converges with domestic doctrine, the convergence supports rather than displaces the domestic standard. The sovereignty defense rests on the proposition that the international and domestic prohibitions are in tension; the doubled compliance failure shows they are aligned.

B. It identifies the failure with constitutional rather than merely policy specificity

The framework names the SCOTUS holdings being violated. A compliance failure that violates *Rochin*, *Farmer*, *Estelle*, *Hope*, *Hudson*, *Whitley*, *Lewis*, *Brown v. Plata*, *Tennessee v. Lane*, and *Caperton* simultaneously is not a marginal failure; it is a categorical failure. The naming of the holdings is critical: it transforms the compliance question from a generalized critique of U.S. practice into a doctrinal indictment that operates within U.S. constitutional discourse.

C. It supplies the predicate for Article 12 investigation

UNCAT Article 12 requires prompt and impartial investigation wherever there is reasonable ground to believe torture or CIDT has occurred. The constitutional showing in this framework — independent of any treaty-specific characterization — supplies that reasonable ground. Failure to investigate is itself an independent UNCAT violation. The doubled compliance failure therefore not only establishes the underlying violation but also establishes the procedural predicate for the State’s investigative obligation, and the procedural predicate for the CAT Committee’s Article 20 systematic-practice inquiry.

Part XIV. Case Application: The IAJ Evidentiary Record

A. The IAJ Case Archive

The IAJ Case Archive (IAJ Disability Harmony, Appendix D) documents specific cases of judicial conduct that, under the framework set out in this Review, may satisfy the constitutional and treaty thresholds. The Archive currently contains 18 documented cases (D.1–D.18), drawn from federal-court records, state-court records, appellate decisions, and IAJ-filed complaints. Each case in the Archive is analyzed under the IAJ five-element framework, the eleven-row proof matrix in Part V, and the Five-Part Proof Architecture in Part XII.

B. The paradigm case: *Hazari v. County of Santa Clara*

The following analysis is illustrative, not adjudicative. It demonstrates how the framework’s eleven-row proof matrix and Five-Part Proof Architecture would apply to a developed evidentiary record. The case is the most comprehensively documented case in the IAJ Archive but the analysis is presented at the level of generality appropriate for a Review of Law publication; the operative determinations on any element would rest on the underlying primary sources, expert reports, and Istanbul Protocol findings rather than on the summary here.

The case is *Hazari v. County of Santa Clara*, Case No. 5:19-cv-04392-BLF (N.D. Cal.), and its successor proceedings in the Ninth Circuit (Case Nos. 19-16291, 20-16291). The case is documented in the *IAJ Human Rights Analysis* (IAJ-HRA-202508-001) and in the Istanbul Protocol medico-legal investigation (ECF-134, filed 2025).

The case documents:

- (i) A 7.5-year federal proceeding combined with prior state-court proceedings spanning a total of 8.5 years.
- (ii) Documented severe physical and psychological harm correlated with proceedings periods through baseline and timeline analysis.
- (iii) Repeated denial of medically-justified accommodations after knowledge of harm was established.
- (iv) Reversal of previously granted accommodations without changed circumstances or medical basis.
- (v) Compelled participation in proceedings under threat of dismissal.
- (vi) Ultimate dismissal of the case on procedural grounds without adjudication of the merits, including the merits of the documented torture allegations.

- (vii) The Ninth Circuit’s denial of mandamus relief (ECF-102, ECF-145) — a documented Plane B remedial failure.

Framework application. On IAJ’s preliminary investigative analysis, the record appears capable of supporting findings under all five UNCAT Article 1 elements; the Fifth and Fourteenth Amendment thresholds; the *Farmer–Estelle–Hope* deliberate-indifference framework; the *Hudson–Whitley* wantonness factors as applied analogically; and the eleven-row proof matrix in Part V across multiple rows. This Review does not adjudicate those findings; it uses the *Hazari* record illustratively to show how the framework would be applied in a full Istanbul Protocol investigation or treaty-body submission. The full Istanbul Protocol documentation is available to treaty bodies and investigators on the standard IAJ access protocol.

The Freeman Bright Line analysis. The case exemplifies the diagnostic value of the Freeman Bright Line. An earlier ruling in the proceeding (Judge Freeman’s grant of a one-year stay in March 2022) satisfied all five elements of the Bright Line — immediate, meaningful, provided willingly and humanely, documented in a written order, and subject to independent review. The IAJ has flagged this as the affirmative Bright Line moment that gives the test its name. Subsequent conduct in the same proceeding failed multiple elements (failure of immediacy in subsequent accommodation requests; failure of meaningfulness when requested accommodations were denied; conditions imposed on accommodations that introduced coercive elements; failures of documentation; failures of independent review). The Bright Line operated diagnostically: where it was met, the conduct was constitutionally adequate; where it was failed, the constitutional analysis proceeded through the proof matrix in Part V.

C. Illustrative screening application: the Betts matter

The following is not an adjudication of the Betts matter. It illustrates how the IAJ would screen allegations under the framework set out in this Review. The relevant questions are not whether every custody error constitutes CIDT, but whether the record shows notice, coercive state control, severe suffering, discriminatory or punitive purpose, lack of jurisdiction or process, failure of remedies, and official refusal to investigate or mitigate known harm. The case of *Betts v. North Carolina*, referenced in the IAJ-filed complaint of August 4, 2025, is currently under IAJ investigation; the screening analysis below maps the framework onto the allegations as documented in the complaint, distinguishing allegation from required evidence from legal relevance from the risk of overclaiming.

Allegation	Evidence needed	Legal relevance	Risk of overclaiming
Repeated arrests of a disabled mother	Orders, warrants, transcripts, arrest records, notice to issuing court	State control; compulsion; potential due-process violation; pattern element for <i>Plata</i> -style structural inquiry	Arrest alone is not torture or CIDT; severity, purpose, and continuation-after-notice must be separately proved

Allegation	Evidence needed	Legal relevance	Risk of overclaiming
Forced separation from child	Custody orders, enforcement records, medical/psychological harm records	Severe mental suffering element; family integrity; potential Article 16 CIDT; <i>Lewis</i> deliberative-context analysis	Must distinguish legal custody disagreement from substantively prohibited treatment; <i>Hope v. Pelzer</i> continuation element is dispositive
Disability ignored or denied accommodation	Accommodation requests of record; medical documentation; explicit denials	ADA Title II; <i>Tennessee v. Lane</i> abrogation; substantive due process; deliberate-indifference (<i>Farmer</i>) element	Must establish notice and the availability of reasonable accommodation; <i>Forrester</i> administrative-function carve-out should be considered for non-judicial denials
Custody order alleged to be void for want of jurisdiction	Jurisdictional record; objections preserved; appellate rulings	Due process; enforcement authority; potential <i>Stump</i> “clear absence of all jurisdiction” application	“Void” must be legally established by the procedural record; the <i>Stump</i> exception is narrowly construed
No effective remedy available	Appellate denials; mandamus denials; record of inability to participate	Remedy failure; treaty-body engagement predicate; equivalence-failure documentation for Plane A submission	Must distinguish adverse remedies from genuinely illusory remedies; the captive-litigant cascade should be carefully documented

Framework analysis. Each row of the screening matrix supports a separate analytical step under the proof matrix in Part V. The aggregate analysis would proceed through the Five-Part Proof Architecture: (1) disability documented; (2) accommodation requested and denied; (3) continued participation under compulsion; (4) foreseeable and documented harm; (5) continuation after notice. The Five-Part Architecture’s fifth element — continuation after notice under *Hope v. Pelzer* — supplies powerful evidence on the domestic-law side; the ultimate constitutional finding remains dependent on the full

record and the adjudicator’s ruling. The IAJ does not adjudicate the Betts matter on this record; the screening analysis identifies what would be required to support each potential characterization.

D. Pattern-or-practice analysis

The IAJ Case Archive supports a pattern-or-practice analysis under 34 U.S.C. § 12601 (the DOJ pattern-or-practice statute) and under the systematic-practice threshold of UNCAT Article 20. The cumulative documentation of multiple cases satisfying the five-element framework, across multiple jurisdictions, with common structural mechanisms (the “Five Structural Mechanisms” identified in IAJ Disability Harmony: Legibility Default; Epistemic Mismatch; Accommodation Splitting; Throughput Pressure; Plausible Neutrality) supports the threshold for systematic-practice inquiry.

Part XV. Integration with the Nine-Dimensional Framework

This Review is designed to slot into the IAJ Synthesis Memorandum’s nine-dimensional architecture without disturbing it. The integration points are explicit.

Dimension	Integration Point with the Enhanced Framework
Dimension I (Article 1 text)	The element-by-element proof matrix in Part V maps the Article 1 elements onto domestic constitutional thresholds, supplying the equivalence proof the RUD invokes.
Dimension II (CAT Committee interpretation)	Part II.B (Article VI / <i>Charming Betsy</i>) supplies the interpretive vehicle for incorporating the Committee’s interpretation into domestic constitutional doctrine.
Dimension III (<i>Jus cogens</i>)	Part VIII (immunity boundaries) operationalizes the VCLT Article 53 conflict between domestic immunity doctrines and <i>jus cogens</i> at the level of domestic constitutional architecture.
Dimension IV (Two-plane analysis)	Part IX is the Plane B (domestic) analog of the Plane A (international) analysis.
Dimension V (Five-element analysis)	Part V’s proof matrix maps the five UNCAT elements onto domestic constitutional proof requirements, completing the equivalence demonstration.

Dimension	Integration Point with the Enhanced Framework
Dimension VI (CIDT-to-torture gradient)	Part IV.B (<i>Farmer–Estelle–Hope</i> triangle) supplies the domestic constitutional gradient that parallels the treaty gradient.
Dimension VII (Jurisdictional custody)	Part IV.A (<i>Lewis</i> deliberative-context standard) supplies the domestic constitutional analog to the functional-custody analogy.
Dimension VIII (Systematic practice)	Part VII.A (<i>Plata</i> structural injunction) supplies the domestic remedial mechanism for systematic-practice findings.
Dimension IX (Domestic compliance baseline)	The enhanced framework consolidates and extends Dimension IX, organizing it into a free-standing constitutional theory.

Part XVI. Implementation Strategy

A. Litigation strategy

The IAJ litigation strategy is sequenced rather than parallel. Each judicial-torture pleading is constructed as a three-track instrument designed to advance the domestic adjudication while simultaneously building the international-forum record. The three tracks invoke distinct legal authorities, are pleaded in the alternative, and together exhaust the domestic remedies the United States represents to international bodies as adequate to discharge UNCAT obligations. The pattern is exemplified by the operative filings in *Hazari v. County of Santa Clara*, No. 5:19-cv-04392-BLF (N.D. Cal.), ECF Nos. 89, 91, 130, and 141.

Track 1 — Pleading the treaty proper

Plead the substantive UNCAT obligation as it would apply absent the United States' RUDs. Frame the count under Article VI as supreme Law of the Land, invoking the Convention Against Torture (and where applicable the ICCPR and CRPD) as binding on every judge in every state by the express text of the Treaty Clause. Cite the *jus cogens* override developed in Part III and in UNCAT and *Jus Cogens: A Contemporary Perspective*. Ask the court to declare the substantive obligation operative notwithstanding any contrary RUD. Track 1 will ordinarily be denied under *Medellín v. Texas* and the non-self-execution Declaration. That denial is the first entry in the documentary record.

Track 2 — Pleading under Congress's alleged equivalence

Plead in the alternative under the standards the United States represented to the international community would provide equivalent or greater protection than the treaty proper. The U.S. Reservation conditioning Article 16 on the standards of the Fifth, Eighth, and Fourteenth Amendments is the operative equivalence promise. Track 2 holds the United States to that promise on its own terms. The conduct alleged is to be assessed under the *Rochin–Lewis* conscience-shocking threshold, the *Farmer–Estelle–Hope* triangle, the *Hudson–Whitley* wantonness test, and the *Brown v. Plata* systemic-conditions doctrine (Part IV). The IAJ evidentiary-inference principle drawn from Justice Kennedy’s concurrence in *Chavez v. Martinez* — that the absence of any legitimate alternative purpose supports the inference of purpose — is to be invoked where the record supports it. The eleven-row constitutional proof matrix of Part V supplies the element-by-element pleading template. Track 2 is the track on which the documentary record of the United States’ equivalence representation is generated as a Plane B matter. The outcome of Track 2 in U.S. courts is evidence — not the dispositive authority — on whether the United States is honoring its international representation. The Plane A determination of compliance is made by treaty bodies and Special Procedures on the international plane; Track 2 supplies the documentary record on which that determination is made.

Track 3 — Pleading the constitutional claim directly

Plead the underlying constitutional violations developed in Part II: substantive and procedural due process; the Eighth Amendment (where the litigant is in custody) or the Fourteenth Amendment (otherwise); ADA Title II and Rehabilitation Act § 504 where disability is implicated; 42 U.S.C. § 1983 against individual officials for prospective relief under *Ex parte Young*; § 1985(3) where conspiracy and class-based animus are documented; and the Article III good-Behaviour pathway (advanced as an IAJ structural argument distinct from Article II impeachment, which is an executive-officer accountability mechanism) where the operative conduct is judicial rather than administrative. Distinguish judicial from administrative acts: *Forrester v. White* preserves accountability for administrative conduct, including court-administrator functions, ADA coordinator functions, and operational decisions distinct from adjudication.

Sequencing the three tracks

The three tracks are pleaded together in a single operative motion but adjudicated sequentially. When Track 1 is denied (on *Medellin* or non-self-execution grounds), the record establishes that the treaty proper is not directly enforceable as the United States has structured the ratification. When Track 2 is denied (on the merits or on procedural grounds), the record establishes that the represented equivalence is not delivered in practice. When Track 3 is denied (on immunity, abstention, or other doctrinal grounds), the record establishes that the parallel constitutional remedies are also foreclosed. The cumulative denials are the documentary predicate the international-forum pleading requires (Section D). One concrete implementation of this sequencing is the three-part motion structure exemplified by ECF-141.1, which presents the same substantive claim in a rule-compliant Part A, a Congress’s-alleged-equivalence Part B, and a treaty-proper Part C, and treats the disposition of each as a distinct record entry.

The *Marbury* frame

Article VI binds every federal and state judge personally to the supremacy of treaties. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), establishes that it is the duty of the judicial branch to say what the law is. Where Congress, through RUDs, departs from the object and purpose of a human-rights

treaty in a manner that places the United States in continuing breach of a jus cogens obligation, the judicial duty under *Marbury* is to identify the congressional error and to restore the constitutional rule under Article VI. The denial of Tracks 1, 2, and 3 — without judicial engagement with the RUDs as the operative obstacle and without judicial application of the equivalence standard the United States itself adopted — is the documentary record of *Marbury* frustration: the judiciary’s refusal to discharge its constitutional duty to say what the law is on the question that controls the outcome. The frustration record is itself a substantive showing for the international-forum reader, because it documents that the failure to discharge UNCAT obligations is not the product of episodic procedural error but of a branch-wide pattern of non-engagement with the Article VI treaty-supremacy obligation. See ECF-89.1 at 16; ECF-91.1 at 16; ECF-130.1 at 9.

Remedial sequence and diagnostic instruments

Within each track, seek prospective rather than retrospective relief where possible. *Ex parte Young*, declaratory relief, and ADA Title II injunctive remedies are the most reliable pathways. Damages pathways are more constrained; where damages are sought, the *Bivens/Carlson* analogue framework and the post-*Abbasi/Egbert* constraints should be addressed on the face of the pleading. Use the five-element Freeman Bright Line (Part XIII) as the diagnostic for identifying which judicial conduct in the record falls below the constitutional safe harbor; address each row of the eleven-row matrix (Part V) in the operative pleading. Both are designed to produce a complete adjudicative record on the points the equivalence test of Track 2 requires.

B. Prosecutorial strategy

The operational manual for prosecutorial decisionmaking under this framework is the IAJ *Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States*. The Guide maps the federal and state criminal-law architecture, addresses charging-decision and declination-decision detail, and develops the Istanbul-Protocol-compliant evidentiary handling that determines whether a prosecution under 18 U.S.C. §§ 2340–2340A, § 242, and § 249 is viable. This section identifies the strategic considerations that bear on integrating prosecutorial enforcement with the litigation strategy of Section A; for operational detail, federal and state prosecutors should consult the Guide directly.

The eleven-row proof matrix of Part V is intended to function as a charging-decision template. Where the matrix is fully populated for a given course of conduct, the willfulness and color-of-law elements of § 242, and the bias-motivated injury element of § 249, are established on the face of the record. The *Hope v. Pelzer*, 536 U.S. 730 (2002), “fair warning” standard governs the willfulness element: continuation of conduct after actual notice of its constitutional defect — including notice in the form of a prior accommodation grant, a prior judicial-conduct complaint, or a prior Article 20 communication — satisfies willfulness without requiring a prior case on identical facts. The IAJ Synthesis Memorandum (perspective_v69) Dimension III develops the knowledge-plus-disregard framework that operationalizes *Hope* in the judicial-torture context.

Coordination with the litigation strategy of Section A is essential. Where a prosecution is declined for resource, evidentiary, or policy reasons, the declination should be documented in a manner that supports the equivalence-failure record built in the parallel civil litigation. Where a prosecution is undertaken, the

charging instrument should track the three-track pleading architecture of Section A so that the criminal record and the civil record are mutually reinforcing rather than divergent. State criminal codes function as the primary day-to-day enforcement mechanism for conduct that meets the constitutional CIDT threshold but does not reach the federal § 242 / § 249 / §§ 2340–2340A elements; the Guide identifies the state-law architecture in detail. Where state prosecutorial authorities decline to act, the declination is itself part of the equivalence-failure record.

Charging decisions in torture and CIDT cases turn on Istanbul-Protocol-compliant evidentiary handling. The Guide addresses Istanbul Protocol implementation in detail and identifies the procedural and evidentiary issues that most often determine viability. Federal and state prosecutors should treat Istanbul Protocol compliance as a precondition for charging in any case in which the underlying claim is constitutionally cognizable under Parts II–V of this framework.

C. Institutional reform pathways

- (1) **Comprehensive domestic torture criminalization.** Enact a comprehensive federal domestic torture offence in conformity with UNCAT Article 1, applicable to conduct within the United States.
- (2) **Withdrawal of incompatible RUDs.** Withdraw the “prolonged mental harm” Understanding and the Article 16 reservation.
- (3) **Immunity reform.** Implement a *jus cogens* exception to absolute judicial immunity for documented torture, consistent with the *Pinochet* (No. 3) line.
- (4) **§ 1985(3) clarification.** Statutory clarification that § 1985(3) reaches conspiracies motivated by disability-based animus.
- (5) **Article III good-Behaviour enforcement.** Develop constitutionally appropriate enforcement mechanisms for Article III good-Behaviour forfeiture that are textually grounded in Article III and structurally independent of Article II impeachment (which is an executive-officer accountability mechanism, not a judicial-tenure mechanism). Candidates include congressional implementing legislation under Article III, independent good-Behaviour adjudication within the judicial branch, and structural reform of the Judicial Conduct and Disability Act framework. The current practice of treating Article II impeachment as the exclusive judicial-removal mechanism is identified by the IAJ as itself constitutionally problematic under the textual and structural reading of Article III.
- (6) **Independent investigation bodies.** Establish permanent investigative mechanisms institutionally independent of the judicial branch.
- (7) **Istanbul Protocol training.** Federal and state prosecutors, judicial conduct authorities, and disability rights coordinators trained in Istanbul Protocol (2022) methodology.
- (8) **Article 22 acceptance.** Accept UNCAT Article 22 individual communications jurisdiction.
- (9) **Sixth Periodic Report.** Submit the long-overdue Sixth Periodic Report to the CAT Committee with candid accounting of equivalence failures.

- (10) **Freeman Bright Line institutional adoption.** Adopt the five-element Bright Line as the operational standard for evaluating judicial performance on accommodation matters.

D. Building the international-forum record

The litigation and prosecutorial strategies of Sections A and B are designed to produce three documentary outputs that, taken together, constitute the record the international-forum pleading requires. The architecture is developed in detail in the IAJ Synthesis Memorandum (perspective_v69) Dimension VI; this section identifies the documentary objectives and their relation to the strategic moves above.

Objective 1 — Exhaustion of domestic remedies

UNCAT Article 22 individual communications (where the State has accepted the procedure), the CAT Article 20 confidential inquiry mechanism, and treaty-body individual-communications procedures generally require exhaustion of available domestic remedies, subject to the futility, undue-prolongation, and unavailability exceptions. The three-track pleading sequence of Section A is designed to produce a complete exhaustion record on the face of the docket: Track 1 establishes that the treaty proper is foreclosed; Track 2 establishes that the represented equivalence is not delivered; Track 3 establishes that the parallel constitutional remedies are also foreclosed. The cumulative denials, properly documented, satisfy the exhaustion threshold. The IAJ position, developed in perspective_v69 Critical Examination VI.2, is that exhaustion is relevant to forum and admissibility, not to the substantive characterization of the conduct: the substantive showing follows from the element-by-element analysis of Parts II–V, while exhaustion confirms that the appropriate forum for accountability is the international level.

Objective 2 — The *Marbury* frustration record

The *Marbury* frame developed in Section A produces a documentary record of judicial refusal to discharge the Article VI duty to say what the law is on the RUD question. Where a U.S. court denies Tracks 1, 2, and 3 without engaging the RUDs as the operative obstacle, the record contains a documented instance of the judicial branch declining to apply its core constitutional function to the matter that controls the outcome. The *Marbury* frustration record is substantively relevant to the systematic-practice analysis the CAT Committee undertakes under Article 20: it documents that the failure to discharge UNCAT obligations is not the product of episodic procedural error but of a branch-wide pattern of judicial non-engagement with treaty supremacy.

Objective 3 — Documented equivalence failure on Plane B

The two-plane framework developed in Part XII distinguishes the international plane (Plane A), where the obligation is operative regardless of domestic enforceability, from the domestic plane (Plane B), where *Medellin* governs. The equivalence-failure record is built on Plane B and supplies the substantive content of the Plane A submission. Each denial on Section A's Track 2 is a documented instance in which the United States' represented equivalence was tested and not delivered. The cumulative record of Track 2 denials across the IAJ case archive (Appendices D and F) constitutes the systematic-practice showing the Committee Against Torture's Article 20 procedure requires.

The three objectives are not independent. The exhaustion record (Objective 1) is the procedural predicate for international forum access. The *Marbury* frustration record (Objective 2) supplies the institutional-

pattern showing that the failure is structural rather than episodic. The equivalence-failure record (Objective 3) supplies the substantive showing that the United States' representations to the international community are not being kept. Together they constitute the documentary record the IAJ Synthesis Memorandum (perspective_v69) Dimensions VI and VIII identify as necessary and sufficient for the Article 20 systematic-practice threshold. The IAJ recommends that operative motions in judicial-torture cases be drafted with explicit reference to the three documentary objectives, so the record they produce is intelligible to the international-forum reader even where the domestic court engages only the procedural surface of the pleading. The three-part motion structure exemplified by ECF-141.1 is one effective implementation; other implementations are equally valid, provided the documentary record contains the three substantive showings identified above.

Part XVII. Conclusion

The enhanced constitutional framework completes the analytical architecture begun in Dimension IX of the IAJ Synthesis Memorandum. Its principal contribution is consolidation: organizing the dispersed constitutional anchors, doctrinal lines, proof elements, and remedial pathways into a single coherent theory that can stand on its own as the domestic-law case for treating documented judicial conduct as constitutional CIDT, with criminal enforcement available under § 242 and § 249 where the willfulness and bias-motivation elements are met.

The framework does not ask courts to invent doctrine from nothing. Its core anchors, doctrinal lines, and remedy pathways draw on authorities already in the record. What the framework adds is **architecture**: it synthesizes existing doctrine, identifies IAJ's proposed extensions where current law is underdeveloped, and marks those extensions as analytical, structural, or reform-oriented rather than as settled holdings. The result is a way of seeing the existing material as a single integrated whole, capable of being applied to a new case without re-deriving the doctrine from first principles.

The framework's deepest consequence is structural. Where domestic constitutional doctrine and international treaty obligations converge on the same prohibition, the sovereignty defense — that the international obligation impermissibly displaces a domestic prerogative — fails on its own terms. The convergence is not an imposition. It is the recognition that the United States' own constitutional commitments and its treaty commitments are saying the same thing about the same conduct. Where both are violated, the violation is not international or domestic. It is simply a violation, in both registers, of the same constitutional and human prohibition.

The framework's principal contributions are the integration of the constitutional analysis with the IAJ analytical architecture (Two-Plane Framework; Six-Move Framework; Five-Level Gravity Scale; lawful-sanctions three-part test); the integration of three constitutional anchors (Article III good Behaviour; Ninth Amendment residual; Privileges or Immunities); one new doctrinal line (the *Farmer–Estelle–Hope* triangle) and one new IAJ evidentiary inference (the *Chavez–Kennedy* “no legitimate alternative” purpose-inference tool); three remedy pathways (§ 249 bias-motivated injury; Article III removal; *Caperton* reassignment); the eleven-row constitutional proof matrix; the Freeman Bright Line; the Five-Part Proof Architecture; and the Doubled Compliance Failure argument.

The path forward requires (a) careful framing of constitutional claims under multiple parallel pathways; (b) preservation of the international obligation through treaty-body engagement regardless of domestic

outcome; (c) legislative reform to close the equivalence gaps the CAT Committee identified in 2014; (d) continued documentation of patterns of judicial conduct that satisfy the international elements, as a basis for systematic-practice inquiry; and (e) institutional adoption of the Freeman Bright Line as the operational standard for judicial conduct on accommodation matters.

The framework is offered to be used: by litigants and their counsel in active cases; by federal prosecutors evaluating § 242 and § 249 referrals; by treaty-body staff confronting the U.S. RUD; and by legislative and structural-reform bodies considering remedial architecture. Its measure is whether it produces constitutional findings where constitutional findings are warranted by the documented record.

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INTERNATIONAL PRECEDENTS AND COMPARATIVE LAW ON JUDICIAL TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT
DATE: May 11, 2026

IAJ Document Version Control Log

Document ID: IAJ-LRV-20260511-003-PUB
Initial Release Date: 2026-05-11

Version History

Version	Date	Author(s)	Summary of Changes
v1.2	2026-05-11	IAJ	errata: 3 countries specifically objected to USA UNCAT RUDs
v1.1	2026-05-11	IAJ	Update
v1.0	2025-09-03	IAJ	Original version

Classification: Law Review
Access Level: Public