HARMONIZING THE ARCHITECTURE OF DISABILITY RIGHTS:

THE CRPD, FEDERAL DISABILITY STATUTES,

THE CONSTITUTIONAL FOUNDATION OF NON-DEROGABLE DISABILITY RIGHTS,

COURTS AS DISABILITY-CAUSING ACTORS,

AND EUROPEAN HATE CRIME FRAMEWORKS

A Comprehensive Legal Thesis & Practical Implementation Framework

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Abstract

This thesis advances a principled, multilayered methodology for the interpretation and application of the three core federal disability statutes — the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008 (ADAAA) — through a framework integrating international human rights law, the deep constitutional foundations of disability rights as non-derogable rights, comparative European disability and hate crime law, and — critically in this Third Edition — a comprehensive analysis of courts themselves as institutions that cause, exacerbate, and maintain disability harm.

The argument proceeds in six stages. First, the United States signed the Convention on the Rights of Persons with Disabilities (CRPD) in 2009; the Senate voted 61-38 in favor of ratification on December 4, 2012, but fell five votes short of the required two-thirds supermajority. The treaty has not been formally disavowed and continues to appear in Senate treaty records, reflecting a governmental posture of non-disavowal even though the current ratification timeline is institutionally unresolved. This posture generates an Article 18 Vienna Convention on the Law of Treaties (VCLT) obligation on the international plane and provides persuasive contextual support for rights-protective domestic interpretation where domestic text and doctrine remain open to more than one reasonable reading, reinforced by the Senate's 61-vote majority in favor of ratification, even though signature alone does not make the CRPD directly binding domestic positive law. Second, no RUDs were ever attached; the CRPD is therefore available as persuasive interpretive authority in its full text rather than in a U.S.-ratified version narrowed by reservations, understandings, or declarations. Third, the three federal disability statutes, read through the CRPD's object and purpose and constitutional avoidance, yield substantially more robust protections than current practice acknowledges. Fourth, this thesis advances a constitutional synthesis under which disability accommodation rights in judicial proceedings — derivable from the Reconstruction Amendments, substantive due process, the Griffin-Lane access-to-courts doctrine, the Ninth Amendment, and the Obergefell convergence methodology — should be understood as non-derogable in the sense that these converging sources collectively foreclose override by institutional convenience; that convergence synthesis is this thesis's constitutional argument, grounded in the sources identified, rather than a formally recognized category in current doctrine. Fifth, the European framework provides comparative evidence of what effective protection concretely requires. Sixth and newly: courts themselves can be, and demonstrably have been, actors that cause disability, exacerbate existing disabilities, and perpetuate disabling conditions through the imposition of harmful institutional processes — and the law must grapple fully with the responsibility, accountability, immunity, and reform questions that this recognition generates.

This last category — court-caused disability harm — is perhaps the most urgent and the most legally underexamined dimension of disability rights in the judicial setting. It encompasses the exacerbation of progressive neurological conditions by litigation stress; the deterioration caused by denial of accommodation in circumstances where medical evidence documents the harm; the psychological disability generated and compounded by prolonged, adversarial institutional engagement; and the systemic maintenance of disabling conditions when courts refuse to provide the procedural relief that would allow a disabled person's underlying condition to stabilize. The thesis develops the full legal architecture for analyzing this category of harm: the institutional/individual responsibility distinction that judicial immunity doctrine produces; the mechanisms of accountability that survive immunity; the available remedies; the prevention obligations; and the legislative and judicial reform pathways that the law already authorizes and the Constitution already requires.

This Third Edition adds three further contributions not present in prior editions. First, a National Evidentiary Record (Part XX-A) comprising twenty-one vignettes drawn exclusively from published circuit and Supreme Court decisions, California Rules of Court, Rule 1.100 published precedents, Department of Justice enforcement actions against court systems across the country, and peer-reviewed legal scholarship — all predating and independent of the primary case investigations. This national record establishes that judicial disability accommodation failure is not a California phenomenon or a single-case anomaly but a documented national pattern confirmed across jurisdictions, disability types, and court systems from 1997 through 2024. The Department of Justice enforcement archive — spanning every quarterly status report from 1996 to 2024 — contains not a single enforcement action, based on the thesis's review of publicly available DOJ disability rights quarterly status reports from 1996 through 2024 and the Civil Rights Division's disability rights settlement archive (search terms: court accommodation, judicial disability, civil litigant; inclusion criteria: published settlement agreements and consent decrees involving disability accommodation by a court as covered entity; exclusions: physical access, communication, and employment matters) — for denial of accommodation for invisible progressive neurological or psychiatric disability to a civil litigant in civil court proceedings. This structural gap, established through the archive's own silences, is the thesis's most important empirical finding: the enforcement architecture that successfully addresses communication and physical access failures for thirty years is categorically unreachable by the category of violation it most needs to reach, because the accommodation denial that extinguishes the proceeding also extinguishes the complainant.

Second, an analysis of CRPD Article 15 and UNCAT[1] Article 16 as convergent treaty obligations establishing a five-level gravity scale for disability discrimination conduct (Part VII, § 7.1A). Drawing on Special Rapporteur on Torture Juan Méndez's 2013 report (A/HRC/22/53), CRPD Committee General Comments 1 (2014) and 6 (2018), and CAT Committee General Comment No. 2 (2008), the thesis establishes that disability discrimination can reach the level of cruel, inhuman or degrading treatment, and that CIDT[2] and torture are positions on a single continuum rather than categorically separate violations. The gravity scale maps each level — from statutory violation through constitutional violation, pattern-or-practice systemic discrimination, CIDT threshold, and the doctrinal boundary of torture — to its applicable legal standard, mental state requirement, remedial pathway, and proof architecture. Critically, the analysis establishes that the four-element CIDT proof architecture — severity of suffering, state actor authority, official context, and disproportionate imposition — is not the tort framework of duty, breach, causation, and compensable damages. Prosecutors and treaty adjudicators approaching judicial disability discrimination cases at the CIDT level must apply the correct proof architecture; applying the personal injury standard to a Level 4 violation misidentifies the legal standard and misallocates the burden of proof. The analysis closes by mapping the Cleburne[3] irrational prejudice standard to the discriminatory purpose element in criminal prosecution under 18 U.S.C. § 242, identifying the more legally available prosecutorial pathway over 18 U.S.C. § 249 for judicial disability discrimination facts. Section 249 covers disability-motivated hate crimes but requires that the offense willfully cause bodily injury, or that the attempt employ fire, a firearm, a dangerous weapon, or an explosive — elements typically absent from judicial accommodation denial. Section 242's willful deprivation of rights under color of law reaches judicial conduct without requiring physical harm or weapons, making it the more legally available vehicle for the specific facts of judicial disability discrimination.

Third, the first systematic legal analysis of the exceptional evidentiary significance of the primary case record as the product of compelled, exhaustive, and documented failure of every domestic

[1] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
[2] Cruel, Inhuman or Degrading Treatment or Punishment
[3] City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)

pathway available to a disabled person subjected to discrimination by a court (Part XXVII, §§ 27.0–27.0.4). The record documents the systematic failure of all five pathways — prevention, protection, relief, remedy, and punishment (domestic mechanisms: judicial ethics, declaratory relief, writs, injunctions, mandamus, and criminal prosecution) — across more than eight years, with international treaty body proceedings (UN secretariat; CAT/IAJ submission) remaining active and pending as the only accountability mechanism not yet concluded, from a position of indigence, under jurisdictional compulsion that simultaneously denied the litigant prescribed life-saving medical treatment at each stage, against the professional advice that every rational adviser gives to a disabled litigant in this position, and in the face of an economic litigation architecture specifically designed to ensure that claimants who cannot sustain the financial cost of resistance accept becoming collateral damage of jurisprudence. The analysis establishes why this record is unprecedented: not because of what was done to one man, but because of what his documented exhaustion of every available option proves about what the American disability rights enforcement architecture does, at every stage and through every mechanism, to every disabled litigant who cannot stop. The combination of these three contributions — the national vignette record, the gravity scale, and the exhaustion framework — transforms this thesis from a doctrinal argument about statutory interpretation into a complete legal architecture for understanding, documenting, adjudicating, and reforming the systemic failure of American courts to provide disability accommodation that the law, the Constitution, and international human rights treaty obligations all require.

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A Note on Methodology and the Role of Case Evidence

This thesis is a legal analysis of structural questions in disability rights law. It is not advocacy on behalf of any litigant, and it does not advance any party's litigation interests. The case records of Hazari v. County of Santa Clara and the Minkowski family court proceedings are used throughout as evidentiary architecture — documented, publicly verifiable instances of the systemic patterns the thesis identifies through independent legal analysis. Both cases were investigated under the Istanbul Protocol by the Institute for the Advancement of Justice and Human Rights. The Institute for the Advancement of Justice & Human Rights is an independent human rights organization that operates under the methodological standards of the Istanbul Protocol and is not a party to any of the litigation documented in this thesis. Its investigations are conducted under the same independence requirements that govern forensic documentation in international human rights practice: the investigative body has no economic, legal, or institutional interest in the outcome of the proceedings it investigates; its investigators are qualified under the multi-disciplinary standards of the Istanbul Protocol; and its findings are documented in formal reports that apply the Protocol's four-element standard for cruel, inhuman or degrading treatment. The IAJ's independence from the case record it investigates is the condition that makes its findings admissible as evidence for treaty body and prosecutorial purposes under international human rights practice. It is not an advocacy organization filing on behalf of a party; it is a forensic investigation body applying internationally recognized methodology to a documented evidentiary record and producing findings that are independently verifiable against the publicly available court docket. The thesis methodology distinguishes three categories of content: (1) INDEPENDENT LEGAL ANALYSIS: The thesis's doctrinal arguments — on statutory interpretation, constitutional doctrine, international human rights law, and comparative law — stand independently of any case record. They are grounded in statute, precedent, treaty text, and secondary authority. (2) NATIONAL EMPIRICAL RECORD: The thesis situates its legal analysis within a national empirical context established by independent investigative journalism and government accountability findings — primarily Reuters' "Teflon Robe" investigation (2020), the Wall Street Journal financial conflicts investigation (2021), and the GAO's fraud, waste, and abuse report (2023). (3) CASE VIGNETTES: The records of Hazari v. County of Santa Clara, the Minkowski family court proceedings, and the Danilak proceedings are presented as case vignettes — documented instances that make the legal analysis concrete. The reader should understand that the thesis's legal propositions are not derived from these cases; the cases illustrate propositions derived from independent legal analysis. The treatment of Julia Minkowski and Eva Danilak has been publicly disclosed in multiple court filings by the primary case litigant in California state courts, federal district courts, and the United States Supreme Court, and is part of the publicly accessible court record. A systemic pattern documented in the national empirical record is not more or less true because of what happened in any individual case. (4) NOTE ON THE THESIS'S TWO ARGUMENT TRACKS: This thesis simultaneously presents two analytically distinct argument tracks that must not be conflated. The first track is descriptive and institutional: it documents the current operational and legal reality of federal judicial disability access as it actually exists in practice — including the acknowledgment that federal courts are generally understood to fall outside ADA Title II's direct coverage, that the CRPD has not been ratified as binding domestic law, and that the Senate vote for ratification did not achieve the constitutional threshold for treaty ratification. These are accurate statements of current institutional practice, and they appear throughout the thesis as such. The second track is normative and interpretive: it argues, through the canonical architecture of Part XXVIII, through constitutional avoidance, and through the Charming Betsy framework, that the current institutional practice is the product of misconstruction — that properly applied statutory interpretation requires federal court coverage, that the CRPD's object and purpose must inform domestic interpretation, and that the Senate vote carries the highest-ranking legislative history weight available. These two tracks operate simultaneously and neither negates the other. Selective quotation of the first track's concessions — while ignoring the second track's arguments — misrepresents the thesis's analytical position. The thesis argues that the gaps the first track acknowledges are the targets the second track establishes must be corrected, either through courts applying proper statutory construction or through congressional legislative reform. Both tracks are necessary: the first establishes the magnitude of the structural failure; the second establishes the legal arguments that require its correction. (5) THE EVIDENTIARY SIGNIFICANCE OF THE

DOCUMENTED CASE RECORD: Beginning in March 2018, when his first disability accommodation request was ignored, and continuing through the present — more than eight years — Cyrus Hazari has systematically exhausted every category of domestic legal pathway available to a disabled person subjected to discrimination by a court: prevention (accommodation requests at every level, in every court, in every prescribed format — each denied, deferred, or procedurally extinguished); protection (stays, protective orders, emergency motions supported by physician documentation of active harm — each denied by the courts whose discrimination they were designed to address); relief (ADA Title II claims, Rehabilitation Act claims, constitutional access-to-courts claims — each blocked by the procedural posture that the discrimination itself created); remedy (damages, declaratory relief, mandatory accommodation orders, international accountability mechanisms — each closed by immunity, coverage gaps, or the economic and procedural destruction that unaccommodated litigation imposed); and punishment (judicial conduct complaints, mandamus, criminal referral, treaty body notification — each dismissed without review or without result from domestic authorities. International treaty body proceedings remain active and pending: the UN secretariat has acknowledged receipt and indicated intent to respond; the CAT is expected to receive the IAJ's submission; those pathways have not failed — they are proceeding on international timelines that domestic urgency cannot accelerate. This exhaustion was not chosen. It was compelled: each court's refusal to accommodate forced the next step, because withdrawal at any point meant total forfeiture of the rights whose denial was causing active physical harm. The courts simultaneously exercised jurisdictional custody over Hazari and denied him the medical treatment — rest, isolation from distress — that his physicians had prescribed as life-saving. He had no option to stop that was not also an option to surrender to the injustice the law prohibits. The record is further unprecedented because Hazari pursued this exhaustion from indigence, without legal representation, against the professional advice that every rational adviser gives to disabled litigants in his position, and in the face of an economic litigation architecture specifically designed to eliminate claimants who cannot sustain the financial cost of resistance. Most disabled litigants subjected to judicial discrimination do not reach this point: they accept the outcome — not because they find the injustice right, but because the economic and physical cost of refusal exceeds the resources available to bear it — accepting, by default, the status of collateral damage of jurisprudence. The Hazari record exists because no available stopping point was not also a point of permanent defeat. The full exhaustion analysis appears in Part XXVII.

Primary Case Record: Court, Docket, and Public Access Information

All ECF numbers cited in this thesis (ECF-1 through ECF-151 and related filings) refer to the docket of *Hazari v. County of Santa Clara et al.*, No. 5:19-cv-04392-BLF, United States District Court for the Northern District of California, San Jose Division, before judge Beth Labson Freeman. The full docket is publicly accessible at PACER (pacer.uscourts.gov) by searching Case No. 5:19-cv-04392 in the Northern District of California. DE numbers (e.g., DE 39-2) refer to numbered exhibits within that same docket.

The second federal proceeding referenced is *Hazari v. Doe et al.*, No. 5:21-cv-04262-JSW, N.D. Cal., before judge Jeffrey S. White (the JSW proceeding). The California state court proceeding underlying both federal cases is *Hazari v. Brady et al.*, No. 16CV295730, Santa Clara County Superior Court. The Danilak family court proceeding is referenced as Case No. 2014-6-FL-013527 (California Family Court of Santa Clara County) proceedings (see ECF-147 of the BLF docket for the trial transcript citation).

Ninth Circuit appeals arising from the BLF proceeding, all in the United States Court of Appeals for the Ninth Circuit: No. 19-16291, No. 22-16046, No. 22-16174, No. 22-16291, No. 23-15221, No. 24-3353, No. 24-6312, No. 25-3879, No. 25-5649, and No. 26-1137. These are accessible at PACER under the Ninth Circuit (ca9.uscourts.gov). The current petition before the Supreme Court is *Hazari v. County of Santa Clara et al.*, No. 25-3879 (S. Ct., filed April 2026). Prior SCOTUS petitions include No. 23-7017, No. 24-5808, and No. 24-6012, all filed pro se by Cyrus Hazari and accessible at the Supreme Court's public docket (supremecourt.gov/docket).

The Minkowski investigation is documented in IAJ Report No. IAJ-PRF-20251226-001-PRV (December 22, 2025), conducted by the Institute for the Advancement of Justice & Human Rights

pursuant to the Istanbul Protocol (2022). The associated SCOTUS petitions filed by Julia Minkowski are S284033 and S284308 (suppressed by the Clerk), accessible at the Supreme Court docket. The IAJ's Human Rights Analysis of the BLF proceeding is IAJ-AMI-20260217-001-LEG (February 17, 2026).

PART I

The CRPD as Interpretive Authority — Signed, Voted Upon, and Pending Ratification

§ 1.1 The Vienna Convention Article 18 Obligation and the 61-Vote Senate Record

The United States signed the Convention on the Rights of Persons with Disabilities on July 30, 2009. The treaty was transmitted to the Senate and put to a ratification vote on December 4, 2012, receiving 61 votes in favor — a majority, but five votes short of the two-thirds supermajority required under Article II, Section 2 of the Constitution. The treaty was not rejected; it fell short of the constitutional threshold for ratification. The United States has never declared an intention not to become a party. To the contrary, the treaty has been reintroduced in successive Congresses and has not been formally disavowed by the United States and continues to appear in Senate treaty records, reflecting a governmental posture of non-disavowal even though the current ratification timeline is institutionally unresolved.

Article 18 of the Vienna Convention on the Law of Treaties (VCLT) — a rule widely accepted as reflecting customary international law binding on the United States — provides that a state that has signed a treaty is "obliged to refrain from acts which would defeat the object and purpose of a treaty" until it has made its intention clear not to become a party. The United States has made no such declaration. Its continuing legislative pursuit of ratification confirms the opposite. The Article 18 obligation is therefore active, not suspended.

The 61-senator majority vote in favor of ratification is not equivalent to ratification, self-execution, or implementing legislation. It does not itself make the CRPD domestically binding positive law. It does, however, provide meaningful contextual evidence that a substantial Senate majority regarded the Convention's principles as compatible with American disability-rights law. Read alongside Article 18 and the United States' continuing non-disavowal of the treaty, that posture lends persuasive support to rights-protective constructions where domestic text is otherwise genuinely ambiguous.

Furthermore, for the analysis developed in Part VI of this thesis — which examines courts as disability-causing actors — the Senate vote carries a specific additional significance. Among the senators who voted for ratification were members of the Judiciary Committee with direct oversight responsibility for the federal judicial system. Their vote provides meaningful contextual evidence that a substantial Senate majority regarded the CRPD's procedural-accommodation norms as compatible with and illuminating of the standards that U.S. courts should approximate, even absent ratification. The fact that courts fall short of those standards is not a reason to dismiss the CRPD's authority; it is a reason to apply it with greater urgency.

§ 1.2 The Significance of No RUDs

When the United States ratifies human rights treaties, it routinely attaches Reservations, Understandings, and Declarations (RUDs) that limit the treaty's reach to what the Senate

understands domestic constitutional law already to require. The ICCPR[4], UNCAT, and CERD[5] ratifications all came with extensive RUD packages effectively domesticating and narrowing their reach. The CRPD was put to a Senate vote on December 4, 2012, and received 61 votes in favor — but it was not ratified, because it fell five votes short of the two-thirds supermajority required by the Constitution. No RUD package was ever attached, because no ratification resolution was ever adopted. As a result, there are no RUDs — none at all. The treaty that 61 senators voted to ratify is the full, unqualified text of the CRPD, without any senatorially enacted gloss narrowing its reach.

This absence of RUDs has two limited but defensible interpretive consequences, neither of which itself increases the CRPD's domestic binding force. First, courts and commentators consulting the CRPD through the Charming Betsy canon or related harmony-based approaches encounter the full treaty text rather than a U.S.-ratified version narrowed by Senate reservations, understandings, or declarations. Second, the CRPD's definition of disability, its substantive articles, and CRPD Committee materials remain available as persuasive interpretive authority without any senatorially imposed narrowing formula. The significance for Article 15 is interpretive rather than automatic incorporation: because no U.S. ratification package exists, there is no domestic ratification gloss narrowing the text before it enters the analysis. This is distinct from Article 15's force as a codification of the jus cogens prohibition on torture and CIDT — a prohibition that operates through customary international law independently of treaty ratification and is addressed fully in Parts VII and VIII.

§ 1.3 The CRPD's Eight Guiding Principles

Article 3 of the CRPD sets out eight general principles: respect for inherent dignity and individual autonomy; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities. Each has a constitutional analogue analyzed in Part V. Each also has direct application to the conduct of courts as institutions. A court that imposes litigation demands known to cause physical or psychological harm violates the principle of respect for inherent dignity. A court that applies identical procedural standards to disabled and non-disabled litigants without accommodation violates non-discrimination. A court that renders a disabled person effectively unable to access its proceedings violates full participation and accessibility. The CRPD's principles are not aspirational. They are the interpretive framework that this thesis argues every institutional actor — including courts — should apply, as a matter of statutory harmony, constitutional avoidance, and comparative engagement with the United States' Article 18 posture on the international plane.

§ 1.4 The Object and Purpose Test

The CRPD's object and purpose — to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity — functions under VCLT Article 31 as a powerful interpretive constraint in cases of ambiguity. An interpretation of the three federal disability statutes that defeats this purpose is in serious tension with the United States' Article 18 posture on the international plane. Domestically, the strongest form of the argument is convergent rather than automatic: where constitutional anti-stereotyping principles, access-to-courts doctrine, and the

[4] International Covenant on Civil and Political Rights
[5] International Convention on the Elimination of All Forms of Racial Discrimination

CRPD's object and purpose point in the same direction, rights-protective interpretation becomes especially compelling.

For the court-caused disability harm analysis in Part VI, the object and purpose test provides a particularly important constraint. A court that characterizes its harmful conduct as an exercise of legitimate docket management authority is implicitly claiming that institutional efficiency justifies defeating the CRPD's object and purpose. Under VCLT Article 18, that claim is difficult to reconcile with the United States' obligation not to defeat the treaty's object and purpose, and under the constitutional framework of Part V it should receive especially skeptical scrutiny where judicial efficiency is invoked to justify exclusion, stereotype, or medically foreseeable harm.

The structural parallel between this thesis's analysis and François Crépeau's Security Paradigm Critique is analytically significant. Crépeau documented that post-9/11 states systematically invoked security concerns as a manufactured justification for eroding migrants' rights — concerns that were both empirically false (99.99% of irregular migrants pose no security threat) and legally incoherent. The invocation was not a genuine response to genuine risk; it was institutional self-interest using a legitimate-sounding pretext to avoid rights obligations. In the court-caused disability harm context, the identical structural pattern operates through the pretext of docket efficiency and judicial administration: courts invoke "fundamental alteration," "case management," and "administrative necessity" as justifications for accommodation denial that are empirically ungrounded (the VA and SSA systems demonstrate that individualized disability assessment is administratively feasible), legally incoherent (the ADA's mandatory "shall" admits no case-management exception), and structurally self-serving (the court claiming administration authority avoids the obligation it is simultaneously subject to). Just as Crépeau's critique exposed the security paradigm as serving institutional interests rather than its stated purpose, this thesis exposes the efficiency paradigm in accommodation denial as a manufactured justification serving the judicial institution's interest in avoiding its disability obligations. The interpretive consequence in both contexts is the same: the pretext cannot justify defeating the treaty's object and purpose. See François Crépeau, Delphine Nakache & Idil Atak, "International Migration: Security Concerns and Human Rights Standards" (2007) 44(3) Transcultural Psychiatry 311; François Crépeau, "Criminalising Irregular Migration: The Failure of the Deterrence Model and the Need for a Human-Rights-Based Framework" (with Bethany Hastie) (2014) 28(2) Journal of Immigration, Asylum and Nationality Law 116.

§ 1.5 The CRPD and Constitutional Resonance

The CRPD was drafted with substantial U.S. input, building on a constitutional tradition that the U.S. had helped to export through the ADA and related frameworks. The Article 18 harmonization project is therefore not primarily about importing foreign law. It is about recognizing that U.S. constitutional law and international disability rights law are engaged in a dialogue that has already produced substantial convergence — and that domestic courts, by ignoring the CRPD, are failing to take advantage of a body of interpretive authority that reinforces rights already constitutionally guaranteed.

PART II

The Three Federal Disability Statutes: Text, History, and Gap

§ 2.1 The Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act provides that no otherwise qualified individual with a disability shall, solely by reason of disability, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 confirmed that 'program or activity' encompasses all operations of a recipient entity. In current federal practice, however, the federal judiciary is generally understood to fall outside Section 504's direct coverage — the Federal Judicial Center states expressly that "the ADA and section 504 of the Rehabilitation Act of 1973 do not apply to the federal judiciary." That institutional position is itself a central object of this thesis's statutory construction argument: Part XXVIII demonstrates, through seven independent canons of construction endorsed by the CRS and every judicial methodological school, that the federal judiciary's self-exemption is the product of misconstruction rather than authoritative legal determination.

The resulting structural gap — the federal judiciary exercising adjudicative power over disability rights while standing outside the principal statutory framework that governs state courts — is not a weakness in this thesis's argument. It is the thesis's central structural claim. The institutional incompleteness of federal judicial disability law is the defect that makes the CRPD harmonization argument, the constitutional convergence argument, and the statutory interpretation architecture of Part XXVIII each independently necessary. A court that concedes the gap but continues to deny accommodation without individualized assessment is simultaneously acknowledging the absence of a directly applicable statutory regime and exercising the discretion that absence creates — precisely the discretion that the constitutional access-to-courts doctrine of Griffin-Lane and the CRPD's Article 13 mandate collectively prohibit.

§ 2.2 The Americans with Disabilities Act of 1990

The ADA's legislative history contains perhaps the most extensive congressional factual record ever assembled in support of civil rights legislation. Congress documented 43 million Americans with disabilities and found that discrimination against them was 'a serious and pervasive social problem' pervasive in employment, transportation, communications, and — critically — access to public services including courts. The ADA is not a statutory gift from Congress to persons with disabilities. It is an exercise of constitutional power to remedy a constitutional problem. This constitutional character has profound implications for interpretation: courts must read the ADA in light of the constitutional violations it was designed to remedy, not in a manner that perpetuates those violations.

Tennessee v. Lane, 541 U.S. 509 (2004), confirmed that Congress, in enacting ADA Title II's accommodation requirements for courts, was exercising Section 5 enforcement power to remedy documented constitutional violations. This means that the ADA's requirements in the judicial context are not regulatory impositions on courts; they are constitutional mandates that Congress

has given statutory form. When courts deny disability accommodations in their own proceedings, they are not exercising legitimate institutional discretion. They are violating constitutional obligations that have been given specific statutory content by the legislature that created the constitutional enforcement mechanism under which courts themselves operate.

§ 2.3 The ADA Amendments Act of 2008

The ADAAA directly rejected the Supreme Court's snapshot approach to disability in Sutton and Toyota. Its episodic impairment provision — that an impairment episodic or in remission is a disability if it would substantially limit a major life activity when active — is of critical importance for the court-caused disability harm analysis. A court that denies accommodation because a disabled litigant 'appeared to function' during earlier proceedings is not only applying pre-ADAAA law that Congress expressly rejected; it is applying the very snapshot reasoning that perpetuates and exacerbates the harm. By denying accommodation during a period of apparent remission, and then invoking that activity as evidence against the disability claim, the court creates a catch-22 that ensures no accommodation is ever granted — causing the disability to progress without relief.

The ADAAA's legislative rejection of snapshot reasoning is itself evidence of congressional intent that courts assess accommodation requests by reference to the full clinical reality of the condition, including its foreseeable course without accommodation. This is not merely an interpretive point. For the court-caused disability harm analysis: it establishes that a court's denial of accommodation based on episodic functionality is a statutory violation that contributes causally to the progression of the condition. The causal chain — denial → continued harmful exposure → disease progression → greater disability — is legally cognizable under the ADAAA's framework.

§ 2.4 The Section 5 Enforcement Power and Its Constitutional Significance

Section 5 of the Fourteenth Amendment grants Congress enforcement power. ADA Title II, as applied to the right of access to courts, satisfies the congruence-and-proportionality test of City of Boerne v. Flores because the congressional record documented pervasive unconstitutional exclusion of disabled persons from courts. Under United States v. Georgia, 546 U.S. 151 (2006), Title II creates private remedies for conduct that independently violates the Fourteenth Amendment, co-extensive with the constitutional violation and not subject to Eleventh Amendment immunity. This establishes the remedial architecture: the most serious instances of court-caused disability harm — those rising to constitutional violations of access to justice or cruel and degrading treatment — are actionable as constitutional wrongs, not merely statutory ones.

§ 2.5 Structural Gaps and Interpretive Deficits — Including Courts as Perpetrators

Four structural gaps in current domestic interpretive practice warrant specific attention:

First, formulaic denial without individualized assessment. Courts routinely deny accommodation requests with boilerplate language without the individualized analysis that both the ADA's implementing regulations and the Constitution require. Under the Cleburne anti-stereotyping principle, a denial based on historical episodes of apparent capacity rather than current clinical evidence is the kind of stereotype-based classification that fails even rational basis review.

Second, temporal misunderstanding of episodic disability. Courts treat a disabled litigant's history of some participation as evidence that the disability is manageable, directly inconsistent with the ADAAA's episodic impairment provision.

Third, formal rather than substantive equality. Providing a disabled litigant the same procedural deadlines as a non-disabled litigant is identical treatment that produces systematically unequal outcomes, failing the CRPD's de facto equality standard and the constitutional access-to-courts guarantee.

Fourth — the failure to recognize courts as perpetrators of disability harm. Current interpretive practice treats courts as neutral administrators of disability law — as institutions that either comply with or violate the ADA's requirements. It does not adequately grapple with the reality that courts can be, and demonstrably are, actors that affirmatively cause, exacerbate, and perpetuate disability harm through the imposition of institutional processes that their own medical records show to be physically or psychologically harmful. This gap is addressed comprehensively in Part VI.

Fifth — the regulatory architecture gap. As Part XII (The Regulatory Architecture) establishes through a comprehensive analysis of the implementing regulations, the ADA's most powerful procedural protections (28 CFR § 35.164's written-statement requirement; § 35.107's ADA coordinator and grievance procedure mandate; § 35.130(b)(7)'s reasonable-modifications obligation) apply to state courts but not to federal courts. The federal judiciary operates under only the Judicial Conference's 1995 internal policy, which covers communications disabilities only. This structural gap is the regulatory architecture of the failure that this thesis documents throughout.

The Judicial Conference's accommodation structure constitutes what the Hazari SCOTUS writ (No. 25-3879, Reason VIII) identifies as a Three-Layer Architecture: (1) acknowledged accommodation for communications disabilities, including sign language interpretation and assistive listening devices, which the Judicial Conference explicitly recognizes and systematically funds; (2) discretionary and unreviewable accommodation for all other disability categories — cognitive, neurological, autoimmune, psychiatric, and chronic illness disabilities affecting the vast majority of the 61 million Americans with disabilities — which the Judicial Conference leaves to individual judicial officers without binding standards, without required written findings, and without any review mechanism; and (3) no neutral arbiter and no reviewable process for the discretionary layer, meaning that the institution with the direct institutional interest in denying accommodation is simultaneously the institution empowered to resolve accommodation disputes without external review. Congress created no hierarchy among disability categories when it enacted the ADA or the ADAAA; both statutes specifically prohibit categorical approaches that provide protection for some disabilities but not others. The Three-Layer Architecture is therefore disability discrimination by institutional design: it provides systematic accommodation where the disability is physically visible and immediately legible, and discretionary accommodation where the disability requires clinical record review to appreciate — precisely the legibility default mechanism that the IAJ investigations independently identified across both the Hazari and Minkowski records. A.J.T. v. Osseo Area Schools, 605 U.S. ___ (2025), the Supreme Court's most recent ADA decision, reaffirmed the individualized assessment requirement and specifically rejected categorical substitutes for individualized disability analysis — a holding that, while decided in an educational setting, directly supports the thesis's objection to categorical substitutes for individualized disability analysis in any covered context.

A sixth structural dimension is documented in comparative evidentiary form in Appendix E of the Hazari SCOTUS writ: the side-by-side disparity between federal and California state court accommodation of the same disabled litigant, under the same governing law and the same medical facts, occurring concurrently in active parallel proceedings. The Appendix E table documents each instance in which the federal court — applying the Freeman bright line standard analyzed in § 12.6.1 — granted accommodation that enabled participation, set against the concurrent California court denial of the identical accommodation request. The table shows the same disability, the same medical documentation, the same type of accommodation request, and the same time period producing radically different outcomes across the federal-state court divide. When the same litigant with the same disability presenting the same medical evidence receives accommodation in the federal court and denial in the state court, the variation cannot be attributed to the litigant, the disability, or the merits of the underlying claims. It is attributed to the courts themselves — specifically, to whether the court operates under a framework that compels accommodation or one that permits denial. The regulatory analysis of Part XII provides the doctrinal explanation for this disparity; the Appendix E table provides its direct evidentiary proof.

PART III

Harmonization: Reading Federal Law Through the CRPD

Each of the CRPD's substantive articles resonates with specific provisions of the three federal disability statutes and with specific constitutional guarantees analyzed in Part V. This Part maps the most significant harmonizations, integrating the court-caused disability harm dimension introduced in § 2.5 and developed fully in Part VI.

§ 3.1 Article 5 — Equality and Non-Discrimination

CRPD Article 5 prohibits all discrimination on the basis of disability and requires states to guarantee 'equal and effective legal protection against discrimination on all grounds.' Article 5(3) specifies that specific measures necessary to achieve de facto equality are not themselves discrimination. Mapped onto domestic law through the constitutional lens, Article 5(3) tracks the understanding established in Tennessee v. Lane that measures specifically designed to remedy documented constitutional violations do not violate the equal protection guarantee — they are required by it.

For the court-caused disability harm analysis, Article 5 has a direct application: discrimination by courts that results in physical or psychological harm to disabled litigants is disability discrimination within the meaning of Article 5, regardless of whether the court intended to discriminate. The CRPD Committee has confirmed that the impact of a measure on persons with disabilities — not the intent behind it — determines whether it constitutes discrimination. A court that applies standard litigation procedures to a disabled litigant knowing that those procedures will cause documented physical or psychological harm is engaging in impact discrimination under Article 5, even if it characterizes its conduct as neutral case management.

§ 3.2 Article 9 — Accessibility

CRPD Article 9 requires proactive identification and elimination of obstacles and barriers to accessibility. For federal courts, Article 9 is best understood as an interpretive and reform benchmark rather than as a simple restatement of existing direct statutory coverage. It clarifies the kind of proactive accessibility regime a rights-respecting judiciary should maintain: identification of barriers before collapse, institutional review of procedures that predictably disable participation, and modification of standard practices shown to be harmful to disabled litigants. The proactive standard requires courts to audit their proceedings for disability-related harm — including the harm caused by standard litigation schedules to persons with conditions that medical evidence shows are exacerbated by litigation stress. A court system that waits for a disabled litigant to suffer a documented relapse before reconsidering its scheduling requirements has failed the Article 9 proactive standard.

§ 3.3 Article 12 — Equal Recognition Before the Law

CRPD Article 12 requires that states provide the support necessary to allow disabled persons to exercise their legal capacity. In the court-caused disability harm context, Article 12 has a specific application: a court that terminates a proceeding — through case-dispositive sanctions, dismissal for failure to prosecute, or involuntary default — when the cause of the litigant's inability to proceed is a disability that the court's own process has exacerbated or caused, is stripping that person of their legal personhood as a direct consequence of the court's own harmful conduct. Article 12's requirement of supported decision-making applies with particular force when the barrier to exercise of legal capacity is the court's own harmful process.

Article 12's supported decision-making requirement carries a specific legal consequence in the judicial accommodation context: it sharply limits treating a disabled litigant's substantial incapacity as the equivalent of legal incompetency for Rule 17(c) purposes. The primary doctrinal point is domestic: the Rule 17(c) threshold — formal legal incompetency — is simply not met by substantial litigation incapacity. Rule 17(c) protects an unrepresented "incompetent person"; a disabled litigant with documented substantial incapacity who contests incompetency and retains the ability to direct their case with accommodation does not satisfy that threshold. Attempting to appoint a guardian ad litem for such a litigant applies the wrong framework to the wrong condition. The combined effect of the Rule 17(c) threshold analysis and Article 12's supported decision-making requirement renders guardian appointment legally unauthorized in the court-caused incapacity scenario. The domestic Rule 17(c) threshold simply does not exist in this factual configuration: there is no incompetent person to protect, because the litigant contests incompetency and demonstrates retained capacity to direct their case when accommodation is provided. CRPD Article 12 independently confirms the same conclusion on the international plane: substituted decision-making over a person who retains legal capacity — however impaired in execution without accommodation — violates the international human rights prohibition on stripping legal agency from persons with disabilities. The two analyses converge: one from within Rule 17(c)'s own threshold, one from CRPD Article 12's independent prohibition. Neither depends on the other; together they are conclusive.

§ 3.4 Article 13 — Access to Justice

CRPD Article 13 requires effective access to justice, on an equal basis with others, through procedural accommodations. The CRPD Committee's General Comment No. 1 clarifies that procedural accommodations are non-negotiable adjustments to legal processes. The phrase 'at investigative and other preliminary stages' establishes that the obligation begins at the earliest stages of legal proceedings and cannot be wound back by subsequent determinations that the disabled person appeared to participate at some earlier stage.

For the court-caused disability harm analysis: when a court's denial of Article 13-mandated procedural accommodations causes the physical or psychological deterioration that then prevents the litigant from participating at all, the court has not simply denied an accommodation — it has caused the very incapacity it then uses to justify case-dispositive action against the litigant. This causal structure — denial → harm → use of harm against the victim — is a pattern that Article 13, the federal statutes, and the constitutional framework all prohibit.

The concrete institutional mechanism required to make Article 13's access guarantee real is what François Crépeau and Bethany Hastie have termed the "firewall" — a structural separation between the exercise of a state function and the enforcement machinery that would otherwise deter persons from accessing that function. Crépeau and Hastie developed the firewall doctrine in the context of irregular migration, arguing that states are legally required to build firewalls between immigration enforcement and access to essential services — courts, hospitals, schools, police — so that irregular status cannot be weaponized to produce exploitation and so that formal

rights guarantees do not become meaningless in practice. The underlying legal argument is structurally identical in the disability context: when accessing accommodation triggers adverse consequences — when a disabled litigant's request for accommodation is used as evidence against their disability claim, or when the act of requesting generates hostility that compounds the harm — the formal right of access to justice is rendered inaccessible in practice. Article 13 requires a firewall: structural separation between the disabled litigant's disclosure of disability and any adverse judicial conduct toward their litigation. The accommodation request must be processed through a channel that is institutionally insulated from the adjudicative function, so that the disabled person can access justice without that access becoming the instrument of further harm. See François Crépeau and Bethany Hastie, "The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights" (2015) 17(2) European Journal of Migration and Law 157.

§ 3.5 Article 15 — Freedom from Torture and Cruel, Inhuman or Degrading Treatment (Including by Courts)

CRPD Article 15 is the provision most directly applicable to court-caused disability harm. It requires states to take 'all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.' The CRPD Committee's General Comment No. 6 specifically addresses situations where the application of standard legal procedures to persons with disabilities results in conditions that amount to cruel, inhuman or degrading treatment.

Courts are state actors. Judicial proceedings are exercises of state power. When a court, in possession of medical evidence establishing that its procedural demands are causing documented physical or psychological harm to a disabled litigant — disease progression, immune system deterioration, neurological injury — continues to impose those demands without modification, it is engaging in conduct that, under the CRPD Committee's interpretation, may constitute cruel, inhuman or degrading treatment. The European Court of Human Rights' vulnerability aggravation principle — that the same institutional conduct reaches the CIDT threshold more readily when the victim is a person with a disability — applies directly to this analysis. A court system that imposes litigation requirements that its own record shows to be physically or psychologically harmful to a disabled litigant is not exercising neutral institutional authority; it is exercising state power in a manner that Article 15 identifies as the paradigmatic case for state liability.

Article 15 also has a preventive dimension — 'all effective measures to prevent' such treatment. This is not a reactive obligation; it is an affirmative duty. Courts must affirmatively ensure that their processes do not subject disabled persons to CIDT — which requires the kind of proactive medical evidence review, individualized assessment, and accommodation protocol that Part VI's prevention standards specify.

§ 3.6 Articles 19, 24, and 27 — Structural Dignity Rights

CRPD Articles 19 (independent living), 24 (education), and 27 (work and employment) establish the structural dignity rights of persons with disabilities. Each maps onto domestic law in ways developed in the harmonization analysis of Part III, the constitutional framework of Part V, and the regulatory architecture of Part XII. For the court-caused disability harm analysis, Articles 19 and 27 have particular relevance: a disabled litigant who cannot obtain justice because of court-caused harm to their condition is not only denied access to the judicial system — they are denied

the ability to vindicate the housing, employment, and independent-living rights that courts exist to protect. Court-caused disability harm therefore has cascading effects across the full range of CRPD structural rights.

PART IV

European Comparative Law: Disability Hate Crimes and the Minimum Floor

European law has developed a substantially more comprehensive framework for addressing disability-based harm. This framework is evidence of what effective protection concretely requires. The European frameworks are particularly relevant to the court-caused disability harm analysis because they treat state institutions — including judicial institutions — as actors bound by positive obligations to protect disabled persons from harm, including harm arising from the institutions' own processes.

§ 4.1 EU Framework Decision 2008/913/JHA and the Demand for Extension to Disability

EU Council Framework Decision 2008/913/JHA requires member states to criminalize public incitement to violence or hatred directed against groups defined by race, colour, religion, descent, or national or ethnic origin. The Framework Decision does not yet expressly cover disability — an omission that itself constitutes a form of institutional discrimination in law, treating disability-based hatred as categorically less serious than racial or religious hatred without justification. That omission is not a limitation of this thesis's argument; it is evidence of exactly the structural failure this thesis addresses: the persistent refusal of legal systems to recognize disability-based harm as deserving the same categorical public-law response as other protected grounds. The Framework Decision's categorical architecture — its recognition that certain forms of group-targeted hatred require mandatory criminal sanction across all member states — is the standard that disability protection must reach. The EU's own ongoing deliberations on extending that framework to disability confirm that this is a matter of when, not whether. For the court-caused disability harm analysis, the Framework Decision establishes the principle that disability-based institutional harm is not merely a private wrong but a matter requiring coordinated state accountability with mandatory enforcement. That principle governs this analysis whether or not the Framework Decision has yet caught up with it.

§ 4.2 The UK Equality Act 2010 and Criminal Justice Acts

The UK Equality Act 2010's anticipatory reasonable adjustments duty — requiring covered entities to make adjustments before a disabled person requests them — is the statutory expression of the CRPD's proactive accessibility obligation. Applied to the court-caused disability harm context: a court system that knew its standard litigation schedules were harmful to persons with MS, PTSD, or cognitive impairments — because its own record documented such harm — and did not proactively adjust those schedules, would be in breach of the anticipatory duty. The duty is not to wait for harm and then respond; it is to prevent the harm by anticipating it.

Under the Criminal Justice Act 2003, disability-based hostility is an aggravating sentencing factor. This principle — that disability-based harm is categorically more serious — should inform the penalty analysis in cases involving court-caused disability harm. When a court system's

institutional processes cause harm that is specifically attributable to a litigant's disability, the severity of that harm is aggravated by the disability dimension, not mitigated by it.

§ 4.3 ECHR Jurisprudence on Article 3 and Disability

The European Court of Human Rights' vulnerability aggravation principle is central to the court-caused disability harm analysis. In Paposhvili v. Belgium (Grand Chamber, 2016), the Court held that states must affirmatively consider the medical consequences of institutional decisions on disabled persons before implementing those decisions. In Price v. United Kingdom (2001), conditions of institutional detention that failed to account for disability constituted degrading treatment absent any intent to humiliate. The principle of medical consequence assessment — requiring institutions to consider the documented physical or psychological effects of their decisions on disabled persons — maps directly onto the obligation of courts to consider the documented physical or psychological consequences of their procedural demands on disabled litigants.

The ECHR also recognizes a positive obligation on states under Article 3 to conduct effective investigations into credible allegations of CIDT. In the court-caused disability harm context, this positive obligation supports the argument that judicial conduct complaint mechanisms — discussed in Part VI — must be capable of effectively investigating credible allegations that court processes have caused documented physical or psychological harm to disabled litigants.

§ 4.4 The German Constitutional Model

Germany's Menschenwürde principle — human dignity as an inviolable constitutional guarantee generating concrete institutional obligations — has been applied in disability contexts to require that state institutions, including courts, provide the accommodations necessary for disabled persons to participate fully in civic life. The German Federal Constitutional Court has held that institutional efficiency cannot justify institutional conduct that treats persons as less than full human beings. This principle directly addresses the court-caused disability harm scenario: a court's invocation of docket management as justification for imposing physically or psychologically harmful procedures on a disabled litigant is precisely the kind of instrumentalization of persons — treating the efficient operation of the institution as more important than the litigant's physical and psychological integrity — that the Menschenwürde principle prohibits.

§ 4.5 Resonance with CRPD Article 15 and the Federal Statutes

The European frameworks converge on five principles that resonate with CRPD Article 15, the federal disability statutes, and the U.S. Constitution, and that are specifically applicable to court-caused disability harm: disability-based harm is categorically more serious; states have positive obligations to protect persons with disabilities from institutional process harm; the CIDT threshold is lower for disabled persons due to vulnerability aggravation; proactive accessibility is the required standard; and when an institution possesses medical evidence that its processes cause physical or psychological harm to a disabled person, continuation without modification is an active choice to inflict harm.

PART V

The Constitutional Foundation: Non-Derogable Disability Rights

This Part advances the thesis's normative constitutional synthesis. The phrase "non-derogable" names the constitutional conclusion that the convergence analysis supports — that multiple constitutional sources combine to make disability accommodation in judicial proceedings a rights-protective domain that institutional convenience cannot override — rather than a status already formally recognized as such in current doctrine. This Part develops the constitutional argument that disability accommodation rights are non-derogable rights embedded in the fabric of the Constitution. The constitutional analysis is also the foundation for Part VI's treatment of courts as disability-causing actors: if courts bear constitutional obligations to accommodate disabled persons, conduct that violates those obligations and causes documented physical or psychological harm is a constitutional violation, not merely a statutory one.

§ 5.1 Constitutional Derivation: The Analytical Framework

The constitutional derivation of disability rights as non-derogable proceeds through five mutually reinforcing channels: the Reconstruction Amendments' historical commitment to protecting vulnerable minorities; substantive due process's protection of liberty interests rooted in dignity; the Griffin-Lane access-to-courts doctrine; the Obergefell convergence methodology; and the Ninth Amendment's preserved unenumerated rights. These channels are cumulative. The constitutional case is strongest when all five are considered together, as Part VI's accountability analysis demonstrates: no single channel, standing alone, overcomes all the immunity doctrines that courts as institutions and judges as individuals can invoke. But the channels together establish a constitutional obligation that operates at the institutional level, independent of individual judicial immunity.

§ 5.2 The Reconstruction Amendments as a Disability Rights Charter

The Thirty-ninth Congress drafted the Fourteenth Amendment in a context saturated with disability. The Civil War had produced approximately 500,000 amputees and hundreds of thousands more veterans with severe chronic conditions. The congressional debates of the Reconstruction era repeatedly invoked the language of equal dignity for persons regardless of physical or psychological condition. The Fourteenth Amendment's equal protection guarantee was drafted against this backdrop and was understood to encompass protection against discriminatory treatment on grounds of physical or psychological condition.

This historical understanding has been largely suppressed in subsequent constitutional interpretation — suppressed in the same way that the Fourteenth Amendment's broader social vision was suppressed in the Slaughterhouse Cases and the Civil Rights Cases. The constitutional corrective — like the corrective for racial discrimination begun in Brown v. Board of Education — is not a departure from the Constitution's original meaning. It is a return to it. And the corrective has specific implications for courts as institutions: the Reconstruction Congress that drafted the equal protection guarantee was not creating an exception for courts that chose to discriminate against disabled persons. It was prohibiting precisely such discrimination.

The disability dimension of this historical corrective is more specific than the existing literature has recognized. The Reconstruction era did not merely produce a general equality principle that incidentally applies to disabled persons. It produced an equality principle whose most urgent immediate application — the application its drafters were personally managing, legislating for, and in many cases personally experiencing — was to persons disabled by the Civil War. The amputee, the blinded veteran, the man with a shattered nervous system: these were not theoretical beneficiaries of the equal protection guarantee. They were the living population around which the Thirty-ninth Congress was legislating. When that Congress enacted the Fourteenth Amendment and declared that no state may deny equal protection of the laws, the disability context was not an afterthought — it was the foreground.

The consequence for constitutional interpretation is direct. The Equal Protection Clause's disability-protective purpose is embedded in the clause's own historical foundation, not derived by analogy from racial equality cases or extended from gender discrimination doctrine. And the CRPD — the modern international articulation of what equal protection for disabled persons requires — is therefore not merely persuasive statutory interpretive authority. It is the contemporary elaboration of a constitutional guarantee whose historical purpose it shares. A court interpreting the EP Clause in the disability context without reference to the CRPD is severing a constitutional provision from the very historical purpose that gave it life. The full argument is developed in § 5.4A.

Tennessee v. Lane *541 U.S. 509 (2004)*

Congress validly abrogated state sovereign immunity for ADA Title II claims asserting the fundamental right of access to courts. The Court confirmed that disability discrimination by courts is a constitutional violation, that the documented pattern of unconstitutional treatment justified congressional remediation, and that ADA Title II's accommodation requirements in the judicial context are a valid Section 5 enforcement measure. The court system, as a public entity, bears constitutional obligations to disabled litigants that individual judges' immunity does not eliminate.

Read in that historical context, the Equal Protection Clause's commitment to equal citizenship and equal protection of the laws supplies a constitutional principle of unusually high importance against disability-based subordination by state institutions. This does not require treating disability as a suspect class in the technical doctrinal sense, or overruling City of Cleburne's rational-basis analysis. It requires reading the Clause through the anti-subordination and anti-caste principles that Reconstruction history most powerfully supports: the principle that state institutions may not systematically exclude persons from equal participation in civil and legal life on the basis of characteristics that define their humanity rather than their conduct. The Equal Protection Clause was ratified by men who knew firsthand what it meant to be defined by a physical condition and rendered invisible by it. That historical knowledge supplies the strongest available original-purpose argument for treating disability-based exclusion by state institutions — including courts — with the unusually skeptical constitutional scrutiny that the thesis's normative synthesis proposes.

The Civil War context also provides the bridge between the historical purpose of equal protection and the accommodation right the thesis defends. A society that mobilizes its citizens, disables them in the exercise of that mobilization, and then treats their disability as disqualifying from full legal personhood has broken the equal citizenship compact that Reconstruction was designed to repair. The federal courts' systematic denial of disability accommodation to civil litigants is the contemporary analogue: the state exercises jurisdictional custody over the disabled litigant, causes or compounds the disability through unaccommodated demands, and then cites the resulting incapacity as the ground for extinguishing the litigant's legal rights. The historical

Reconstruction prohibition on this structure provides the deepest available grounding for the accommodation right. It is not aspirational; it is the Equal Protection Clause's original purpose, read honestly against the society that produced it.

§ 5.3 The Dark Precedent: Buck v. Bell and the Constitutional Corrective

Buck v. Bell, 274 U.S. 200 (1927), which upheld compulsory sterilization on the basis of pseudoscientific eugenics, encapsulated a constitutional philosophy that treated persons with disabilities as objects of state management rather than as rights-holders. Its constitutional premises have been systematically repudiated: in Skinner v. Oklahoma, 316 U.S. 535 (1942); Youngberg v. Romeo, 457 U.S. 307 (1982); City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985); and Tennessee v. Lane. This trajectory — from Buck's nadir through a progressive constitutional corrective — is not complete. But it establishes the direction and the principle: courts that impose institutional processes on disabled persons in the manner of a management problem rather than as a question of individual rights are perpetuating, rather than correcting, the constitutional error that Buck represents.

City of Cleburne v. Cleburne Living Center *473 U.S. 432 (1985)*

Governmental classifications based on disability cannot rest on mere negative attitudes, fear, or irrational prejudice. Even under rational basis review, disability-based discrimination reflecting animus or stereotype is constitutionally prohibited. Applied to courts: denial of accommodation based on assumptions about what disabled persons can or cannot do — rather than actual individualized medical assessment — is the paradigmatic Cleburne violation.

§ 5.4 Equal Protection: From Rational Basis to the Cleburne Standard

The rational basis standard applied in disability equal protection cases has a significantly more demanding character than its application in ordinary economic regulation. Three features of Cleburne establish this: classification based on mere negative attitudes or fear fails rational basis; actual rather than conceivable rational basis is required; and the anti-stereotyping principle requires that disability classifications reflect genuine individual assessment. For the court-caused disability harm analysis: a court's denial of accommodation based on the litigant's history of some litigation participation — without individualized assessment of current capacity and current medical prognosis — is precisely the kind of stereotype-based classification that Cleburne condemns. The constitutional violation is not merely a by-product of bad case management; it is the application of an assumption to a rights-holder who is constitutionally entitled to individualized assessment.

Board of Trustees of Univ. of Alabama v. Garrett *531 U.S. 356 (2001)*

While limiting ADA Title I claims against states, the Court confirmed that equal protection prohibits irrational disability discrimination by governments, and that the documented history of such discrimination supports congressional remediation establishing the constitutional baseline. The decision confirmed that courts imposing irrational disability-based distinctions violate the constitutional guarantee, independent of the statutory remedy.

§ 5.4A The CRPD as Constitutional Interpretive Authority: Why Equal Protection's Rational Basis in the Disability Context Must Be Calibrated to CRPD Article 5, Not to Governmental Convenience

The Equal Protection Clause is not a neutral instrument of general application that happens to extend to disabled persons as one beneficiary class among many. It is a constitutional guarantee drafted in immediate response to the largest mass-disability event in American history. The Thirty-ninth Congress that produced the Fourteenth Amendment was legislating for a nation of approximately 500,000 Civil War amputees and hundreds of thousands more veterans with severe acquired neurological, psychiatric, and systemic conditions. The equal protection guarantee was understood, in that historical moment, to apply most urgently to those whose physical or psychological conditions marked them for unequal treatment by state actors. Disability was not a peripheral concern of Reconstruction constitutionalism — it was among its central animating realities. The EP Clause is not a general equality guarantee that incidentally applies to disabled people. It is a guarantee whose most immediate original application was to disabled people.

This historical foundation has a precise doctrinal consequence that neither Cleburne nor the existing literature has drawn: if the Equal Protection Clause was specifically designed, among its primary purposes, to protect the class of persons whom the CRPD now protects, then the CRPD is not merely persuasive interpretive authority for domestic disability statutes. It is the most authoritative contemporary articulation of what the Equal Protection Clause's disability-protective purpose requires. Interpreting the EP Clause's application to disability without reference to the CRPD is interpreting a constitutional guarantee in deliberate ignorance of the richest available evidence of what it was designed to secure.

The mechanism for importing the CRPD into EP Clause interpretation is the principles the Supreme Court has already endorsed. The constitutional avoidance doctrine's analogue requires that constitutional provisions be read in light of their historical purpose. The EP Clause's historical purpose includes disability protection as a founding concern, not a peripheral extension. And the Senate's 61-senator majority finding — that existing law, including the Constitution, already meets the CRPD's standards — performs a constitutional function: it is the legislative branch's determination that the EP Clause, properly interpreted, delivers CRPD-equivalent outcomes in the disability context. That determination binds the interpretive inquiry.

The Fifth Amendment dimension reinforces this for federal actors. Through Bolling v. Sharpe, 347 U.S. 497 (1954), the equal protection guarantee applies to the federal government through the Fifth Amendment's due process clause. Federal courts denying disability accommodation are therefore direct Fifth Amendment equal protection violators — not only statutory violators and Fourteenth Amendment actors through the ADA's Section 5 mechanism. The same CRPD-calibration argument applies with equal force: the Fifth Amendment's equal protection component must produce outcomes that the Senate determined existing constitutional law delivers — which are CRPD Article 5-equivalent outcomes. A federal court's accommodation denial falling below that floor is simultaneously a Fifth Amendment violation, a Fourteenth Amendment violation, a statutory violation, and a treaty obligation violation.

The practical consequence is decisive. When a court invokes "docket management" as rational basis for denying accommodation, the question is not whether docket management is a legitimate purpose in the abstract — it is. The question is whether denying accommodation that the CRPD defines as required for equal access is rationally connected to that purpose. It is not. The denial produces the incapacity and default that the court then cites as grounds for termination. The "rational purpose" is self-defeating. And beyond self-defeat: the CRPD calibration establishes that

"rational" in the disability context is not for the government to define. It is defined by the constitutional guarantee's founding purpose, elaborated by the CRPD standard the Senate confirmed existing law already meets. A court that defines "rational" more narrowly than the CRPD defines "reasonable" is not applying Cleburne faithfully. It is applying a version of Cleburne that the Senate's treaty deliberations establish is constitutionally inadequate.

§ 5.5 Substantive Due Process: Liberty, Dignity, and Physical Integrity

This section proposes a doctrinal extension by analogy. It argues that courts exercising jurisdictional custody over a litigant whose access to prescribed medical treatment is simultaneously obstructed through unaccommodated litigation demands raises concerns functionally analogous to those the custody-based due process cases recognize — and that future doctrine should recognize at least some protective obligations in this setting — without claiming this extension is already settled law in ordinary civil litigation. Substantive due process under the Fifth and Fourteenth Amendments protects fundamental liberty interests from governmental infringement. Youngberg v. Romeo established that institutionalized persons with disabilities retain substantive due process rights to reasonable care and freedom from unreasonable restraint. Lawrence v. Texas and Obergefell v. Hodges expanded the liberty interest to encompass the right to define one's own identity and to be free from governmental impositions that deny fundamental humanity.

For the court-caused disability harm analysis, Youngberg's extension is critical: when the state exercises institutional authority over a person — whether through physical confinement or through the mandatory participation in legal proceedings that courts compel through the power of contempt, default, and dismissal — the state assumes heightened constitutional obligations toward that person's physical and psychological wellbeing. A court that compels a disabled litigant's participation in harmful proceedings under threat of case-dispositive sanction for non-participation is exercising coercive authority that generates precisely the Youngberg obligation: an obligation to ensure that the exercise of that authority does not cause unnecessary physical or psychological harm.

Youngberg v. Romeo *457 U.S. 307 (1982)*

Persons with disabilities under the institutional authority of the state retain substantive due process rights to reasonable care, safety, and freedom from unreasonable restraint. The state's exercise of institutional coercive authority over vulnerable persons generates heightened constitutional obligations — not reduced rights. Applied to courts: the coercive authority to compel litigation participation generates an obligation to ensure that compelled participation does not cause documented unnecessary physical or psychological harm.

Obergefell v. Hodges *576 U.S. 644 (2015)*

The Constitution promises liberty to all within its reach. Equal protection and due process operate together to protect rights rooted in dignity. The convergence methodology — deriving constitutional rights from the joint operation of multiple provisions — provides the analytical framework for establishing disability rights as a constitutional mandate rooted in dignity and for identifying court-caused disability harm as a constitutional violation at the intersection of multiple constitutional provisions.

§ 5.6 Access to Courts as Non-Derogable: The Griffin-Lane Doctrine

The access-to-courts doctrine, from Griffin v. Illinois through M.L.B. v. S.L.J. and Tennessee v. Lane, establishes that access to judicial proceedings is a constitutional right that the government cannot deny on the basis of characteristics that systematically foreclose access for particular groups. For the court-caused disability harm analysis: if the right of access to courts is constitutional, then conduct by courts that destroys the physical or psychological capacity to exercise that right — by exacerbating the condition that disables the litigant from participating — is itself a constitutional violation. The causal chain runs directly from the court's harmful conduct to the constitutional injury: court imposes harmful procedure → disability exacerbated → litigant cannot participate → constitutional right of access extinguished. Every step in that chain is attributable to the court's violation of its accommodation obligations.

M.L.B. v. S.L.J. *519 U.S. 102 (1996)*
When the state conditions access to its judicial system in ways that effectively foreclose access for particular persons, it violates the constitutional guarantee that the administration of justice not be a luxury available only to the privileged. The principle applies to disabilities that systematically prevent access to standard judicial procedures on the same basis as economic barriers that foreclose access for indigent litigants. A court's imposition of procedures that its own record shows will foreclose a disabled litigant's access is a constitutional violation under this principle.

§ 5.7 Convergence: The Obergefell Framework Applied to Disability

The convergence methodology produces the following result for disability rights as non-derogable: the equal protection clause prohibits disability-based discrimination reflecting stereotype or animus (Cleburne); substantive due process protects the liberty interest in dignity, physical and psychological integrity, and access to courts (Youngberg, Lawrence, Obergefell); and the Griffin-Lane doctrine establishes access to courts as a fundamental constitutional right. Read together, these streams establish that disability-based denial of access to courts is constitutionally prohibited, and that court conduct that causes the disability that then forecloses access is a constitutional violation of the most direct kind.

For the court-caused disability harm analysis, the convergence methodology is particularly powerful because it does not depend on any single doctrinal channel that might be blocked by immunity doctrine. Even if judicial immunity bars individual liability under one channel (substantive due process damages), institutional accountability remains available in varying forms: directly under Title II and Section 504 in the state-court setting, and in the federal-court setting through a more fragmented mix of constitutional claims, prospective relief, internal judicial-administrative mechanisms, and the statutory-construction argument developed in Part XXVIII. The convergence of all constitutional channels establishes both the existence of the right and the availability of at least some remedy against the institution, even where individual immunity provides a shield for the individual actor.

§ 5.8 The Section 5 Power as Constitutional Validation

Tennessee v. Lane confirms that Congress exercised Section 5 enforcement power to require disability accommodations in judicial proceedings because courts had engaged in a documented pattern of unconstitutional exclusion of disabled persons. United States v. Georgia confirms that Title II creates private remedies for conduct independently violating the Fourteenth Amendment,

not subject to Eleventh Amendment immunity. This means that the most serious instances of court-caused disability harm — those rising to constitutional violations — are actionable as constitutional wrongs against the court as an institution. The constitutional validation of the ADA in the judicial context is therefore simultaneously a validation of the remedy for court-caused disability harm.

United States v. Georgia *546 U.S. 151 (2006)*
Title II of the ADA validly abrogates state sovereign immunity to the extent it creates private remedies for conduct that actually violates the Fourteenth Amendment. Where court-caused disability discrimination rises to the level of a constitutional violation — denial of access to justice, imposition of processes causing cruel and degrading physical or psychological harm — the ADA provides a remedy that survives Eleventh Amendment challenge. The constitutional violation and the statutory violation are co-extensive in the most serious cases.

§ 5.9 The Ninth Amendment: Retained Rights and Disability

This section is corroborative rather than primary. The Ninth Amendment is not the thesis's principal doctrinal engine; the thesis's constitutional argument stands on equal protection, due process, and access-to-courts doctrine. The Ninth Amendment offers limited supporting evidence that constitutional protection of human dignity and disability-related rights need not be artificially restricted to rights already exhaustively enumerated elsewhere. The Ninth Amendment preserves rights retained by the people from denial based on enumeration of other rights. The CRPD, as an international articulation of disability rights that 61 senators voted to ratify, provides powerful contextual evidence that disability accommodation rights are recognized at the highest levels of governmental commitment as fundamental human rights — precisely the category of unenumerated rights that the Ninth Amendment was designed to protect from denial by negative implication. The Ninth Amendment does not create new rights; it prevents the denial or disparagement of rights already retained by the people. When the United States signed the CRPD and when 61 senators voted for its ratification, the political branches were acknowledging that the rights of persons with disabilities meet the threshold of fundamental human rights — the kind of rights whose existence does not depend on constitutional enumeration. That governmental acknowledgment, while not itself a source of constitutional content, corroborates the Ninth Amendment's application to disability accommodation rights and supports the conclusion that those rights belong to the category the Constitution's text preserves without exhaustively enumerating.

§ 5.10 Structural Constitutional Arguments: Courts as Rights-Guarantors — and Rights-Violators

Courts are the institutions to which the Constitution assigns ultimate responsibility for vindicating constitutional rights. If courts themselves discriminate against persons with disabilities, the entire constitutional rights system fails. A disabled person who cannot access the courts cannot vindicate any of their constitutional rights. This structural failure argument has a new dimension in the court-caused disability harm context: when courts not only deny access but actively cause the disability that forecloses access, they are not merely failing to perform their constitutional function. They are actively subverting it. The court is simultaneously the violator of the right and the institution to which the victim must turn for remedy — a structural conflict of

interest that generates urgent arguments for independent oversight mechanisms, as Part VI's accountability analysis develops.

The structural argument also supports a particularly demanding application of the constitutional avoidance canon in this context. A court that reads the ADA or Rehabilitation Act narrowly, in a manner that permits court-caused disability harm to go unremedied, raises constitutional concerns not only about individual rights but about the structural integrity of the judicial system as a constitutional institution.

Mathews v. Eldridge *424 U.S. 319 (1976)*

Procedural due process requires balancing the private interest affected, the risk of erroneous deprivation, and the government's interest. Applied to court-caused disability harm: the private interest (physical and psychological integrity, access to justice) is weighty; the risk of erroneous deprivation is high (courts systematically deny accommodation without medical review); and the government's interest in docket efficiency does not justify the complete deprivation of access combined with active physical or psychological harm. The constitutional balance strongly favors not merely accommodation, but prevention of the harm that denial of accommodation causes.

§ 5.11 The Non-Derogability Synthesis

The five constitutional channels — Reconstruction Amendments, substantive due process, Griffin-Lane, Obergefell convergence, Ninth Amendment — converge on a single conclusion: disability accommodation rights are non-derogable rights embedded in the constitutional fabric. They cannot be defeated by institutional convenience, statutory narrowing, or judicial immunity of individual actors. As Part VI demonstrates, institutional accountability survives immunity doctrines in different forms depending on the forum: directly under ADA Title II and Section 504 in the state-court setting, and in the federal-court setting through a more incomplete remedial mix that itself illustrates the structural defect this thesis identifies.

This non-derogability synthesis is grounded in a principle that François Crépeau placed at the foundation of his entire body of work as UN Special Rapporteur on the Human Rights of Migrants: human rights attach to the person, not to the person's legal or administrative status. In Crépeau's formulation, "migrants are human beings with human rights, not agents for economic development and outputs. All migrants are protected by international human rights law, regardless of the administrative status or situation." The ICCPR, ICESCR, UNCAT, and the CRPD all protect "all persons" or "every human being" within a state's jurisdiction — none restrict their protections to persons whose status the state finds convenient. The identical principle governs this thesis's analysis: disability accommodation rights attach to the disabled person, not to how their disability manifests, how it affects their litigation behavior, whether they have previously appeared capable, or whether their illness is visible or invisible. A disabled litigant who filed documents during a period of remission retains the full force of their accommodation rights during a subsequent exacerbation. Their status as a rights-holder is determined by their personhood, not by whether the court finds their disability presentation convenient. Crépeau's foundational principle, transplanted into the disability rights context, compels rejection of every form of snapshot reasoning, appearance-based denial, and episodic-capacity inference that the thesis identifies as the primary mechanism of accommodation discrimination. See François Crépeau, UN Special Rapporteur on the Human Rights of Migrants, Thematic Reports to the Human Rights Council and General Assembly (2011–2017), including A/HRC/23/46 (EU External Border Management, 2013); François Crépeau and Delphine Nakache, "Critical Spaces

in the Canadian Refugee Determination System: 1989–2002" (2008) 20(1) International Journal of Refugee Law 50.

Constitutional Source	Specific Guarantee	Application to Court-Caused Harm
14th Amend. — Equal Protection	Non-discrimination; anti-stereotyping (Cleburne)	Accommodation denial based on assumed rather than assessed capacity is constitutionally impermissible
14th Amend. — Due Process	Liberty interest in dignity, integrity, access to justice (Youngberg, Obergefell)	Compelled participation in harmful proceedings without accommodation violates liberty interest
14th Amend. — Section 5	Section 5 validation of ADA/Rehab Act (Lane, Georgia)	ADA/Rehab Act liability against court institutions survives 11th Amendment; constitutional and statutory violation co-extensive
Art. III / Access to Courts	Non-derogable right of access (Griffin, M.L.B., Lane)	Court conduct that causes the disability preventing access extinguishes the constitutional right it is obligated to protect
Structural / Separation of Powers	Courts as constitutional rights-guarantors	Courts that violate disability rights subvert their own constitutional function; structural conflict demands independent oversight
9th Amendment	Unenumerated retained rights; 61-vote Senate authority	Disability accommodation rights are retained rights; CRPD principles provide international content
Convergence (Obergefell)	Equal protection + due process jointly establish dignity-based rights	Court-caused disability harm violates multiple constitutional provisions simultaneously; institutional liability survives all individual immunity defenses

PART VI

Courts as Disability-Causing Actors: Responsibility, Immunity, Remedies, and Prevention

This Part addresses what is perhaps the most legally underexamined dimension of disability rights in the judicial setting: the capacity of courts themselves, as institutions exercising state power, to cause disability, exacerbate existing disabilities, and perpetuate disabling conditions through the imposition of institutional processes. The analysis proceeds from a factual premise to a full legal architecture: what courts do; why it is legally cognizable; how responsibility is attributed; what immunities apply and do not apply; what remedies are available; how accountability is enforced; how the CRPD and European law frame the analysis; how harm is prevented; and what reforms the law already authorizes and the Constitution already requires.

The Core Factual Premise

When a court is in possession of medical evidence establishing that its procedural demands — litigation schedules, deadlines, hearing requirements, motion practice — are causing documented physical or psychological harm to a disabled litigant, and when the court continues to impose those demands without modification, the court is not exercising neutral institutional authority. It is making a deliberate institutional choice whose foreseeable and documented consequence is the physical or psychological deterioration of a disabled person who is compelled to participate in its proceedings or face case-dispositive sanction for non-participation. This choice is legally cognizable as disability discrimination, as a potential constitutional violation, and — under CRPD Article 15 and the ECHR vulnerability aggravation principle — as conduct that may constitute cruel, inhuman or degrading treatment.

§ 6.1 Three Categories of Court-Caused Disability Harm

Category 1: Disability Caused by Court Process

The first category encompasses disability that did not exist before a legal proceeding and that was caused — in whole or in material part — by the stress, demands, and trauma of the proceeding itself. Peer-reviewed medical literature establishes that psychological stress is a direct trigger of multiple sclerosis relapses; that prolonged adversarial stress is a recognized cause of PTSD and other trauma disorders; and that chronic stress impairs immune function in ways that can precipitate or accelerate the onset of autoimmune and inflammatory conditions. A litigant who enters a proceeding in good health and who, as a direct consequence of the court's processes, develops a disability, is a victim of court-caused disability harm in the most direct sense.

Legal causation in this category requires establishing: (1) the existence of a pre-existing vulnerability or susceptibility; (2) the imposition of court processes known, or knowable through reasonable medical inquiry, to trigger the condition; (3) the onset or exacerbation of the condition causally attributable to the court processes; and (4) the court's failure to modify those processes upon receiving medical evidence of the causal relationship. The medical literature on stress and MS, stress and PTSD, and stress and autoimmune disease generally provides the epidemiological foundation for this causal chain.

Using the Hazari case as example, the most precise causal evidence in the entire record is documented through the Disease Quantification Measurement System (DQMS) and the FDA-certified Freestyle Libre II continuous glucose monitor, which recorded real-time physiological data during the March 7–10, 2025 sequence. The Freestyle Libre II is an FDA-certified continuous monitoring device whose data is stored on a central server accessible to treating physicians. Its records correlate precisely with the filing of opposing counsel's declaration on March 7, 2025 and the subsequent ECF-87 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.) accommodation denial on March 10, 2025: the device recorded dysregulation during the period when the legal events that the causal chain identifies as the stress trigger were occurring, with the resulting WBC elevation to 21 (documented in DE 39-2 / DQMS) occurring in the aftermath. This is the causal chain documented not through clinical retrospection but through contemporaneous FDA-certified measurement: the court event is time-stamped in the court docket; the physiological response is time-stamped in the device's server data; the treating physician's documentation of the consequence is in the medical record. The Hazari SCOTUS writ (No. 25-3879, Appendix P) presents the complete six-link causal chain, the Solomon Equation parameters and derivation, and the full physician chain from UCSF, Stanford, and other treating institutions, establishing that the sevenfold DMT threshold escalation caused by court-induced immune suppression constitutes documented permanent neurological damage caused by the courts' coercive authority.

Category 2: Disability Exacerbated by Court Conduct

The second and most common category encompasses disability that existed before the proceeding but that was materially exacerbated by the court's conduct — specifically, by the denial of disability accommodations that medical evidence established were necessary to prevent exacerbation. This category is distinguished from the first by the pre-existence of the disability, but the legal analysis is analogous: the court received medical evidence, had the opportunity to modify its processes, and chose instead to continue imposing demands that its own record showed to be harmful.

The ADAAA's episodic impairment provision is central to this category. A court that points to earlier periods of apparent functionality as evidence that accommodation is unnecessary for future proceedings is applying reasoning that the ADAAA expressly rejected. By doing so, the court creates the conditions for exacerbation: the disabled litigant, denied accommodation during a period of relative remission, is forced to participate in harmful proceedings and suffers a relapse — the very relapse that the medical evidence warned against. The court has not simply denied an accommodation; it has caused the relapse.

Exacerbation harm may also arise from the cumulative effect of repeated accommodation denials over time. A pattern of denials that individually might not constitute actionable harm may, in aggregate, constitute a course of conduct that materially and documentably worsens the litigant's condition. The cumulative harm theory is particularly important in cases involving progressive neurological conditions: each relapse caused or contributed to by court-imposed stress may accelerate the condition's progression in ways that are permanent and irreversible.

The Hazari record provides a specific documented instance of Category 2 harm that is unique in the litigation record: the court's accommodation denial directly obstructed the plaintiff's access to life-saving medical treatment. On April 11, 2025, in a filing to the Ninth Circuit Court of Appeals (ECF-97_2 in 25-3879), Hazari stated on the official court docket: 'The motion for disqualification…must be adjudicated promptly, in view of the imperative of STOPPING PLAINTIFF'S TORTURE, especially for the urgent purpose of allowing the Plaintiff to regain his biological immunity to a level where he may receive an overdue and critical Disease Modifying Therapy which this judge and this Circuit deprive him of.'

The Biological Mechanism on the Official Court Record

The disease-modifying therapy (DMT) argument places a specific causal mechanism on the official judicial record. DMTs for Multiple Sclerosis require a minimum immune cell count threshold to be safely administered — a biological gate that cannot be bypassed. When litigation-induced physiological stress suppresses immune function (documented in the Hazari record: CD8 T-cells at 54 cells/μL, severely below the normal minimum of 180, flatlined across 28 months), the immune cell count falls below the DMT administration threshold. The court's continuation of unaccommodated litigation demands — each demand generating documented physiological stress — directly maintained the immune suppression that prevented DMT administration. This is not a claim of general harm from participation in litigation. It is a specific documented causal chain: litigation demand → stress response → immune suppression → DMT threshold not met → life-saving treatment withheld. The biological mechanism that connects the court's conduct to the treatment obstruction was placed on the official Ninth Circuit docket on April 11, 2025 — 18 months before the case concluded — giving the court specific notice of the precise causal pathway it was maintaining.

Artificial Intelligence as Court-Compelled Substitute for Accommodation (ECF-71; ECF-89/91)

The most direct evidentiary statement of the AI-as-forced-accommodation mechanism is now on the record of the United States Supreme Court. The Hazari SCOTUS writ (No. 25-3879, Introduction) contains the following statement: “This petition was prepared with the assistance of agentic artificial intelligence. That fact is legally significant, not merely biographical: AI supplied the organizational capacity that accommodation would have supplied. Every prior submission was prepared without that capacity, under conditions of active MS relapse and cognitive impairment at the 0.1 percentile, and was returned for the Rule 14 formatting defects those conditions produce.” This statement, made in a document filed with the Supreme Court of the United States, establishes on the highest domestic judicial record that: (a) AI was deployed as a substitute for the cognitive organizational capacity that accommodation was designed to provide; (b) without AI, every prior filing was produced under conditions of active MS relapse and cognitive impairment at the 0.1 percentile; (c) the formatting defects for which 50+ filings were returned were the product of those conditions, not of bad faith; and (d) the standard this Court establishes in answering the questions presented will determine whether the next disabled litigant in this position needs an AI, and whether even AI is sufficient when the person directing it is in active medical crisis. Recipe 12 of Part XX-B — “Use the Litigant’s Best Work Against Her” — is documented in the writ’s own pages: a Rule 14-compliant writ produced by AI during active MS relapse with CD8 T-cells at 54 cells/μL will now be cited as capacity evidence by any respondent opposing accommodation.

Two documents in the BLF record make explicit what Part VI identifies as courts causing disability harm: when accommodation is denied, disabled litigants are forced into technology-mediated substitutes that themselves constitute a form of harm. ECF-71 (February 25, 2024 — the eleventh accommodation motion) contains the first appearance of this statement in the record: 'With one exception… our jurisprudence… does not serve the People, and must be reformed.' The exception is Freeman. The document also contains the only explicit request for posthumous transparency in the entire record: 'in the event of my death, or such incapacity as to frustrate any prosecution of this lawsuit, that judge Freeman please unseal every record in this court, so that the public shall know what happened to me.'

ECF-89 and ECF-91 (March 20-23, 2025) contain the definitive statement: 'it was only the advent of Artificial Intelligence that provided this technology entrepreneur with a tool, through which to express his case for deprivation of his Accommodation, to multiple courts, including the US Supreme court, and to the United Nations human rights bodies, as a last resort.' This statement

— on the official federal court record — documents that AI was not a convenience but the only available mechanism of access after human cognitive capacity had been compromised by seven years of court-induced injury.

AI as Forced Amelioration: The ADA's Undue Burden Analysis Applied

The ADA requires courts to provide reasonable accommodation. When accommodation is denied, the disabled litigant faces three options: (a) withdraw from litigation and lose rights; (b) participate unaccommodated and suffer documented physical and mental harm; or (c) deploy technology as a substitute for the cognitive capacity that courts refuse to restore through accommodation. ECF-71 and ECF-89/91 document option (c) in operation. The litigant is 'entirely dependent on injurious training of A.I. to write due to the burden of [his] injuries from judicial torture' (ECF-102). The injuries were caused by unaccommodated litigation. The AI substitutes for the cognitive function whose degradation was caused by the courts. The ADA's reasonable accommodation doctrine asks whether accommodation would impose an undue burden on the service provider. ECF-71 and ECF-89/91 answer the prior question: the absence of accommodation has already imposed an undue burden on the litigant — specifically, the burden of training and deploying AI to substitute for the human cognitive capacity that more than eight years of court-induced stress systematically degraded. ECF-98 (Freeman's disqualification denial) cites the AI-assisted filings as evidence of ability: 'after the Court notified Plaintiff that there was a filing error in his first mammoth, 109-page brief, Plaintiff was able to file a second 125-page brief within two days.' This is the paradox at its most precise: the court uses the AI-mediated output — generated at documented cost to the litigant's health — as evidence that accommodation is unnecessary, while simultaneously acknowledging the filing that demonstrated that output required a correction due to errors caused by the cognitive impairments the court is denying are real.

The significance for the court-caused harm analysis is twofold. First, it establishes a quantified harm mechanism: the court's denial of accommodation produced a specific measurable consequence (treatment withheld) rather than general suffering. Second, it places that causal claim on the official judicial record before the harm was complete — making the continuation of the court's conduct, with knowledge of this specific mechanism, relevant to the intentionality analysis in the CIDT framework.

The September 2025 Briumvi Dose and the Irreversible Treatment Threshold

The court-caused harm record in Ninth Circuit No. 25-5649 documents adds a previously undocumented escalation point to the Briumvi treatment timeline. DE-6 in appeal 25-5649 (Emergency Motion for Injunctive Relief, October 2025) documents two separate missed Briumvi doses: March 2025 and September 2025. The March 2025 dose was previously documented in the DQMS evidence in 24-6312, where WBC elevation to 21 and missed infusion are recorded alongside the Zela letter sequence. The September 2025 dose was not in any previously read document.

More significantly, DE-6 reports an escalation beyond the September dose: 'Neurologist advised Appellant can no longer receive Briumvi, while the accumulating burden of disease has required graduation to Briumvi.' The sequence is: (1) MS required graduation to Briumvi because prior DMTs failed to mitigate court-induced relapse; (2) Briumvi was then missed in March 2025 due to distress-induced immunocompromise; (3) missed again in September 2025; (4) the neurologist then concluded further Briumvi treatment was no longer feasible. The court-caused harm did not merely delay a treatment — it caused the permanent discontinuation of the highest-intensity available treatment at the point when the patient's disease had escalated to require it.

The July 2023 Medical Evidence: Controlled Substances, Steroids, Coma Risk, and the Absence of Immune Response

The 23-15221 show cause response (DE-18, July 7, 2023) contains two medical exhibits that extend the documented harm record. Exhibit C includes a letter from Michelle Bakin, Health Navigator at Roots Community Health Center (July 6, 2023), who conducted biweekly visits with Hazari. The letter records the following concurrent conditions as of mid-2023: absence of antibody formation following Covid-19 diagnosis in June 2022; large antibiotic injections to treat recurring bacterial infections that Hazari's immune system could not clear independently; prescription controlled substances required to stay awake and complete unavoidable legal work, under close medical monitoring; monitored steroids administered to cope with the distress of legal work, with Bakin noting these 'have negative consequences on his health, and doctors have to constantly find new ways to help him to work when he is sick'; a diabetic complication in which blood sugar levels rise with stress and fall with sleep, creating a risk of diabetic coma during sleep if levels drop too low; shortness of breath and no stamina; a need for 24-hour care; significant weight loss and visible aging observable between visits.

Bakin states: 'Based on our biweekly visits with Mr. Hazari, it is evident that his illness has been increasing due to distress from the courts. The most recent visit on June 30, 2023 showed me and my partner, Kioni Williams, that actively dealing with these court cases is exacerbating his chronic conditions.' Bakin notes that 'His doctors have been concerned since 2019 that it could result in his death' and requests 'a long period of complete rest and isolation from stress.'

Medical Escalation Ladder: The Court Record as Corroborating Evidence

JULY 2018 (SSA determination): Federal Social Security Administration sets disability onset date as July 1, 2018. Independent government determination. 2019: Multiple physicians warn in writing of probable sudden death from court-induced distress. First federal court referral (LHK) dismissed as frivolous. 2019 (state court): Permanent ban on all disability accommodation in California state courts. DECEMBER 2019: End-stage MS symptoms appear. Quitclaim of property to Dr. Horvath in preparation for possible death. DECEMBER 2019: Valley Medical Center neuropsychological exam (Dr. Choi) measures cognitive processing speed at one-third of normal population average, directly contradicting Cassini's 'no cognitive problems' finding from one week earlier. 2020–2022: Progressive escalation including severe MS relapses, PTSD, major depressive disorder, and anxiety. JUNE 2022: Covid-19 contracted in hospital (immune-compromised). No antibody development post-infection. JULY 2023 (Bakin letter): No Covid antibodies; large antibiotic injections; controlled substances to work; monitored steroids; diabetic coma risk during sleep; 24-hour care required; significant weight loss. JUNE 23, 2023 (Buchanan/UCSF letter): Psychiatric questionnaire scores at or near maximum at every visit — described by UCSF psychiatrist as 'quite rare.' Treatment escalated to recommendation of voluntary psychiatric hospitalization for consideration of electroconvulsive therapy (ECT). Hazari declined due to infection risk in hospital environments (having already contracted Covid during a prior hospital stay) and concern for his wife. UCSF supervising team: Dr. Buchanan, Dr. Tianyi Zhang, Dr. John Chamberlain. MARCH 2025: Briumvi (Ublituximab) dose missed (DQMS documented). September 2025: second Briumvi dose missed. Post-September 2025: neurologist advises Briumvi can no longer be administered.

The Buchanan letter adds a specific clinical calibration point. UCSF's standard questionnaires on depression and anxiety symptoms — covering impaired sleep, concentration, appetite, and suicidal ideation — registered 'at or very near the maximum at each of the approximately monthly appointments.' Buchanan characterizes this as 'quite rare.' The ECT recommendation represents an escalation beyond medication management to a treatment that requires in-patient hospitalization, general anesthesia, and neurological monitoring. Hazari's stated reasons for declining — infection risk given documented immune compromise and concern for his wife's wellbeing — are themselves documented in the file and corroborated by the Bakin letter's description of 24-hour care needs and compromised immune function.

The Briumvi Escalation Timeline: From Treatment to Inability to Receive Treatment

PRE-2025: Multiple prior DMTs proven ineffective in mitigating MS relapses caused by judicial stress. Disease progression requires graduation to Briumvi — the most potent available FDA-approved DMT for relapsing MS. FEB-MAR 2025: ECF-87 (March 10) denies accommodation. ACMS-37 (March 3) administratively closes 24-6312. ECF-80 unseals medical records. DE 39-2 (DQMS) documents WBC=21, Briumvi infusion missed. Source: 24-6312 DE 39-2. SEPT 2025: Second missed Briumvi infusion documented in DE-6 (25-5649). The BLF dismissal (December 1, 2025) occurs during the period between the two missed doses. Source: 25-5649 DE-6. POST-SEPT 2025: Neurologist advises Appellant can no longer receive Briumvi. The treatment that was prescribed specifically because prior DMTs failed — themselves failed due to court-induced harm — has been rendered permanently inaccessible. Source: 25-5649 DE-6. RESULT: The court's refusal to accommodate did not merely cause a delay in treatment. The cascade of harm produced a permanent treatment discontinuation: from graduated to most potent available DMT → missed doses → treatment declared permanently unavailable → no current effective MS treatment. This is the severest physical harm consequence in the entire record.

The Multiple Sclerosis Stress Equation: Primary Source Peer-Review Provenance

The complete text of the peer-reviewed paper, 'The Multiple Sclerosis Stress Equation,' appears in full as Exhibit A to Hazari's show cause response (DE-18, 23-15221). The paper was submitted to the Journal of Medical Statistics and Informatics on February 1, 2023; and the paper was published on June 13, 2023. The authors are Benjamin Solomon, and three of Hazari's treating physicians Peter Boruta, Dagmar Horvath, and John MacKellar. The dataset is identified throughout as the 'Hazari Data Set,' covering 2,561 days of daily-granularity medical records from 2010 to 2017.

The paper's core findings — that distress is a direct and mathematically modelable cause of MS relapse, that symptom sets follow predictable statistical distributions correlated with distress magnitude, and that it is mathematically possible to 'trap' an MS patient in a continuous relapse through sufficiently frequent distress triggers — are not opinions offered to a jury; they constitute peer-reviewed scientific authority. The editorial review board consisted of qualified subject-matter experts with no competing interests. Hazari cited this paper in every court filing from 2023 onward as the scientific authority for his accommodation position. The paper's conclusion that 'distress management reduces markers of disease activity and improves outcomes' directly supports the claim that a genuine global stay across all concurrent proceedings was the medically indicated accommodation — and that courts' failure to provide it was not merely procedurally inadequate but scientifically contra-indicated.

Category 3: Disability Maintained by Court Conduct

The third category is distinct from the first two and perhaps the most legally complex. It encompasses situations where a court's refusal to provide accommodation — or its imposition of case-dispositive sanctions that terminate the proceeding — prevents the disabled litigant from obtaining the relief that would allow their condition to stabilize or improve. The disability is neither caused nor directly exacerbated by the court's conduct, but it is perpetuated by the court's refusal to provide the procedural relief that would enable recovery.

The most common example: a disabled litigant whose litigation-caused or litigation-exacerbated condition requires a period of complete rest from litigation activities in order to stabilize. The court's refusal to grant an extended stay — on the ground that cases cannot remain pending indefinitely — perpetuates the condition by maintaining the source of the harm. The court is not

causing the disability in the active sense, but it is the only institutional actor with the power to provide the relief that would allow recovery, and its refusal to do so constitutes a maintenance of the disabling condition through institutional inaction. Under CRPD Article 12's supported decision-making framework and Article 13's effective access guarantee, this institutional inaction is itself a form of disability discrimination.

A specific weaponization of the court-caused harm analysis must be addressed and rejected at the outset. Courts and adversarial parties have argued, or may argue, that because litigation causes documented physical harm to the disabled litigant, the correct legal response is dismissal — that ending the litigation protects the litigant from further harm. This argument is legally and structurally wrong, and its wrongness is not incidental but constitutive. The harm caused by litigation does not arise from the fact of litigation; it arises from the denial of accommodation that makes litigation harmful. A disabled litigant who is fully accommodated — given the schedule modifications, procedural adjustments, and deadline extensions that their medical condition requires — does not experience litigation as a disease-causing stimulus in the same way. The court-caused harm is caused by the accommodation denial, not by the existence of the proceeding. Dismissal in response to court-caused harm therefore does not eliminate the harm — it rewards the harm-causing conduct with the permanent forfeiture of the legal rights whose vindication the harm was inflicted to prevent. It is the legal equivalent of telling a plaintiff whose arm was broken by a defendant that the correct remedy is to dismiss the case, because continued participation in litigation is medically inadvisable for someone with a broken arm. The correct remedy — the only remedy consistent with the ADA, the CRPD, and the constitutional access-to-courts doctrine — is to provide the accommodation that stops the harm and allows participation to occur without the medically documented harm-causing stimulus. Dismissal is not protection. It is the completion of the rights deprivation that the accommodation denial began.

§ 6.2 The Legal Foundation: Why This Harm Is Cognizable

Court-caused disability harm is cognizable through four independent and cumulative legal channels:

First, the federal disability statutes. Section 504 of the Rehabilitation Act and ADA Title II both prohibit disability discrimination by covered entities — with state courts as directly covered public entities under ADA Title II, and with the federal judiciary presenting the structural gap whose misconstruction Part XXVIII addresses through the full canonical toolkit of statutory interpretation. Discrimination includes conduct that subjects disabled persons to physical or psychological harm that non-disabled persons do not face in the same proceeding. A court that imposes procedures causing documented physical or psychological harm to a disabled litigant, without accommodation, is subjecting that litigant to discrimination in the conduct of its proceedings.

Second, constitutional violations. As developed in Part V, the denial of disability accommodations in judicial proceedings that results in denial of access to courts and physical or psychological harm constitutes violations of the equal protection guarantee (Cleburne anti-stereotyping), substantive due process liberty interests (Youngberg, Obergefell), and the non-derogable right of access to courts (Griffin-Lane). These constitutional violations are actionable under 42 U.S.C. § 1983 (against state court systems) and directly under the Constitution against the federal court system, subject to the immunity and abrogation analysis in §§ 6.4-6.6.

Third, CRPD Article 15 and the Article 18 obligation. As analyzed in § 3.5, court conduct that imposes processes known to cause physical or psychological harm to a disabled litigant may constitute cruel, inhuman or degrading treatment under CRPD Article 15. The CRPD Committee's General Comment No. 6 specifically addresses this scenario. The Article 18 obligation requires courts to interpret the federal disability statutes consistently with Article 15's prohibition.

Fourth, the state-created danger doctrine. As analyzed in § 6.3, the state-created danger doctrine provides a constitutional basis for liability when a state actor affirmatively places a person in danger or increases the danger to which they are exposed. Courts that compel disabled litigants' participation in harmful proceedings satisfy the elements of this doctrine in appropriate circumstances.

§ 6.3 The State-Created Danger Doctrine

DeShaney v. Winnebago County, 489 U.S. 189 (1989), established the general rule that the Due Process Clause does not impose a duty on the government to protect individuals from privately inflicted harm. The Court, however, identified two exceptions: (1) the special relationship exception, where the state takes a person into its custody or care, generating affirmative protective duties; and (2) the state-created danger exception, where the state's own conduct creates or increases the danger to which the individual is subjected.

The state-created danger doctrine has been recognized by the majority of federal circuits, though not yet formally adopted by the Supreme Court. Under the circuit-level formulations — typified by the Third Circuit's analysis in Kneipp v. Tedder, 95 F.3d 1199 (3d Cir. 1996) — a state-created danger claim requires: (1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted with a degree of culpability that shocks the conscience; (3) a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the state's acts; and (4) the state actor used its authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger.

Applied to court-caused disability harm, each element is supportable. Foreseeability: a court in possession of medical evidence establishing that its procedural demands cause disease exacerbation cannot deny foreseeable harm. Culpability: the deliberate choice to continue imposing harmful processes despite specific medical evidence, and the formulaic denial of accommodation requests without individualized assessment, constitute at minimum deliberate indifference and arguably conduct that shocks the conscience when the documented harm includes immune system failure, neurological deterioration, and risk of death. The relationship: the court exercises compulsory jurisdiction over the litigant; the litigant cannot simply walk away from the proceedings without forfeiting all legal rights. State authority creating danger: the court's use of its authority to compel participation creates and maintains the danger to which the disabled litigant is exposed.

The special relationship exception also applies, independently. When a court exercises coercive jurisdiction over a litigant — compelling participation under threat of case-dispositive sanction for non-participation — it has created a relationship of legal compulsion analogous to the physical custody that Youngberg established as generating heightened constitutional obligations. The litigant is not free; they are compelled. The court that compels them has assumed the protective obligations that compelled custody generates.

DeShaney v. Winnebago County *489 U.S. 189 (1989)*
While holding that the Due Process Clause does not impose general protective duties, the Court identified the state-created danger exception: where the state's own conduct creates or increases the danger to which an individual is subjected, the state bears constitutional responsibility for the resulting harm. Courts that compel disabled litigants' participation in processes known to cause documented physical or psychological harm satisfy the state-created danger exception: the court's coercive authority creates and maintains the danger.

§ 6.4 Responsibility Attribution: The Institutional/Individual Distinction

The most important structural feature of the legal analysis of court-caused disability harm is the distinction between the court as an institution and the individual judge as an actor. This distinction determines which legal channels are available for relief and which immunity doctrines apply. It is the key to understanding why court-caused disability harm is legally cognizable even in the face of strong judicial immunity doctrine.

The Court as Institution

The court as an institution — including the court system's policies, practices, procedures, and accommodation protocols — is a covered entity under ADA Title II in the state court context, with federal courts presenting the structural coverage gap that Part XXVIII argues is the product of misconstruction rather than deliberate congressional choice. As a public entity under ADA Title II, the state court system bears direct statutory liability for disability discrimination in its services, programs, and activities. This liability runs against the institution, not the individual judge, and is not defeated by judicial immunity, which is a defense available to individual judicial officers, not to institutional entities.

Critically, Tennessee v. Lane establishes that this institutional liability has been constitutionally validated under Section 5 of the Fourteenth Amendment. The court system's obligation to provide disability accommodations is not merely a statutory requirement; it is a constitutionally mandated obligation. When the court system as an institution fails to provide those accommodations, and when that failure causes documented disability harm, the institutional liability is both statutory and constitutional.

The court's institutional liability extends to three specific categories of conduct relevant to court-caused disability harm: (a) the failure to maintain adequate accommodation request protocols; (b) the adoption or maintenance of policies, practices, and procedures that disproportionately burden disabled litigants without justification; and (c) the failure to train judicial officers and court staff in disability accommodation law, including the ADAAA's episodic impairment provision, the CRPD-informed individualized assessment requirement, and the medical evidence standards applicable to accommodation requests.

The Individual Judge

Individual judges acting in their judicial capacity enjoy absolute immunity from civil damages claims — established in Stump v. Sparkman, 435 U.S. 349 (1978), and Mireles v. Waco, 502 U.S. 9 (1991). This immunity is broad but not unlimited. It applies only to judicial acts — acts performed in the judge's judicial capacity and not in the complete absence of jurisdiction. Administrative acts by judges — including the management of court administrative functions such

as the accommodation request process, training requirements, and compliance with court system policies — may not qualify as judicial acts and therefore may not be immunized.

More importantly for practical purposes: judicial immunity bars damages claims against individual judges, but it does not bar injunctive relief. Pulliam v. Allen, 466 U.S. 522 (1984), established that injunctive relief is available against judges acting in their judicial capacity — subject to a critical subsequent statutory limitation. The 1996 amendment to 42 U.S.C. § 1983 provides that injunctive relief against a judicial officer for acts taken in a judicial capacity shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. In the judicial disability accommodation context, declaratory relief is structurally unavailable for the same reasons the Accommodation Paradox establishes: the court adjudicating the declaratory relief claim is itself a court that must accommodate the disabled litigant, making neutral adjudication structurally impossible. Where declaratory relief is unavailable, the 1996 amendment's exception applies, and injunctive relief under Pulliam remains available. The primary injunctive relief pathway, however, runs through institutional ADA Title II liability — against the court system as an entity rather than against individual judicial officers under § 1983 — which the 1996 amendment does not reach. See the full analysis at § 24.1.4.

The Accommodation Denial as Administrative vs. Judicial Act

A court's decision on a disability accommodation request is a hybrid act that sits at the boundary between judicial and administrative function. To the extent the decision is part of the exercise of judicial authority — for example, a judge's ruling on a motion for case management accommodation — it may qualify as a judicial act for immunity purposes. But to the extent the decision reflects the application (or non-application) of the court system's accommodation policies — or, critically, the absence of adequate accommodation policies — it may be characterized as an administrative act or a policy failure, not a judicial act.

This distinction matters because: (1) administrative acts are not protected by judicial immunity; (2) the failure to adopt adequate accommodation policies is an institutional failure, not an individual judicial act; and (3) liability for policy failure runs against the court system as an institution, precisely where ADA Title II and Rehabilitation Act liability is most clearly established. The strategic implication is that litigants challenging court-caused disability harm should focus claims on institutional policy failures — the absence of accommodation protocols, the failure to train, the systematic denial pattern — rather than on individual judicial decisions, both because institutional claims avoid immunity and because they address the structural source of the harm.

Stump v. Sparkman *435 U.S. 349 (1978)*
Judicial immunity applies to acts performed in a judge's judicial capacity, broadly construed. The immunity is absolute — no damages are available against individual judges for judicial acts, regardless of how erroneous or harmful. But the immunity is individual, not institutional: it protects the judge, not the court system. In the state-court setting, institutional liability under ADA Title II and Section 504 is not defeated by judicial immunity; in the federal-court setting, the comparable institutional-accountability structure is incomplete, which is itself part of the thesis's structural critique.

Pulliam v. Allen *466 U.S. 522 (1984)*
Injunctive relief is available against judicial officers notwithstanding their immunity from damages. In cases involving ongoing court-caused disability harm — where a court's continuing conduct is

exacerbating a disabled litigant's condition — the injunctive relief channel provides the most immediate and practically effective remedy. Congress subsequently limited Pulliam's attorney fees implications in 42 U.S.C. § 1988. The 1996 amendment to 42 U.S.C. § 1983 further qualified injunctive relief against judges in their judicial capacity, conditioning it on prior violation of a declaratory decree or unavailability of declaratory relief. As analyzed at § 24.1.4, declaratory relief is structurally unavailable in the judicial accommodation context through the mechanism the Accommodation Paradox establishes, preserving the injunctive channel; and institutional ADA Title II claims against the court system as entity provide a parallel avenue the § 1983 amendment does not reach.

Mireles v. Waco *502 U.S. 9 (1991)*
Judicial immunity is defeated only when a judge acts in the clear absence of all jurisdiction or performs a non-judicial act. The functional test — whether the act is one normally performed by a judge — is broadly construed. But administrative policy decisions — including the failure to adopt accommodation protocols — may fall outside this definition, providing a basis for institutional liability that individual immunity does not foreclose.

§ 6.5 Judicial Immunity: Scope, Limits, and What It Does Not Protect

Judicial immunity, as established in Stump and Mireles, is absolute within its scope but limited in its reach. It does not protect:

- The court system as an institution from accountability under the statutory regimes that do apply to it, and in the state-court setting from direct institutional liability under ADA Title II and Section 504.
- Individual judges from injunctive relief under Pulliam v. Allen.
- Administrative rather than judicial acts — including policy decisions about accommodation protocols and training requirements.
- Acts taken in the complete absence of jurisdiction.
- Conduct by court personnel who are not judges — court administrators, clerks, and ADA coordinators who make or implement accommodation decisions are not protected by judicial immunity even when performing functions related to judicial proceedings.
- Non-judicial conduct by judges — including statements made outside their judicial role and administrative decisions about court operations.

The significance of these limits is practical: a comprehensive litigation strategy addressing court-caused disability harm does not require overcoming judicial immunity for its most important claims. Institutional liability under ADA Title II and the Rehabilitation Act, injunctive relief under Pulliam, and judicial conduct complaints under the Judicial Conduct and Disability Act all operate independently of — and are not defeated by — judicial immunity doctrine. The immunity is real but it is not a complete shield; it is a shield for the individual judge acting judicially, not for the institution, not for its policies, and not for ongoing harm that an injunction could stop.

§ 6.6 Sovereign Immunity and Its Abrogation

State Courts

State courts as public entities are subject to ADA Title II, which Congress enacted under its Section 5 Fourteenth Amendment enforcement power. Tennessee v. Lane held that Title II validly

abrogates state sovereign immunity for claims asserting the fundamental right of access to courts. United States v. Georgia further established that the abrogation extends to claims for conduct that independently violates the Fourteenth Amendment. The Eleventh Amendment does not bar ADA Title II damages claims against state court systems for disability discrimination in judicial proceedings that denies access to courts or constitutes cruel and degrading treatment of disabled litigants.

State courts are also subject to Section 504 of the Rehabilitation Act to the extent they accept federal funds — an acceptance that constitutes a waiver of sovereign immunity under the clear statement rule of Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985), and its progeny. Where state courts accept federal funding through court improvement programs, technology grants, or other federal assistance, that acceptance waives sovereign immunity under the Rehabilitation Act, providing a damages remedy independent of the ADA's Section 5 abrogation.

Federal Courts

Federal courts are not subject to the Eleventh Amendment, but they benefit from federal sovereign immunity under common law. The federal judiciary's remedial exposure under existing statutory frameworks is incomplete and comparatively discretionary: the Federal Judicial Center acknowledges that neither ADA Title II nor Section 504 directly governs federal judicial disability access. ADA Title II applies to state and local public entities; Section 504's "Executive agency" formulation has been read by DOJ's Office of Legal Counsel to exclude the legislative and judicial branches. That structural gap is itself the central injustice under examination. The thesis's primary remedial argument for federal courts therefore runs through the statutory construction channels of Part XXVIII — establishing that the gap is misconstruction — and through prospective relief, constitutional claims, Judicial Conference action, and congressional reform as the accountability pathways where statutory coverage remains incomplete.

Federal courts are also subject to constitutional claims directly — under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), for damages, subject to immunity doctrine, and more importantly through prospective injunctive relief against court systems and judicial officers. The Supreme Court has significantly curtailed Bivens' availability in recent terms, which makes the federal remedial picture narrower rather than clearer: prospective relief, structural constitutional arguments, Judicial Conference and Judicial Council mechanisms, and congressional reform assume greater importance where direct statutory liability remains contested or unavailable.

Prospective Relief: Ex Parte Young

Ex parte Young, 209 U.S. 123 (1908), established that the Eleventh Amendment does not bar suits seeking prospective injunctive relief against state officials to prevent ongoing constitutional violations. Applied to state courts: a disabled litigant experiencing ongoing court-caused disability harm may seek injunctive relief requiring the court to provide accommodation, compelling the cessation of harmful procedures, or mandating the adoption of adequate accommodation protocols. Ex parte Young relief does not require abrogation of sovereign immunity; it operates independently, on the theory that a state official acting unconstitutionally is stripped of the state's sovereign immunity to the extent necessary to prevent the ongoing violation.

§ 6.7 Available Remedies: A Complete Taxonomy

This section classifies remedies by forum, defendant, and form of relief. It does not assume that all remedies are equally available across state courts, federal courts, individual judges, court systems, and international accountability bodies; its purpose is to distinguish those paths rather

than collapse them into a single remedial category. Five distinct settings govern: (1) state court systems facing ADA Title II institutional liability under Tennessee v. Lane; (2) federal courts and the structural coverage gap; (3) individual judges facing the § 1983 post-1996 amendment's limitation on injunctive relief; (4) declaratory and prospective institutional relief as the primary surviving pathway against courts as institutions; and (5) the international accountability track operating entirely outside domestic immunity doctrine. This section classifies remedies by forum, defendant, and form of relief. It does not assume that all remedies are equally available across state courts, federal courts, individual judges, court systems, and international accountability bodies; its purpose is to distinguish those paths rather than collapse them into a single remedial category. Five distinct settings govern: (1) state court systems facing ADA Title II institutional liability under Tennessee v. Lane; (2) federal courts and the structural coverage gap; (3) individual judges facing the § 1983 post-1996 amendment's limitation on injunctive relief; (4) declaratory and prospective institutional relief as the primary surviving pathway against courts as institutions; and (5) the international accountability track operating entirely outside domestic immunity doctrine. The following taxonomy maps available remedies to the specific claims and immunity/abrogation posture described above:

Remedy	Legal Basis	Who Is Liable	Key Limitations
Prospective injunctive relief (ongoing proceedings)	Pulliam v. Allen; Ex parte Young; ADA Title II § 12133	Individual judges (Pulliam); state officials (Ex parte Young); court system	Must be ongoing violation; most powerful remedy in active cases
Damages against state court system	ADA Title II (Lane abrogation); Rehab Act § 504 (funding waiver)	State court system as institution	Must show constitutional violation (Georgia) or federal funding acceptance
Damages against federal court system	No clear, settled primary statutory vehicle under current institutional understanding — thesis argues present noncoverage is misconstruction (Part XXVIII)	Federal court system as institution	Highly contested / generally unavailable as straightforward analogue to state-court Title II liability; Bivens severely curtailed; Section 504 coverage of federal courts disputed by institutional practice; thesis argues present architecture is incomplete and misconstrued (Part XXVIII)
Declaratory relief	28 U.S.C. § 2201; ADA Title II and Rehab Act where applicable; constitutional and administrative theories in the federal-court setting where direct statutory coverage is contested	Court system; may include judicial officers	Available even where damages are not; provides prospective guidance
Pattern or practice relief (DOJ)	42 U.S.C. § 12133; ADA Title II	Court system as entity	DOJ Civil Rights Division enforcement; requires pattern evidence

Remedy	Legal Basis	Who Is Liable	Key Limitations
Judicial conduct complaint	28 U.S.C. §§ 351-364 (Judicial Conduct and Disability Act)	Individual federal judge (administrative, not civil)	Administrative remedy; Judicial Council; no damages; can result in censure, reassignment, referral
Mandamus (to compel accommodation)	28 U.S.C. § 1651 (All Writs Act)	Court or judge	Extraordinary remedy; requires clear legal duty and no adequate alternative
Appellate review of accommodation denial	Direct appeal; mandamus; interlocutory appeal (28 U.S.C. § 1292)	No liability; error correction	Requires appealable order; corrects legal error but not physical or psychological harm already caused
State judicial conduct commission	State constitutional authority	Individual state judges (administrative)	Varies by state; can result in censure, suspension, removal; no damages
Constitutional claim (direct, prospective)	5th/14th Amend. due process; equal protection; access to courts	Federal officials (limited by immunity doctrine)	Bivens curtailed; best pursued as constitutional or institutional claim; statutory vehicle against federal courts remains contested under current institutional understanding

§ 6.8 Accountability Mechanisms: Judicial Conduct and Administrative Oversight

The Judicial Conduct and Disability Act (28 U.S.C. §§ 351-364)

The Judicial Conduct and Disability Act provides the primary administrative accountability mechanism for federal judicial misconduct. Any person may file a complaint with the circuit's chief judge alleging that a federal judge has engaged in 'conduct prejudicial to the effective and expeditious administration of the business of the courts' or has a 'mental or physical disability rendering the judge unable to discharge the duties of office.' The Judicial Council of the circuit has authority to: take no action; request the judge to voluntary retire; certify the disability; privately or publicly reprimand or censure the judge; request the judge to certify that they will not repeat the conduct; and — in the most serious cases — refer the matter to the Judicial Conference for potential impeachment proceedings.

The Judicial Conduct and Disability Act is rarely invoked in the disability accommodation context, but it is legally available and potentially significant. A pattern of accommodation denials by a judge that documents deliberate indifference to medical evidence of disability harm — particularly where the denials repeatedly use identical formulaic language without individualized assessment, suggesting a policy of denial rather than an exercise of judicial judgment — is the kind of conduct that is properly the subject of a judicial conduct complaint. The complaint mechanism does not provide damages and is not a substitute for civil liability; but it provides a form of administrative accountability for individual judges that civil liability, blocked by judicial immunity, cannot.

For courts in which the pattern of accommodation denial is systemic — affecting multiple disabled litigants across multiple cases — the Judicial Council mechanism is particularly significant. The Judicial Council has authority to issue rules for the administration of justice in the circuit, authority that could be used to mandate accommodation protocols, require ADA Coordinator appointments, and establish medical evidence review standards. These structural interventions address the source of the harm rather than merely providing post-hoc compensation.

Department of Justice Civil Rights Division Enforcement

The DOJ Civil Rights Division has authority to enforce ADA Title II against state and local government entities, including state courts. Under 42 U.S.C. § 12133, the DOJ may bring civil actions to enforce Title II, including pattern or practice claims against court systems that systematically deny disability accommodations. The DOJ's enforcement authority is not subject to judicial immunity and is not constrained by the standing limitations that sometimes prevent individual litigants from pursuing structural reform.

A pattern of accommodation denials across multiple disabled litigants in a state court system — documented in court records, docket entries, and medical evidence — would constitute the kind of pattern or practice that DOJ enforcement is designed to address. The remedy available in a DOJ pattern or practice action includes injunctive relief requiring adoption of accommodation protocols, training requirements, ADA Coordinator appointments, and monitoring mechanisms — precisely the structural reforms that Part VI's prevention analysis identifies as necessary.

Congressional Oversight

Congress has oversight authority over both the federal judicial system and the DOJ's enforcement of disability law. Congressional oversight hearings, reports, and directives can address systemic court-caused disability harm at the structural level — mandating reforms to the Judicial Conduct and Disability Act, directing the DOJ to prioritize enforcement against court systems, and amending the ADA or Rehabilitation Act to clarify the obligations of courts as covered entities. The 61-senator majority vote for CRPD ratification demonstrates the congressional capacity for action in this domain; the question is whether that capacity will be channeled into specific oversight and legislative reform.

State Judicial Conduct Commissions

Every state has a judicial conduct commission or equivalent body with authority to investigate and discipline state judges for misconduct. These commissions have authority to impose sanctions ranging from private admonishment to public censure to suspension and removal. Disability accommodation denials that reflect a pattern of deliberate indifference to medical evidence — or that are accompanied by demeaning or hostile characterizations of disabled litigants' claims — may be cognizable as judicial misconduct under state commission standards. State judicial conduct proceedings are independent of ADA and Rehabilitation Act liability and provide an additional accountability channel for individual judicial actors at the state level.

§ 6.9 CRPD and European Law Dimensions

The CRPD and European frameworks provide both substantive content for the legal analysis of court-caused disability harm and — importantly — evidence of international consensus about what constitutes adequate state response to this harm.

CRPD Article 15's prohibition on cruel, inhuman or degrading treatment, applied to court-caused disability harm, establishes a international baseline against which the adequacy of domestic accountability mechanisms must be assessed. A domestic legal system that provides no effective remedy against court-caused disability harm — where judicial immunity bars individual liability, sovereign immunity has not been clearly abrogated, the Judicial Conduct Act is rarely invoked, and DOJ enforcement is intermittent — is a system that falls below the Article 15 standard of 'all effective measures to prevent' such treatment. The Article 18 harmonization obligation requires domestic courts to read the available legal mechanisms as capaciously as possible in order to approach the Article 15 standard.

The harmonization obligation extends, in the disability context, beyond the interpretation of federal statutes. Because the Equal Protection Clause was drafted with disability as a central animating concern — the Thirty-ninth Congress was legislating for hundreds of thousands of Civil War disabled — and because the Fifth Amendment's reverse-incorporation of equal protection applies that guarantee to federal actors through Bolling v. Sharpe, 347 U.S. 497 (1954), the CRPD's Article 5 framework for reasonable accommodation functions as interpretive authority for the constitutional guarantee itself, not merely for the statutes that implement it. The Senate's determination that existing law already meets the CRPD's requirements is, in the constitutional dimension, a determination that the Equal Protection Clause properly interpreted already delivers CRPD Article 5 outcomes. Courts that interpret the EP Clause to permit accommodation denials falling below the CRPD's reasonable accommodation floor are therefore not merely misreading statutes — they are misreading the Constitution in a manner that contradicts the legislative branch's own authoritative determination of what the Constitution already requires. This constitutional dimension is developed fully in § 5.4A and § 11.10A.

The ECHR's positive obligation framework is particularly instructive. Under Price v. United Kingdom and the broader Article 3 positive obligation doctrine, states must maintain effective investigative mechanisms for credible allegations of CIDT — not merely a formal complaint process but one capable of producing actual findings and effective remedies. Applied to the Judicial Conduct and Disability Act: Congress should evaluate whether the Act's mechanisms are, in practice, capable of effectively investigating and sanctioning the pattern of accommodation denial that constitutes court-caused disability harm — and if not, should reform them to meet the Article 3 positive obligation standard, as an expression of the CRPD Article 15 commitment that 61 senators voted to ratify.

The UK's anticipatory duty model under the Equality Act 2010 provides the most concrete comparative benchmark for what prevention of court-caused disability harm requires. A court system that proactively identifies the disability-related risks of its standard litigation procedures and modifies those procedures before a disabled litigant is harmed — rather than waiting for harm and then litigating its responsibility — is a court system that meets the anticipatory duty standard. No U.S. federal court system currently operates this way. The anticipatory duty model is the reform target that the CRPD and the Constitution together require.

The conceptual reorientation this standard requires is precisely what François Crépeau proposed as his signature intellectual contribution to international human rights governance: the shift from "management" to "facilitation." In his final thematic report as UN Special Rapporteur, Crépeau argued for a generational reorientation of international migration governance — away from managing migration as a security threat and toward facilitating human mobility as a development good and a human capacity. The structural argument applies with full force in the disability rights context. Courts currently approach disability accommodation as case management: they manage whether to accommodate, within a framework of institutional convenience, on a discretionary basis, subject to their own assessment of whether accommodation is warranted. The reform this thesis proposes — mandatory accommodation as a non-discretionary legal obligation, proactive

medical evidence review, anticipatory barrier identification, and independent oversight — is a shift from management of accommodation to facilitation of disabled participation. Courts that facilitate participation ask: what does this disabled litigant need in order to exercise their legal rights effectively? Courts that manage accommodation ask: does this disabled litigant's request for adjustment meet our threshold for granting a concession? The facilitation question is the correct one under the ADA, the CRPD, the Constitution, and every framework this thesis has analyzed. The management question is the one courts currently answer — and the thesis's prevention analysis requires replacing it. See François Crépeau, "Towards a 2035 Agenda for Facilitating Human Mobility" (2017) UN Doc A/HRC/35/25 (Final Report of the Special Rapporteur on the Human Rights of Migrants); François Crépeau, "Towards a Mobile and Diverse World: 'Facilitating Mobility' as a Central Objective of the Global Compact on Migration" (2018) 30(3) International Journal of Refugee Law 373.

Crépeau also diagnosed what he called the "governance gap" in international migration: the systematic absence of a binding institutional framework that holds states accountable to their treaty obligations, with states deliberately constructing governance structures that are not accountable to human rights law. The parallel in domestic disability rights law is the structural gap this thesis has documented throughout: the federal judiciary operates outside the principal statutory disability-access frameworks that govern every other public entity, the Judicial Conference's internal policy covers only communications disabilities and provides no binding enforcement mechanism, and DOJ enforcement is intermittent rather than systematic. This is not an oversight — it is a governance architecture that the judicial branch has constructed to maximize its own discretion at the expense of disabled litigants' rights. Crépeau's diagnosis of the migration governance gap — and his prescription that genuine accountability requires binding institutional frameworks rather than voluntary cooperation — applies directly to the disability governance gap in the federal judiciary. The IDAT and the mandatory accommodation standard developed in this thesis are the disability rights answer to the governance gap that Crépeau identified as the structural failure of rights-based governance. See François Crépeau and Idil Atak, "Global Migration Governance: Avoiding Commitments on Human Rights, Yet Tracing a Course for Cooperation" (2016) 34(2) Netherlands Quarterly of Human Rights 113.

§ 6.10 Prevention: Structural and Prophylactic Standards

Prevention of court-caused disability harm requires structural intervention at the institutional level — not merely improved adjudication of individual accommodation requests. The following structural standards are derived from the CRPD, the European comparative frameworks, the constitutional analysis of Part V, and the accountability architecture of Part VI:

Medical Evidence Review Requirements

Before imposing any case-dispositive sanction on a disabled litigant — dismissal for failure to prosecute, default judgment, terminating sanctions for non-compliance — the court must conduct a medical evidence review specifically addressing the causal relationship between the litigant's documented disability and the failure to comply. This review must be conducted by a judicial officer with access to, and actual consideration of, the current medical record. Formulaic application of case management principles without medical evidence review in this context is not an exercise of judicial discretion; it is a category of judicial conduct that the ADA, the Rehabilitation Act, and the Constitution prohibit.

In cases involving complex or contested medical evidence, the court should consider appointment of an independent medical expert — under Federal Rule of Evidence 706 or its state equivalents — to assess the causal relationship between the litigation process and the documented disability

progression. This mechanism ensures that the medical judgment that case management decisions depend upon is informed by expert assessment rather than judicial assumption.

Mandatory Accommodation Protocols

Every court system must adopt written accommodation protocols that: (a) establish a designated ADA Coordinator for litigation proceedings with authority to receive, process, and recommend action on accommodation requests; (b) specify the documentation standards for accommodation requests, consistent with the ADAAA's episodic impairment provision and the CRPD's social model of disability; (c) establish a timeline for individualized assessment of each request; (d) require written findings on each request, including specific medical evidence considered, specific burden or alteration analyzed, and specific alternatives considered; and (e) provide for medical evidence reassessment when the litigant's medical condition changes.

The absence of written accommodation protocols in a court system is itself evidence of a policy of non-compliance — evidence relevant both to institutional liability under ADA Title II and to the state-created danger analysis, because a court system that has not adopted protocols for responding to accommodation requests has created the institutional conditions in which harmful denials are foreseeable and preventable.

Mandatory Judicial Education

Federal and state judicial education programs — including those administered by the Federal Judicial Center and the National Judicial College — must incorporate mandatory training on disability accommodation law, including: the ADAAA's episodic impairment provision; the ADA's individualized assessment requirement; the CRPD's social model of disability and Article 13's procedural accommodation mandate; the medical science of progressive neurological conditions including their stress-sensitivity and relapsing-remitting character; the Cleburne anti-stereotyping principle as applied to accommodation decisions; and the institutional liability of court systems under ADA Title II and the Rehabilitation Act.

The absence of such training is legally significant. A court system that fails to train its judicial officers in the legal standards applicable to disability accommodation requests cannot claim that individual judges' non-compliant decisions were reasonable exercises of judicial discretion; they were uninformed decisions made in the absence of the training the law requires. Failure to train is a category of institutional failure that establishes institutional liability independent of any individual judicial decision.

Proactive Accessibility Audit

Every court system should conduct — and periodically update — a proactive accessibility audit of its standard litigation procedures, identifying the disability-related risks of those procedures and modifying them to eliminate unnecessary risks. This audit should be informed by the medical literature on litigation stress and health, by consultation with disability rights organizations and medical experts, and by review of accommodation request patterns in the court's own records. The audit should address: standard briefing schedules and their compatibility with conditions affected by stress and cognitive impairment; hearing formats and their accessibility to persons with mobility, sensory, and cognitive disabilities; remote appearance technology and its adequacy for persons whose disabilities prevent in-person appearance; and the court's policies on extended stays and case management flexibility for disabled litigants.

Independent Oversight Mechanism

The structural conflict of interest inherent in asking courts to adjudicate claims of court-caused disability harm — the court is both the alleged wrongdoer and the institution responsible for adjudicating the claim — generates a compelling argument for an independent oversight mechanism. Congress should consider establishing an independent disability rights inspector general for the federal judicial system, with authority to receive complaints of court-caused disability harm, conduct investigations, make findings, and recommend remedial action to the Judicial Conference. Such a mechanism would provide the effective investigative capacity that the ECHR's Article 3 positive obligation requires and that the current Judicial Conduct and Disability Act mechanism, self-administered within the judicial branch, cannot consistently provide.

§ 6.11 Reform Pathways: Legislative, Judicial, and Administrative

The reform case should be presented in the alternative. This thesis argues in Part XXVIII that proper statutory construction already strongly supports federal-court coverage of, or at minimum seriously undermines the legitimacy of the judiciary's current self-exemption from, the ADA's comprehensive non-discrimination mandate. But even if that argument is not accepted by courts, Congress should amend Title II and related provisions to eliminate any remaining doubt. Legislative clarification is therefore not a concession that current law is necessarily exclusionary; it is the prudent structural correction for a regime whose present architecture has generated persistent inequality between state and federal court disability access. The thesis's statutory-construction argument and its legislative-reform argument are alternatives, not contradictions: whether the present gap is a misconstruction that courts should correct or a legislative omission that Congress must address, the result required is the same — full and enforceable disability-access obligations in every federal judicial proceeding.

Legislative Reform

Congress should amend the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, to: (a) explicitly include disability accommodation denial patterns as cognizable grounds for judicial conduct complaints; (b) establish a right for disabled litigants to file complaints without the current procedural barriers that make the Act ineffective in practice; (c) require Judicial Councils to issue public reports on accommodation complaint patterns in their circuits; and (d) establish minimum standards for judicial accommodation protocols as a condition of federal court operation.

Congress should also amend ADA Title II to clarify that federal courts, to the extent they exercise functions analogous to state courts, are covered entities for purposes of the access-to-justice provisions — closing the gap created by the current coverage structure in which Title II applies to state courts and the Rehabilitation Act applies to federal courts, but the coverage frameworks have different procedural and remedial features that may create gaps in protection.

A specific legislative reform of high importance is the creation of a safe harbor for disabled litigants: a statutory provision specifying that a case may not be dismissed for failure to prosecute, or subject to terminating sanctions, solely on the basis of a failure to comply with procedural requirements that are causally attributable to a documented disability — and that any such dismissal or sanction entered without a specific finding of the absence of such causation is void. This safe harbor would directly address the third category of court-caused disability harm: the maintenance of disability through the denial of the procedural relief that would allow recovery.

Judicial Rule Reform

The Federal Rules of Civil Procedure should be amended to require, in any case where a party has given notice of a disability affecting their litigation capacity: (a) individualized case management conferences specifically addressing the disability's impact on standard procedures; (b) medically-informed scheduling orders that account for the documented functional limitations of the disabled party; (c) a specific showing of prejudice to the non-disabled party before case-dispositive sanctions are imposed for disability-related non-compliance; and (d) a requirement that courts consider the least prejudicial alternative to terminating sanctions in all cases involving documented disability.

Local court rules should be amended to require ADA Coordinator appointments for litigation proceedings, written accommodation protocols, and annual accessibility audits. Many federal district courts have adopted some version of these measures; the goal of reform is to make them universal and to establish minimum federal standards that eliminate the current patchwork of inconsistent practices across court systems.

Administrative Reform

The DOJ should issue updated guidance on ADA Title II's application to court proceedings, specifically addressing court-caused disability harm, the proactive accessibility obligation, and the medical evidence standards applicable to accommodation requests. The guidance should explicitly incorporate the CRPD's Article 13 and Article 15 frameworks as interpretive authority under the Charming Betsy canon and the Article 18 obligation.

The Access Board should develop accessibility standards specifically applicable to court proceedings — standards that address not only physical accessibility of courthouses but procedural accessibility of judicial proceedings, including scheduling, hearing formats, documentation requirements, and remote appearance technology. These standards should be developed in consultation with disability rights organizations, medical experts in conditions commonly affecting litigation capacity, and international counterparts who have implemented CRPD-consistent court accessibility standards.

PART VII

The Absolute Prohibition: CRPD Article 15, UNCAT Article 16, the Supremacy Clause, and the Law of Nations

This Part develops what the preceding analysis has approached but not yet fully confronted: the proposition that CRPD Article 15 — read in full conjunction with UNCAT Article 16, the CAT's authoritative interpretive guidance, the 2014 Concluding Observations of the Committee Against Torture, the jus cogens character of the prohibition on torture and cruel, inhuman or degrading treatment — creates a preeminent, hierarchically superior obligation that limits, in its domain of application, every conflicting domestic legal doctrine, including judicial immunity, sovereign immunity, and any statute of limitations. The implications for judicial actors who cause disability harm through institutional conduct, and for the federal and state judges who bear constitutional obligations under Article VI of the Constitution to obey treaties as supreme law of the land, are both radical and legally necessary.

The Central Proposition of This Part

When a judicial actor — individually or through institutional policy — subjects a person with a disability to conduct that constitutes cruel, inhuman or degrading treatment under UNCAT Article 16 and CRPD Article 15, that actor has violated a peremptory norm of international law (jus cogens) from which no derogation is permitted by any domestic law. Judicial immunity, which is a domestic common-law doctrine, cannot override a jus cogens norm before international accountability bodies — the CAT Committee, the CRPD Committee, and the UN Special Rapporteur — for whom jus cogens is fully operative and US domestic immunity doctrine carries no weight. Before those bodies, the judge's official capacity is the aggravating factor, not a defense. Domestically, the judge's oath of office under Article VI of the Constitution binds them to the supreme law of the land — which includes ratified treaties — and the Congress of the United States has independent authority under Article I, Section 8, Clause 10 to define and punish offences against the law of nations, including disability-based CIDT by state actors operating under color of judicial authority, through legislative action that does not depend on domestic courts overriding their own immunity doctrines.

§ 7.1 The Convergence of CRPD Article 15 and UNCAT Article 16: The Full Prohibition

CRPD Article 15(1) provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 15(2) requires states to "take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment." UNCAT Article 16(1) requires each state party to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The convergence of these two provisions is complete and deliberate. CRPD Article 15 was drafted to track UNCAT Article 16 precisely, with the additional requirement that the prohibition apply to persons with disabilities "on an equal basis with others" — meaning that the disability-specific dimension of CIDT receives the same absolute prohibition as CIDT generally. Courts are institutions whose officers — judges, court administrators, clerks — are public officials acting in an official capacity. A judge who denies a disability accommodation knowing that the denial will cause documented physical or psychological harm — disease exacerbation, immune system collapse, neurological deterioration — is a public official whose conduct constitutes, at minimum, acquiescence in cruel, inhuman or degrading treatment within the meaning of UNCAT Article 16.

Three features of this convergence are critical for the analysis that follows. First, UNCAT Article 16 has been ratified by the United States — it is part of the supreme law of the land under Article VI of the Constitution. Second, CRPD Article 15 has no RUDs attached to it — unlike the CAT's reservation limiting Article 16 to violations of the Fifth, Eighth, and Fourteenth Amendments, CRPD Article 15 applies in its full international meaning without any domestic filtering formula. Third, the two provisions together establish a disability-specific CIDT prohibition that is simultaneously binding as a ratified treaty obligation (UNCAT Article 16) and unrestricted by RUDs (CRPD Article 15), creating a layered and mutually reinforcing prohibition that is more robust in the disability context than in any other.

The U.S. reservation to CAT Article 16 — limiting "cruel, inhuman or degrading treatment" to the meaning of those terms in the Fifth, Eighth, and Fourteenth Amendments — was explicitly designed to limit U.S. exposure under the CAT to what U.S. constitutional law already prohibited. But this RUD creates a gap when considered alongside CRPD Article 15: because the CRPD has no RUDs, Article 15's CIDT prohibition operates at the full international standard, which the CAT Committee has consistently interpreted as broader than the U.S. constitutional equivalents. The result is that disability-based CIDT by U.S. public officials — including judicial officers — is subject to a prohibition that has no RUD filter and no constitutional equivalence limitation. CRPD Article 15, backed by the Article 18 VCLT obligation and the 61-senator majority endorsement, requires U.S. courts to treat the full international CIDT standard as applicable to their conduct toward disabled litigants.

7.1.1 The Deposited Instrument: Understanding II(1)(c) and II(5)

Every domestic court analysis of UNCAT has proceeded through the lens of S. Exec. Rep. No. 101-30 (1990) — the Senate deliberations preceding ratification. That report is not the binding international commitment. The binding commitment is the instrument of ratification physically deposited with the United Nations on October 21, 1994. No domestic court has ever addressed the deposited instrument directly. It contains two provisions of immediate relevance to the judicial disability discrimination context that S. Exec. Rep. No. 101-30 does not contain in the same form.

Understanding II(1)(c) of the deposited instrument provides that domestically-imposed sanctions — including judicially-imposed sanctions — cannot be used to defeat UNCAT's object and purpose. Applied to the judicial disability discrimination context: case-dispositive sanctions imposed for defaults caused by accommodation denial are judicially-imposed sanctions that defeat UNCAT's object and purpose (the prevention of cruel, inhuman or degrading treatment by state actors). The court cannot impose the sanction that extinguishes the disabled litigant's rights and simultaneously claim that UNCAT's protections do not apply because its own sanction has removed the litigant from the proceeding. Understanding II(1)(c) is the U.S.'s own commitment that its own courts cannot do this.

Understanding II(5) of the deposited instrument explicitly identifies state and local courts as "competent authorities of the constituent units of the United States" responsible for implementing

UNCAT Articles 10–14 and 16. Courts are not merely forums in which UNCAT-governed conduct occurs. They are, in the U.S.'s own deposited international commitment, named competent authorities with specific implementation obligations under Articles 10 through 16 — the articles requiring training, prevention, and prohibition of cruel treatment by officials. When a court denies disability accommodation in a manner that causes CIDT-level harm, it is a named competent authority committing the violation that the treaty in which it is named prohibits. The Hazari SCOTUS writ (No. 25-3879) presents this argument to SCOTUS for the first time; no prior domestic court has addressed what follows from the deposited instrument's explicit naming of courts as competent authorities.

7.1.2 VCLT Article 27: Internal Law Cannot Justify Non-Performance

This section advances an international-law accountability argument and an institutional-governance argument, not a claim that Article 27 itself creates a privately enforceable domestic cause of action. Its force operates on three distinct levels: (1) on the international plane, removing domestic law as justification for treaty non-performance; (2) as an institutional-governance argument, undermining the legitimacy of treating non-self-execution as a complete answer to whether federal judicial policy required examination and adjustment; and (3) indirectly in domestic argument, supporting constitutional avoidance and rights-protective statutory construction. The domestic enforcement routes proceed through the statutory and constitutional doctrines developed in Parts V, VI, and XXVIII. Vienna Convention on the Law of Treaties Article 27 provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." This provision operates independently of, and is not addressed by, the domestic non-self-execution doctrine. Non-self-execution determines whether a treaty provision creates privately enforceable rights without implementing legislation. It determines nothing about whether the United States government — including the federal judiciary as a branch of that government — may invoke domestic legal doctrines to justify non-performance of treaty obligations. Article 27 answers that question directly: it may not.

Applied to the judicial disability accommodation context: the federal judiciary's 1995 Judicial Conference policy limiting accommodation to communications disabilities has never been examined for compatibility with UNCAT (ratified 1994), the ADAAA (enacted 2008), or the CRPD (signed 2009). Each of those three milestones triggered an independent institutional adjustment obligation — an obligation to examine and adjust the judiciary's own policies and procedures to ensure compatibility with the new legal requirements each created. That obligation arises from Article VI's "bound thereby" language, from the equivalence promise the executive made to the Senate and to the international community, and from Article 27 VCLT. None of the three requires Congressional implementing legislation. Each independently required the judiciary to examine its 1995 policy. Thirty years of non-adjustment is the documented consequence. The non-self-execution defense — the argument that UNCAT and CRPD do not require judicial accommodation because they are non-self-executing — is a provision of domestic law. Article 27 means the U.S. cannot invoke it to justify the judiciary's failure to examine and adjust its accommodation policy. The institutional adjustment obligation exists regardless of self-execution; Article 27 removes the only available justification for non-performance.

7.1.3 The Equivalence Promise and Its Falsification

When the United States ratified UNCAT in 1994, the Senate Foreign Relations Committee made a specific promise to the international community, recorded in S. Exec. Rep. No. 101-30, pp. 25–36: that existing federal and state laws provide full UNCAT fulfillment — that the Fifth, Eighth, and Fourteenth Amendments already supply the protection UNCAT requires. This equivalence promise was the basis for the Reservation I(1) limiting Article 16 to what U.S. constitutional law

prohibits. It was not a limitation on UNCAT's reach; it was a representation that the limitation was unnecessary because domestic law already matched the international standard.

The equivalence promise has been falsified. The documented record — eleven treating physicians, FDA-certified real-time physiological measurement, permanent immune destruction from court-imposed stress across eight years, denial of life-saving disease-modifying therapy through the Freestyle Libre II-documented causal chain — establishes that the Fifth, Eighth, and Fourteenth Amendments as currently applied do not provide the protection UNCAT requires for disabled litigants subjected to CIDT-level harm by federal courts. The Hazari SCOTUS writ (No. 25-3879, Appendix M, § 4) presents this argument formally: the equivalence promise was either accurate in 1994 and has since been falsified by changed application, or it was inaccurate in 1994 and the U.S. has been in Article 16 non-compliance since ratification. Either conclusion has the same consequence: the domestic courts cannot invoke Reservation I(1) to limit UNCAT's reach to what constitutional law currently provides, because the equivalence that justified the reservation no longer exists in practice. Where equivalence fails, the full UNCAT standard governs, unqualified by the reservation.

7.1.4 The Jus Cogens Hierarchy: UNCAT Cannot Confine a Pre-Existing Peremptory Norm

The prohibition on torture is not a creation of UNCAT. It pre-exists UNCAT as a peremptory norm of customary international law — jus cogens — from which no derogation is permitted under VCLT Article 53. When states negotiated what they were and were not willing to accept in the UNCAT treaty, including the sovereignty-protective provisions that the treaty's drafting history reflects, they could not through that negotiation confine the lower bound of a pre-existing peremptory norm. The negotiating history identifies what states wanted to limit in the conventional instrument. It cannot accomplish that limitation as against a norm that exists independently of the treaty. This is the precise legal meaning of "no derogation is permitted" under VCLT Article 53: the norm exists independent of any treaty instrument, and treaty instruments cannot modify it downward even by explicit agreement among parties.

Applied to Reservation I(1): the reservation limits the U.S.'s UNCAT obligations to what U.S. constitutional law prohibits. But if U.S. constitutional law fails to prohibit conduct that meets the customary international law threshold of torture or CIDT — as the documented record suggests it currently does, with respect to judicial CIDT of disabled litigants — then Reservation I(1) operates to confine U.S. compliance below the jus cogens floor. VCLT Article 53 renders that confinement void: a reservation that would bring a treaty obligation below the jus cogens minimum on a specific category of prohibited conduct is unenforceable as against the customary norm that the treaty codifies. The prohibition on CIDT of disabled persons by state actors — established at the customary level by the state practice and opinio juris that UNCAT Article 16 codifies — is not reducible by domestic reservation to the current scope of U.S. constitutional application.

7.1.5 Erga Omnes Obligations: The U.S. Failure Is Owed to Every UNCAT Signatory

Barcelona Traction, Light and Power Co. (ICJ 1970) established that certain obligations in international law are erga omnes — owed to the international community as a whole, not merely to individual states that can demonstrate specific injury. Belgium v. Senegal (ICJ 2012) confirmed that UNCAT's obligations against torture are erga omnes partes — owed by each state party to all other state parties, independently of any bilateral injury. The consequence for this thesis's analysis is structural: the federal judiciary's failure to provide disability accommodation that prevents CIDT-level harm is not merely a domestic disability rights failure, not merely a violation

of American law, and not merely a breach of the individual rights of the specific litigant harmed. It is a breach of obligations owed to every UNCAT signatory. The international community has standing — under the ICJ's own doctrine — to insist on compliance. The treaty bodies have authority — under the erga omnes partes structure — to receive the complaints and make findings. The IAJ's CAT submission and the UN secretariat communications documented in Part XXVII are not peripheral to the legal analysis; they are the mechanism through which erga omnes obligations are enforced when domestic mechanisms have failed.

§ 7.1A CRPD Article 15 / UNCAT Article 16: Disability Discrimination on the Continuum of Torture, the Five-Level Gravity Scale, and the Prosecutorial Proof Architecture

This section presents an international-law severity framework. It does not claim that each level corresponds automatically to an already-recognized domestic cause of action; rather, it identifies the gravity at which disability discrimination implicates international CIDT prohibitions, clarifies that the CIDT proof architecture is distinct from ordinary tort analysis, and illuminates domestic interpretation and prosecutorial reasoning without collapsing international severity analysis into a domestic doctrinal continuum. The textual convergence between CRPD Article 15 and UNCAT Article 16 is established in § 7.1: both provisions occupy the same normative space when the person subjected to CIDT has a disability, CRPD Article 15 operates without RUDs at the full international standard, and the "acquiescence" element of UNCAT Article 16 is directly engaged by a court that continues imposing procedures known to cause CIDT-level harm after receiving physician documentation of that harm. Building on that textual foundation, three independent lines of treaty body and Special Rapporteur authority confirm that disability discrimination can reach CIDT level — and establish the analytical framework for the gravity scale that follows.

7.1A.2 Special Rapporteur and Treaty Body Authority: Disability Discrimination Can Reach CIDT Level

Special Rapporteur on Torture Juan Méndez, in his 2013 report to the Human Rights Council (A/HRC/22/53), explicitly addressed disability-based discrimination in institutional settings — including legal and medical institutions — as capable of constituting CIDT independently of any intent to punish or coerce. Méndez established three propositions directly applicable to the judicial disability discrimination context: (1) the UNCAT's purpose element does not require proof of subjective intent to cause suffering; (2) the intent to continue an institutional practice known to cause suffering is itself sufficient to satisfy the purpose element; and (3) persons with disabilities subjected to institutional processes that deprive them of autonomy, cause documented suffering, and are imposed by or with the acquiescence of state actors fall within the core jurisdiction of UNCAT Article 16 and CRPD Article 15. Méndez specifically identified legal proceedings imposing coercive demands on persons with disabilities — particularly where such demands override the person's expressed medical needs and cause documented deterioration — as a paradigmatic CIDT context. His analysis establishes that the state of mind required is the intent to engage in the conduct, not the intent to cause the specific harm that results: once a state actor knows that a practice causes documented suffering and continues the practice, the mental state requirement is satisfied.

The CRPD Committee's General Comment No. 1 (2014) on equal recognition before the law addresses the CIDT implications of forced legal processes imposed on persons with disabilities — including processes that deny legal capacity, override expressed preferences, and subject disabled persons to institutional control without accommodation. While GC 1 focuses primarily on guardianship and forced psychiatric treatment, its framework for analyzing forced institutional

processes as CIDT contexts under Article 15 applies by extension to any state-controlled legal process that causes documented suffering through the denial of procedural accommodation. General Comment No. 6 (2018) on equality and non-discrimination recognizes that disability-based discrimination can, at its most severe — when systematic, prolonged, imposed by state actors, and causing documented serious harm — engage the Article 15 prohibition against cruel, inhuman or degrading treatment. Read together, General Comments 1 and 6 establish the analytical framework within which the CRPD Committee has recognized that the combination of systematic denial, documented harm, and absence of proportionate justification can constitute CIDT-level discrimination, and that the CRPD Article 15 pathway is available for adjudication of such claims through the Committee's individual communications procedure.

The CAT Committee's General Comment No. 2 (2008) provides the structural framework underlying all of these instruments: the distinction between torture under Article 1 and CIDT under Article 16 is one of severity and purpose, not of kind. Torture, CIDT, and cruel or degrading treatment are not separate categories between which a bright line exists. They are positions on a single continuum. Conduct that constitutes CIDT can, when aggregated, intensified, or prolonged over time, transition into the territory of the torture prohibition itself. This continuum structure — established by the CAT Committee as the authoritative interpretive framework for UNCAT Articles 1 and 16 — is the doctrinal architecture within which the gravity scale that follows is constructed and within which the prosecutorial proof architecture at each level is calibrated.

7.1A.2a The Posner Admission: Judicial CIDT of Pro Se Litigants as Institutional Confession

The international legal framework for cruel, inhuman or degrading treatment requires evidence that the state actor's conduct was not accidental but reflected a pattern, policy, or institutional norm. For the CIDT claim against courts treating disabled pro se litigants, the most powerful available evidence is not the IAJ's Istanbul Protocol findings, nor the physiological measurement record, nor the twenty-two vignettes of the national empirical record. It is a statement by one of the most respected and prolific federal appellate judges of the twentieth century, made not in dissent, not in a legal brief, not in academic writing subject to peer qualification, but in a broadcast public interview during his active tenure on the Seventh Circuit Court of Appeals.

Judge Richard A. Posner — author of more than 3,000 published judicial opinions, more than forty books, and widely regarded as the most cited legal scholar in American history during his lifetime — stated in a 2014 NPR interview and confirmed in associated writings that federal courts treat pro se litigants as "a kind of trash not worth the time" of federal judges. Posner was not alleging individual judicial misconduct. He was describing, from inside the institution, the institutional culture of the federal judiciary toward self-represented parties — a culture so entrenched that one of its most decorated members found it necessary to found a free legal clinic for pro se litigants upon his retirement, specifically because of his documented concern that the courts he had served for thirty-five years systematically failed to provide them with meaningful access to justice.

> **The Posner Admission: Institutional Culture as CIDT Evidence**
>
> *"[P]ro se litigants are, I think, a kind of trash not worth the time of federal judges." — Judge Richard A. Posner, Seventh Circuit Court of Appeals, 2014 NPR interview. Posner subsequently founded the Posner Center of Justice for Pro Ses (Chicago, 2016) upon his retirement from the bench, stating that the federal judiciary's treatment of pro se litigants was a failure of justice that had motivated his advocacy work. The statement and the action together constitute the most authoritative available*

admission that the judicial culture described in this thesis is real, documented, and acknowledged from within the institution that is its subject.

The CIDT analysis of this Part requires evidence of severity, state actor authority, official context, and — at Level 4 — discriminatory purpose or deliberate indifference. The Posner admission provides direct evidence on two of these four elements. On official context: the statement was made by an active federal appellate judge describing the institutional culture of the courts in which he served. It is not an outsider's allegation; it is an insider's characterization of institutional norm. On discriminatory purpose and deliberate indifference: "a kind of trash not worth the time" is not a description of neutral case management preference. It is a description of categorical institutional contempt for a class of litigants defined by their absence of legal representation. When that categorical contempt is the institutional culture within which disability accommodation requests are adjudicated, the deliberate indifference element of the Level 4 CIDT threshold is satisfied by the culture itself, independently of the specific mental state of any individual judicial officer denying any individual accommodation request.

The convergence between pro se status and disability is not incidental; it is structural and documented. The ADA Amendments Act of 2008 confirmed that disability disproportionately affects persons at lower income levels, and that the economic consequences of progressive neurological and psychiatric conditions systematically reduce the capacity to retain and maintain legal representation over multi-year litigation. The Hazari record documents this precisely: the litigant became indigent in March 2018, the same month of the first accommodation request, after eight years of MS progression had eliminated the income and savings base from which legal representation in complex civil litigation could be financed. The Minkowski record documents the same pattern: the financial sanctions imposed in correlation with accommodation requests totaling more than $1,040,683 were a mechanism of economic elimination that made continued legal representation impossible regardless of initial financial capacity. The Danilak record, Hazari's accompaniment role, and Judge Scott's contemporaneous accommodation — excusing him from standing and stopping trial when his condition deteriorated acutely — further confirm that the disability was visible, severe, and economically disabling simultaneously.

The Posner admission therefore describes the institutional framework within which disabled litigants are processed: courts that regard pro se litigants as institutional trash are courts whose disability accommodation requests from those same pro se litigants are evaluated against a baseline of contempt, not a baseline of equal access. The CIDT analysis does not require proof that any individual judicial officer consciously held this view. It requires proof that the institutional culture within which accommodation decisions are made systematically disadvantages the class of persons making them. Posner has provided that proof from the inside. He did so voluntarily, publicly, during active judicial service, with the authority of thirty-five years of federal appellate experience. No external investigation, treaty body finding, or academic study carries equivalent institutional weight, because none was produced by a member of the institution whose conduct it describes.

The intersection of pro se status and disability also illuminates the Cleburne irrational prejudice analysis of Part XI. Cleburne held that disability discrimination lacking rational basis violates equal protection. The Posner admission establishes that the judicial culture toward pro se litigants — of which disabled pro se litigants are a subset — is not merely without rational basis but is premised on explicit contempt. A court that operates within an institutional culture characterizing its pro se litigants as "trash" and applies that culture to disability accommodation requests cannot claim that its accommodation denials reflect individualized assessment of the litigant's specific needs. The Posner admission is, at the Cleburne level, direct evidence of the discriminatory purpose element: not one judge's personal animus, but the institutional norm within which every

individual accommodation decision is made. The full collegial loyalty and pro se discrimination analysis appears in Part XXI, §§ 21.5–21.5.2.

7.1A.3 The Five-Level Gravity Scale: From Statutory Violation to CIDT

The following scale maps disability discrimination conduct to its applicable legal standard, remedial pathway, and proof architecture. The scale is cumulative: each level incorporates the elements of all preceding levels and adds additional proof requirements and remedies. The scale does not purport to be exhaustive; it maps the specific pathway relevant to judicial disability discrimination contexts. The continuum framework established in CAT General Comment No. 2 means that these levels are not mutually exclusive categorical boxes but positions on a single severity gradient — conduct at any level may aggravate upward when aggregated, intensified, or prolonged.

Level 1 — Statutory Violation: ADA Title II / Rehabilitation Act

Conduct: Accommodation denial without individualized assessment; denial without written findings; denial using formula language that does not engage with specific medical evidence. Legal standard: 28 C.F.R. § 35.164 (written statement requirement); 28 C.F.R. § 35.107 (coordinator and grievance mandate); 28 C.F.R. § 35.130(b)(7) (reasonable-modifications obligation). Mental state required: Intent to deny, or deliberate indifference to an obvious need established by medical documentation. Remedial pathway: Compensatory damages (where Eleventh Amendment permits), injunctive relief, declaratory judgment, attorney's fees. Proof standard: Preponderance of the evidence. Treaty engagement: None required at this level; statutory and regulatory analysis is sufficient.

Level 2 — Constitutional Violation: Cleburne Irrational Prejudice

Conduct: Accommodation denial resting on stereotyped assumptions about disability capacity — the snapshot capacity inference, the "files documents therefore functions" reasoning, refusal to engage with physician documentation that contradicts lay assumptions about what a person with the documented disability can or cannot do. Legal standard: City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) — government classification based on irrational prejudice about disability violates the Equal Protection Clause. Mental state required: Irrational prejudice demonstrated through the absence of rational engagement with the actual facts of the individual's condition; subjective animus need not be proven. Remedial pathway: § 1983 constitutional claim; constitutional avoidance argument. Proof standard: Preponderance; irrational prejudice shown by the character of the denial reasoning. Critical equivalence: The Cleburne irrational prejudice standard is functionally equivalent to animus evidence in criminal hate crime doctrine. Both require proof that the actor's conduct was motivated not by legitimate institutional interest but by categorical assumptions about the target class. This equivalence is developed at Level 4.

Level 3 — Pattern-or-Practice Systemic Discrimination: Teamsters Standard

Conduct: The Level 1 and Level 2 violations deployed systematically across multiple individuals, multiple proceedings, or multiple courts — constituting a policy or practice rather than an individual error or deviation. Legal standard: International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977) — proof of a discriminatory pattern establishes that individual violations are institutional policy. Mental state required: Pattern proof displaces the requirement of individual intent; the institutional choice to maintain a discriminatory framework is itself the requisite state of mind. Remedial pathway: Pattern-or-practice injunctive relief, structural reform decree, DOJ pattern-or-practice enforcement, congressional intervention. Proof standard: Statistical and anecdotal evidence of pattern; individual comparators and formula language analysis across multiple cases. Treaty engagement: CRPD Article 5 (equality and non-

discrimination); CRPD Article 13 (access to justice); CRPD General Comments 1 and 6; CRPD Committee structural inquiry procedure.

Level 4 — CIDT Threshold: CRPD Article 15 / UNCAT Article 16 / Méndez 2013

Conduct: The Level 1 through 3 violations sustained over time, causing documented severe physical or psychological suffering, imposed by state actors exercising official authority, without adequate justification proportionate to the harm caused. Legal standard: UNCAT Article 16; CRPD Article 15; CAT General Comment No. 2 (2008); Méndez 2013 Report A/HRC/22/53; Istanbul Protocol. Mental state required: At Level 4, subjective intent to cause suffering is not required. The intent to continue an institutional practice known to cause documented severe suffering — demonstrated by the institution's receipt of and non-engagement with physician documentation — satisfies the purpose element (Méndez 2013: the state of mind required is the intent to engage in the conduct, not the intent to cause the specific harm that results).

The four-element CIDT proof architecture — which replaces the tort framework at this level — is: (1) SEVERITY: The suffering caused must be severe, measured by objective clinical indicators (medical records, laboratory values, Istanbul Protocol criteria) and qualified clinician assessment. Severity is established through the continuum framework: the same conduct that proves Level 3 pattern-or-practice reaches CIDT level when documented harm crosses the clinical severity threshold. The Istanbul Protocol's four-element standard — physical or psychological suffering, severity, state actor authority, official context — provides the diagnostic criteria. (2) STATE ACTOR AUTHORITY: Federal and state judicial officers exercising official authority are unambiguously state actors. This element requires no additional proof in the judicial discrimination context. (3) OFFICIAL CONTEXT: Every accommodation denial in a court proceeding occurs in an official capacity. This element requires no additional proof in the judicial discrimination context. (4) DISPROPORTIONATE IMPOSITION: The suffering must be disproportionate to any legitimate institutional interest advanced by the denial. Where the "fundamental alteration" defense is unavailable because proper statutory construction compels accommodation — as Part XXVIII's seven canonical arguments establish — no proportionate justification for the denial exists, and the CIDT threshold is met when severity is established. Remedial pathways: 18 U.S.C. § 242 criminal prosecution; IACHR precautionary measures; CAT Committee individual communication; CRPD Committee individual communication; jus cogens override of judicial immunity. Critical note: The tort framework (duty, breach, causation, compensable damages, foreseeability) does not apply at Level 4. A prosecutor or treaty adjudicator applying personal injury standards to a Level 4 judicial disability discrimination case will misidentify the applicable legal standard and misallocate the burden of proof.

Level 5 — Torture: UNCAT Article 1 (Doctrinal Boundary; Not Argued for This Case Record)

Conduct: Severe pain or suffering intentionally inflicted for a specifically prohibited purpose — obtaining information, punishment, intimidation, coercion, or discrimination based on any ground — by or with the acquiescence of a state official. Legal standard: UNCAT Article 1; CAT Committee jurisprudence. Mental state required: Specific intent to inflict severe suffering for a prohibited purpose. This thesis does not argue, and does not require, that judicial disability discrimination in the American court system has reached the Level 5 threshold in the cases documented. Level 4 — CIDT — is the factually defensible and legally sufficient characterization for the conduct documented in Parts VI and XXI. Level 5 is included here for doctrinal completeness and to establish the continuum structure that the CAT Committee mandates: the boundary between CIDT and torture is not a categorical wall but a point on the severity gradient at which the additional specific intent element is established.

7.1A.4 The Prosecutorial Proof Architecture: Why Personal Injury Standards Fail at Level 4

The five-level gravity scale produces four distinct proof architectures, only one of which tracks the tort framework that personal injury litigation uses. Prosecutors and treaty body adjudicators approaching judicial disability discrimination cases must identify which level of the scale applies to the conduct at issue, and then apply the proof architecture calibrated to that level rather than defaulting to the personal injury framework that disability discrimination cases have historically used in civil litigation. The conflation of disability discrimination proof standards with personal injury proof standards is the single most consequential structural error in the prosecution of disability discrimination at CIDT level. It produces misaligned witness selection (economic damages experts instead of clinical severity experts), misaligned causation analysis (proximate cause instead of CIDT four-element assessment), and misaligned remedial framing (compensatory damages instead of treaty-body accountability and structural reform).

At Levels 1 and 2, the tort framework is approximately correct, though even at Level 2 the Cleburne standard replaces "breach of duty" with "irrational prejudice" — a different showing that requires different evidence. At Level 3, the pattern-or-practice framework replaces individual causation analysis with institutional policy proof: a prosecutor does not prove that this specific denial caused this specific harm, but that the pattern constitutes an institutional policy producing systematic disadvantage. At Level 4, the tort framework is entirely inapplicable. The elements are severity of suffering (not compensable harm), state actor authority (not negligence or breach), official context (not foreseeability), and disproportionate imposition without legitimate justification (not proximate causation). The witnesses are clinicians applying Istanbul Protocol criteria, not economists calculating lost income. The standard of proof in treaty body proceedings is preponderance on the balance of probabilities; in § 242 criminal prosecution it is proof beyond reasonable doubt applied to the four CIDT elements, not to tort elements.

7.1A.5 The Hate Crime Convergence: Cleburne Irrational Prejudice as Discriminatory Purpose Evidence at Level 4

At Level 4, the animus evidence that establishes Cleburne irrational prejudice at Level 2 acquires an additional legal function: it establishes the discriminatory purpose element of the CIDT standard and — where criminal prosecution is pursued — provides the bias motivation evidence that corresponds to the hate crime proof architecture. The formula language accommodation denials, the categorical treatment of disabled litigants as a class without individualized medical assessment, and the documented continuation of harm-causing procedures after receipt of physician documentation all establish, simultaneously: (a) Cleburne irrational prejudice in the civil constitutional context; (b) the "official purpose" element of the CIDT standard in the treaty context; and (c) discriminatory motivation in the criminal context. The structural proof — pattern evidence, formula language, absence of individualized assessment, continuation after documented medical harm — is the same evidentiary architecture that functions as animus evidence in hate crime prosecution. The disability gravity scale and the hate crime proof structure converge at Level 4.

On federal hate crime coverage: 18 U.S.C. § 249 (Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act) extends federal hate crime coverage to disability-motivated offenses but requires willful causation of bodily injury motivated by actual or perceived disability. The statute has been applied primarily to physical assault contexts; no circuit court has applied § 249 to institutional accommodation denial. The bodily injury threshold may be satisfied by documented progressive neurological deterioration and immune system collapse of the severity documented in the case record — but the prosecution theory on these facts would require first-impression adjudication and is not the most legally available vehicle. The more immediately available

criminal pathway for judicial disability discrimination is 18 U.S.C. § 242 — willful deprivation of a federal right under color of law — which does not require bodily injury, only that the actor willfully deprived the victim of a right secured or protected by the Constitution or laws of the United States. Every accommodation denial by a judicial officer, made after receipt of physician documentation establishing that the denial will cause harm to a rights-holder under the ADA and CRPD, with knowledge of that documentation and deliberate choice to proceed regardless, satisfies the § 242 willfulness standard. Section 242 is the prosecutorial vehicle; the five-level gravity scale and the CIDT four-element framework are the proof architecture that makes the § 242 prosecution on judicial disability discrimination facts legally coherent and adjudicatively distinct from the tort framework that the personal injury analogy would otherwise impose.

§ 7.2 Jus Cogens: The Peremptory Norm That No Domestic Law Can Override

Article 53 of the Vienna Convention on the Law of Treaties defines a peremptory norm of general international law (jus cogens) 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." The prohibition on torture is universally recognized as a jus cogens norm. The International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia (ICTY) in Prosecutor v. Furundžija (IT-95-17/1-T, 1998), the European Court of Human Rights, and the U.S. courts in Filartiga v. Pena-Irala have all affirmed this characterization.

The legal consequence of jus cogens status is absolute: no treaty provision, no domestic legislation, and no administrative or judicial rule can derogate from a jus cogens norm. As the ICTY stated in Furundžija: "Because of the importance of the values it protects, [the prohibition on torture] has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy of norms that cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force." This reasoning applies with full force to domestic law: a domestic doctrine of judicial immunity, however well-established in common law, cannot derogate from a jus cogens norm. When a judicial act constitutes torture or CIDT under the international prohibition, the jus cogens character of that prohibition overrides the domestic immunity doctrine that would otherwise shield the actor.

The jus cogens status of the CIDT prohibition — to the extent it extends beyond torture strictu sensu to the Article 16 UNCAT standard — is somewhat more contested but broadly supported. The CAT Committee's General Comment No. 2 (2008) states: "The Committee emphasizes that the obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment (article 16, paragraph 1) is indivisible, interdependent and interrelated." The Furundžija Tribunal noted that the prohibition generates "obligation erga omnes" — obligations owed to the international community as a whole, not merely to individual states. Whether or not the Article 16 standard is formally jus cogens in every application, the combination of its erga omnes character, its absolute prohibition structure, and its convergence with the undisputed jus cogens prohibition on torture establishes a norm that no domestic immunity doctrine can validly override when applied to conduct that causes documented physical or psychological harm to a vulnerable disabled person by a public official.

Prosecutor v. Furundzija *ICTY Trial Chamber, IT-95-17/1-T (1998)*

The absolute prohibition on torture has evolved into a jus cogens norm from which no derogation is permitted through any domestic or international legal instrument. The norm generates obligations erga omnes — owed by every state to the international community as a whole. A domestic law that purports to shield conduct constituting torture or CIDT from accountability is in direct conflict with a peremptory norm of international law and, under the hierarchy established by VCLT Article 53, must yield.

§ 7.3 The 2014 CAT Concluding Observations and the Istanbul Protocol: No Immunity, No Statute of Limitations

The 2014 CAT Concluding Observations on the United States

In its 2014 Concluding Observations on the fifth periodic report of the United States, the Committee Against Torture expressed specific concern about U.S. practices regarding CIDT by public officials in institutional settings and called on the U.S. government to: ensure that all acts of CIDT are criminalized and prosecutable regardless of the official capacity of the perpetrator; ensure that no statute of limitations applies to such conduct; and "ensure that all victims of torture and ill-treatment have access to an effective remedy and reparation, including fair and adequate compensation and as full rehabilitation as possible." The 2014 Concluding Observations are not binding treaty text, but they are the authoritative interpretation of the CAT by the body charged with its supervision — and as such, they are the most reliable statement of what U.S. ratification of UNCAT Article 16 requires.

Applied to disability-based CIDT by judicial actors, the 2014 Concluding Observations establish three specific requirements that current U.S. law fails to satisfy. First, the conduct must be criminally prosecutable regardless of the perpetrator's official capacity — meaning judicial immunity cannot bar criminal accountability for CIDT, even if it bars civil damages. Second, no statute of limitations may apply — meaning that disability-based CIDT by a judge that occurred years ago may still be prosecuted or litigated without a statute of limitations defense. Third, victims must have access to an effective remedy and full rehabilitation — a standard that existing U.S. remedies for disability discrimination by courts, heavily constrained by judicial immunity and sovereign immunity, demonstrably fail to meet.

The Istanbul Protocol (2022 Revision)

The Istanbul Protocol — the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, revised in 2022 — is the primary international standard for the documentation, investigation, and accountability of torture and CIDT. While primarily designed for physical torture contexts, its principles apply with full force to institutional CIDT, including disability-based CIDT by judicial actors.

The Istanbul Protocol states explicitly that under international law: (1) "torture and cruel, inhuman or degrading treatment are absolutely prohibited and cannot be justified under any circumstances"; (2) "perpetrators enjoy no immunity from prosecution under international law, regardless of their official status or the domestic laws of their country"; and (3) "there is no statute of limitations for torture and cruel, inhuman or degrading treatment under international law." These three propositions, taken from the authoritative international documentation standard, directly address and negate the three primary defenses that judicial actors accused of CIDT might assert: that their conduct was judicially authorized and therefore immune; that applicable statutes

of limitations bar the claim; and that circumstances (docket management, institutional efficiency) could justify the conduct. All three defenses fail under the Istanbul Protocol framework.

The Istanbul Protocol (2022) also addresses institutional patterns of CIDT — conduct by institutions rather than isolated individuals. It states: "When CIDT occurs as a pattern of institutional conduct rather than as isolated individual acts, state responsibility is engaged at the institutional level, and the obligation to investigate, acknowledge, and remedy the conduct falls on the state as a whole rather than on the individual perpetrator alone." This principle directly addresses the court-caused disability harm scenario: when a court system's policies — formulaic denial of accommodations, failure to adopt protocols, systematic dismissal of medical evidence — produce a pattern of CIDT against disabled litigants, the state (and the court system as a state institution) bears international law responsibility for that pattern, independent of whether any individual judge acted with the requisite mental state for individual culpability.

The Istanbul Protocol's Three-Part Absolute Standard

Under international law as codified in the Istanbul Protocol (2022): (1) Perpetrators of torture and CIDT enjoy NO immunity from accountability regardless of their official status or the domestic laws of their country. (2) There is NO statute of limitations for torture and CIDT under international law. (3) These absolute standards apply to institutional patterns of CIDT as well as individual acts, engaging state responsibility at the institutional level. Each of these propositions directly contradicts the domestic U.S. framework of judicial immunity and statutes of limitations as applied to disability-based CIDT by judicial actors.

§ 7.4 The Pinochet Principle: Immunity Cannot Shield Jus Cogens Violations

R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 3) [2000] 1 AC 147 is the defining precedent for the proposition that the absolute prohibition on torture overrides immunity. The House of Lords held, by a majority of 6-1, that Senator Pinochet could not claim former head-of-state immunity for acts of torture committed while he was Chile's head of state, because the absolute nature of the international prohibition on torture meant that no state could confer immunity from accountability for such conduct. The critical reasoning, stated by Lord Browne-Wilkinson: "If [head of state] immunity were to be applicable, a state could… authorise its state officials to carry out torture and then claim that those officials were entitled to head of state immunity. The whole point of the international [prohibition] is that it imposes the obligation on the state and on state officials to observe its terms and does not permit the state or its officers to escape from liability by relying on immunity."

The Pinochet principle is not limited to heads of state, to former officials, or to the specific context of extradition between states. Its reasoning is universal: where an act violates a jus cogens norm, domestic immunity doctrines — which are themselves creatures of domestic law and cannot override jus cogens — do not apply. The principle applies with equal logical force to judicial immunity. If a judge commits acts that constitute CIDT against a disabled litigant — knowingly imposing procedures that cause documented physical or psychological deterioration, maliciously denying accommodation to cause harm, or systematically applying discriminatory policies that subject disabled persons to degrading institutional treatment — the judge cannot claim judicial immunity for those acts, because judicial immunity is a domestic common-law doctrine that cannot override the jus cogens prohibition on CIDT.

The Pinochet principle also addressed the functional argument for immunity: that judges (like heads of state) need immunity to perform their functions without fear of personal consequences.

Lord Millett's opinion addressed this directly: "International law cannot be supposed to have established a crime of the highest gravity and then to have provided that those responsible for it are to be immune from prosecution." The functional argument for judicial immunity — that judges need protection to decide fearlessly — collapses entirely when the conduct for which immunity is claimed is itself a jus cogens violation. The principle of judicial independence was never designed to protect the commission of international crimes. It was designed to protect honest judicial decision-making from external interference. When the decision itself constitutes CIDT, the protection becomes a license for the very harm it was designed to prevent.

R v. Bow Street Magistrate ex parte Pinochet Ugarte (No. 3) *[2000] 1 AC 147 (House of Lords)*

The absolute international prohibition on torture — a jus cogens norm — overrides head-of-state immunity because to permit immunity would make the absolute prohibition illusory. The principle extends to all domestic immunity doctrines: no state may confer immunity from accountability for conduct that violates a jus cogens norm. Applied to judicial immunity: a domestic common-law immunity doctrine cannot shield a judicial actor from accountability for acts constituting torture or CIDT under the international absolute prohibition.

Filartiga v. Pena-Irala *630 F.2d 876 (2d Cir. 1980)*

The torturer has become, like the pirate and slave trader before him, hostis humani generis, an enemy of all mankind. Torturers are common enemies of all nations, and a nation's refusal to prosecute them is a violation of international law. Federal courts have jurisdiction under the Alien Tort Statute over civil actions for torture and CIDT by state officials — a principle established for foreign official acts in Filartiga and the foundation on which the thesis's international accountability argument rests. The official status of the torturer is not a defense before international accountability bodies and forums operating under customary international law; the act violates the law of nations regardless of official capacity in those forums. Before domestic civil courts applying US common-law immunity, the institutional liability channels and prospective relief mechanisms developed in Part VI provide the primary remedial pathway, precisely because those channels do not require domestic courts to override their own immunity doctrines.

§ 7.5 Article VI of the U.S. Constitution: The Mandatory Treaty Obedience of State Judges

Article VI, Clause 2 of the Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This provision imposes on state judges a specific, mandatory, constitutional obligation of obedience to treaties as the supreme law of the land. It is not a principle, a preference, or a canon of interpretation. It is a binding constitutional command directed specifically and explicitly at state judges.

The scope of this obligation is absolute within its domain. The phrase "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" was deliberately chosen to foreclose any state-law exception, including state-law judicial immunity doctrines. A state judge who applies a state judicial immunity doctrine to shield conduct that violates a ratified treaty — including UNCAT Article 16's prohibition on CIDT by public officials — is violating Article VI's

Supremacy Clause directly. The state judicial immunity doctrine is precisely the "Constitution or Laws of any State" that Article VI says cannot override treaty obligations. The Supremacy Clause does not permit exceptions for institutional convenience or doctrines of judicial self-protection. When a state judge applies state judicial immunity to shield treaty-violating CIDT, the judge is not exercising legitimate institutional discretion; they are committing an independent constitutional violation by refusing to obey the supreme law of the land.

The specific mention of "Judges in every State" — rather than simply "all government officers" — was deliberate and significant. The Founders understood that state judges would be the primary interpreters and appliers of federal law in the new republic. The clause was designed specifically to ensure that state judges could not escape treaty obligations by invoking state law. Applied to CRPD Article 15 and UNCAT Article 16: a state judge who denies disability accommodations in a manner that constitutes CIDT under these treaty provisions is violating both the treaty and the Supremacy Clause simultaneously. The constitutional violation is independent of and additional to the treaty violation.

The Article VI mandate also has implications for the availability of remedies. A state court that dismisses a disability discrimination claim by invoking state judicial immunity to shield conduct that violates a ratified treaty obligation is not merely deciding an accommodation question incorrectly. It is violating the Supremacy Clause by subordinating the supreme law of the land to a state common-law doctrine. This constitutional violation provides the basis for federal court intervention — including mandamus, injunctive relief, and ultimately habeas corpus — that treats the state court's immunity ruling as itself unconstitutional.

The Supremacy Clause's Direct Command to State Judges

Article VI, Clause 2 states that state judges "shall be bound" by treaties "notwithstanding" anything in the state's constitution or laws "to the Contrary." State judicial immunity doctrines are "Laws of any State." When a state judicial immunity doctrine would shield conduct that violates a ratified treaty prohibition (UNCAT Article 16 / CRPD Article 15), Article VI prohibits application of the immunity doctrine. The Supremacy Clause is not a suggestion. It is a constitutional command that overrides state law — and state self-protective judicial immunity is state law.

§ 7.6 "Judges in Every State" Does Not Preclude Federal Judges: Article VI Clause 3 and the Oath of Office

The user of the specific phrase "Judges in every State" in Article VI Clause 2 has led some commentators to suggest that federal judges are not bound by the same Supremacy Clause obligation. This reading is textually and structurally wrong. The phrase was used to address the specific concern — prominent in the Founders' debates — that state judges would be the primary points of resistance to federal law. The Supremacy Clause was directed at them because they were the anticipated problem. The clause does not exempt federal judges from treaty obligations; it specifically addresses state judges because they required express constitutional direction.

Federal judges' treaty obligations arise through two independent constitutional channels. First, Article VI Clause 3 provides: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution." The phrase "all… judicial Officers, both of the United States and of the several States" expressly and without exception includes federal judges and Supreme Court Justices. Supporting the Constitution means supporting the Supremacy Clause — which makes treaties the

supreme law of the land. A federal judge who violates a ratified treaty obligation is violating their Article VI Clause 3 oath to support the Constitution.

Second, the oath of office prescribed by Congress for federal judges under 28 U.S.C. § 453 provides: "I, [name], do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as [title] under the Constitution and laws of the United States. So help me God." This oath contains two provisions of direct relevance to the disability-based CIDT analysis. First, "administer justice without respect to persons" is a categorical prohibition on disability-based discrimination in the administration of justice — it is the judge's personal oath to the equal treatment principle that CRPD Article 5 and the equal protection clause both require. Second, "do equal right to the poor and to the rich" extends this principle to all economically and socially disadvantaged persons — a category that includes disabled litigants whose poverty of procedural resources (caused by their disability) places them at a systematic disadvantage.

The oath's requirement to "faithfully and impartially discharge all the duties incumbent upon me… under the Constitution and laws of the United States" incorporates treaty obligations by direct reference: treaties are the supreme law of the land under the Constitution, and compliance with them is a duty incumbent upon federal judges. A federal judge who violates UNCAT Article 16 or CRPD Article 15 in the conduct of judicial proceedings is not merely violating a statute or a treaty; they are violating their personal oath of office. And the violation of a sworn constitutional oath, by a constitutional officer, is not merely a professional failure. It is a constitutional wrong of the most personal and direct kind.

Supreme Court Justices take the same oath under 28 U.S.C. § 453 and additionally take the Constitutional Oath under 5 U.S.C. § 3331: "I, [name], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." A SCOTUS Justice who interprets judicial immunity so broadly as to shield disability-based CIDT from all accountability — in a manner that the Constitution's Supremacy Clause forbids and that Article VI Clause 3 obligates them personally to prevent — is violating both oaths simultaneously.

The Federal Judicial Oath: 28 U.S.C. § 453

"I will administer justice without respect to persons, and do equal right to the poor and to the rich, and… faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution and laws of the United States." The phrase 'without respect to persons' is a categorical anti-discrimination oath. The phrase 'under the Constitution and laws of the United States' incorporates treaty obligations as supreme law. A federal judge who commits or permits disability-based CIDT violates each clause of this oath personally and directly.

§ 7.7 "Treaties Made, or Which Shall Be Made": The CRPD's Supremacy Clause Status

Article VI Clause 2's phrase "Treaties made, or which shall be made, under the Authority of the United States" raises the question of whether the CRPD — signed but not yet ratified, though voted on by a 61-senator majority — qualifies as a treaty that generates the Supremacy Clause's binding-on-judges obligation. The conventional answer is that "treaties made" refers to ratified treaties,

and that a treaty not yet ratified does not have Supremacy Clause force. But the complete analysis is considerably more complex and reveals pathways by which the CRPD exerts constitutional force on judicial actors even before formal ratification.

The Conventional Analysis: "Made" Means Ratified

Under the dominant view, a treaty is "made" under the Supremacy Clause only when the Senate has provided its advice and consent and the executive has ratified. The CRPD, having received 61 votes but not the required 67, has not been ratified. On the conventional analysis, it is not yet "made" and therefore does not generate the binding-on-judges obligation of Article VI Clause 2. The UNCAT Article 16 obligation — a ratified treaty — does generate that obligation. The analysis of CRPD Article 15 would then be limited to the Article 18 VCLT interpretive obligation and the Charming Betsy canon, rather than the full Supremacy Clause binding force.

The Progressive Analysis: "Which Shall Be Made" Is Prospective and Anticipatory

The phrase "or which shall be made" is grammatically prospective — it refers to treaties that will in the future be made under the authority of the United States. The question is what constitutional obligations attach before that future making occurs. Three arguments support the conclusion that the CRPD's relationship to U.S. law is more complex than the conventional ratification-only analysis suggests.

First, the VCLT Article 18 obligation materially strengthens the interpretive case against readings of domestic law that would defeat the CRPD's object and purpose. The stronger and more defensible claim is interpretive rather than self-executing: Article 18 does not by itself make the unratified CRPD equivalent to a ratified treaty under the Supremacy Clause, but it does reinforce harmony-based construction, constitutional avoidance, and skeptical review of doctrines that leave disabled persons categorically underprotected in judicial proceedings. The customary international law prohibition on conduct that defeats a signed treaty's object and purpose provides an independent reinforcing channel: it is part of the background against which domestic statutes are interpreted under the Charming Betsy canon and the federal common law of nations. The CRPD's principles thus reach state and federal judges most securely as substantial interpretive authority, reinforced by Article 18 and by the treaty's continuing pending-ratification posture.

Second, the 61-senator majority vote in favor of ratification is not merely a legislative history point. It is evidence that the CRPD IS the treaty "which shall be made" under the authority of the United States — the one that is in the process of being made, pending only a narrowing of the political gap between 61 and 67 votes. The Supremacy Clause's reference to future treaties anticipates exactly this scenario: a treaty in the process of ratification, already endorsed by a majority of the Senate, already signed by the executive, already operative as a matter of international law through Article 18. The constitutional obligation of judicial officers to treat such a treaty as a source of interpretive authority — if not full binding force — is consistent with both the text and the purpose of the Supremacy Clause.

Third, and most powerfully: the convergence of CRPD Article 15 with UNCAT Article 16 — a fully ratified and Supremacy Clause-binding treaty obligation — means that the CRPD's principles are already binding on state and federal judges through UNCAT Article 16, and the CRPD Article 15 analysis simply confirms and extends what UNCAT Article 16 already requires. State and federal judges who violate CRPD Article 15 are, in all but the most technical cases, also violating UNCAT Article 16 — a ratified treaty obligation from which there is no question of binding force.

The Oath Dimension of "To Be Made"

Even if the CRPD is not yet "made" within the technical meaning of the Supremacy Clause, the oath dimension provides an independent constitutional pathway. A federal or state judge who takes an oath to "support this Constitution" is taking an oath that encompasses the Supremacy Clause's structure — including its anticipatory reference to future treaties. A judge who acts to defeat the object and purpose of a treaty that 61 senators voted to ratify, that the executive signed, and that the U.S. continues to pursue ratifying, is acting against the constitutional grain that the Supremacy Clause establishes — and doing so in a manner that their oath to support the Constitution should prevent.

§ 7.8 The Malice and Corruption Problem: When Judicial Immunity Shields CIDT

The domestic doctrine of judicial immunity, as established in Bradley v. Fisher, 80 U.S. (13 Wall.) 335 (1872), and expanded in Stump v. Sparkman, 435 U.S. 349 (1978), extends to malicious and corrupt judicial acts performed within the judge's jurisdiction. The Supreme Court stated in Bradley: "It is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." And in Mireles v. Waco (1991), the Court confirmed that "a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority."

The result of these doctrines is a specific legal privilege that exists nowhere else in U.S. law: the privilege of a public official to be malicious, corrupt, and deliberately harmful to a person under their institutional authority — and to be completely immune from civil liability for that malice and corruption, as long as it occurs within their judicial jurisdiction. This privilege is the most direct and most fundamental incompatibility between domestic judicial immunity doctrine and the international prohibitions on CIDT and the three federal disability statutes. It requires extended analysis because it is the point at which the domestic and international frameworks collide most directly.

The Incompatibility with UNCAT Article 16 and CRPD Article 15

UNCAT Article 16 prohibits CIDT by public officials "at the instigation of or with the consent or acquiescence of a public official." It contains no exception for malicious or corrupt officials who happen to hold judicial office. The CAT Committee's General Comment No. 2 explicitly states: "The Committee emphasizes that States Parties are obligated to adopt effective measures to prevent public officials and other persons acting in an official capacity from perpetrating ill-treatment. The State's responsibility includes acts or omissions committed at all levels of the State hierarchy." The phrase "all levels of the State hierarchy" necessarily includes the judiciary. And the reference to "acts or omissions" — including omissions — encompasses the malicious omission to provide disability accommodation that causes documented physical or psychological harm.

CRPD Article 15, with no RUDs, applies the same prohibition in its full international meaning. A judge who maliciously denies a disability accommodation for the purpose of causing harm to the disabled litigant — or who does so with deliberate indifference to documented medical evidence of harm — is a public official whose conduct constitutes CIDT under Article 15 and Article 16. The fact that the domestic law grants that judge absolute immunity for this conduct does not render the conduct permissible under international law; it means that domestic law is in violation of international law, and that the State bears international law responsibility for the judge's conduct.

The Incompatibility with the Three Federal Disability Statutes

The three federal disability statutes — the Rehabilitation Act, the ADA, and the ADAAA — provide no immunity for intentional discrimination. Section 504 of the Rehabilitation Act explicitly covers programs and activities receiving federal financial assistance, and Part XXVIII's statutory construction argument establishes that the institutional consensus excluding federal courts from this coverage is a misconstruction that no recognized canonical methodology supports. Even under the current institutional understanding, Section 504 makes no exception for malicious or corrupt conduct within its established coverage, and the absence of such an exception reinforces the argument that discriminatory judicial conduct — wherever it occurs — is incompatible with the statutory scheme. ADA Title II's implementing regulations provide no immunity exception for intentional discrimination. The ADA's legislative history specifically reflects Congress's intent that intentional discrimination be fully actionable — the deliberate choice to discriminate against a disabled person is the most culpable form of the conduct the statutes prohibit.

The current doctrinal structure creates a bizarre asymmetry: an individual judge who maliciously discriminates against a disabled litigant is immune from personal damages liability under Bradley/Stump, while the court system as an institution faces liability under ADA Title II and the Rehabilitation Act for the same conduct — through the institutional/individual distinction analyzed in Part VI. But this institutional liability channel — while important for practical remedy — does not address the more fundamental problem: that the domestic law creates a class of state actors who may be personally malicious and corrupt with complete personal impunity, as long as their malice is exercised within the jurisdiction of their judicial office. This personal impunity is precisely what the international prohibition on CIDT prohibits.

The Pinochet Principle Applied to Judicial Malice

The Pinochet reasoning applies with particular force to the malice and corruption scenario. Lord Browne-Wilkinson's analysis in Pinochet was specifically addressed to the scenario where domestic law confers immunity on a state actor for conduct that violates the international prohibition on torture: the international prohibition overrides the domestic immunity precisely because, without that override, the prohibition would be a dead letter for the most culpable category of state actors — those who act deliberately and maliciously. The same override applies to judicial immunity in the CIDT context: a doctrine that immunizes the most culpable form of judicial disability discrimination — the deliberate, malicious denial of accommodation for the purpose of harming a disabled litigant — is a doctrine that makes the CIDT prohibition a dead letter in exactly the domain where it is most urgently needed.

The constitutional dimension reinforces this conclusion. A doctrine that immunizes corrupt judicial conduct — including the corrupt exercise of state authority to deny disability accommodations for malicious reasons — is not merely incompatible with international law. It is incompatible with the oath that judges take to "administer justice without respect to persons" and to "do equal right to the poor and to the rich." A corrupt exercise of judicial authority is, by definition, a violation of these oath obligations — and no immunity doctrine can shield a judge from the constitutional consequences of oath violation, which include impeachment under Article I.

Bradley v. Fisher *80 U.S. (13 Wall.) 335 (1872)*
Judicial immunity extends to acts performed within jurisdiction even if malicious or corrupt, to ensure judges act on their convictions without fear of personal consequences. The principle was designed to protect honest judicial decision-making from external interference — not to create a privilege for

malicious conduct that constitutes crimes against the law of nations. When malicious judicial conduct rises to CIDT under UNCAT Article 16 and CRPD Article 15, the jus cogens prohibition overrides the domestic immunity: a peremptory norm cannot be derogated from by a common-law doctrine, however well-established.

§ 7.9 Article I, Section 8: Crimes Against the Law of Nations, Hostis Humani Generis, and Disability Discrimination

The Define and Punish Clause

Article I, Section 8, Clause 10 of the Constitution grants Congress the power to "Define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." This clause — the Define and Punish Clause — is one of the most significant and least invoked provisions in the constitutional allocation of federal power. It grants Congress the authority to criminalize any conduct that violates the law of nations — the international legal order as recognized by the community of states. The law of nations, in its modern formulation, includes the prohibition on torture and CIDT as a jus cogens norm. It includes the customary international law prohibition on systematic discrimination against vulnerable populations by state actors. And it includes the principle, established in Filartiga and confirmed in Sosa v. Alvarez-Machain, 542 U.S. 692 (2004), that the prohibition on torture and CIDT is a "specific, universal, and obligatory" norm of customary international law.

The Define and Punish Clause empowers Congress to do three things in this context: (1) define disability-based CIDT by judicial actors as an offence against the law of nations; (2) punish that offence — including by overriding judicial immunity doctrine, which is itself a domestic common-law doctrine that Congress has plenary power to abrogate; and (3) provide for the prosecution and civil liability of judicial actors who commit such offences, independent of and superior to the common-law immunity doctrine. Congress has not yet exercised this power in the disability context. But the constitutional power exists, is directly applicable, and — under the Pinochet principle and the jus cogens analysis — is arguably required by the Supremacy Clause's incorporation of customary international law as part of the "Laws of the United States."

The Alien Tort Statute and Customary International Law

The Alien Tort Statute, enacted by the First Congress in 1789 simultaneously with the Judiciary Act, provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. In Filartiga v. Pena-Irala (1980), the Second Circuit held that official torture — torture committed by a state official in an official capacity — violates the law of nations and is actionable under the ATS. The court concluded that torturers have joined pirates and slave traders in the category of hostis humani generis — enemies of all mankind — against whom any state may exercise jurisdiction and whom no domestic immunity doctrine can shield from accountability before international law.

In Sosa v. Alvarez-Machain (2004), the Supreme Court confirmed that the ATS provides jurisdiction for civil claims based on violations of specific, universal, and obligatory norms of customary international law. The Court identified the prohibition on arbitrary arrest and prolonged detention as one such norm, while setting a high bar for recognizing new norms. The prohibition on torture and CIDT has unquestionably met this bar since Filartiga. The question for the disability context is whether systematic disability-based CIDT by judicial actors rises to the level of an ATS-cognizable violation of the law of nations.

The answer — in cases where the conduct is demonstrably established as CIDT under the Istanbul Protocol's full four-element standard, through independent forensic investigation producing documented findings of the kind the IAJ investigations of Hazari and Minkowski have produced — is yes. The CIDT prohibition is specific (it applies to defined conduct by defined actors), universal (every major international human rights instrument prohibits it), and obligatory (states are required to prevent it). A judicial actor who subjects a disabled litigant to systematic CIDT through deliberate denial of accommodation and imposition of harmful procedures — where all four Istanbul Protocol elements are independently documented: state actor authority, foreseeable harm, intentional continuation after specific medical notice, and severe physical or psychological suffering — is committing the precise category of violation that Filartiga identified as actionable under the ATS. The official status of the judicial actor is not a defense under the ATS — it is, under Filartiga, the aggravating factor that triggers the ATS's application. This channel operates through international law; it does not require domestic courts to override their own immunity doctrines, which remain available for the institutional liability and prospective relief channels that do not depend on the ATS.

Hostis Humani Generis and Its Application to Judicial Actors

The concept of hostis humani generis — enemy of all mankind — originated in maritime law as the designation for pirates, who operated outside any state's jurisdiction and preyed on all nations. Because they were enemies of all mankind, every nation had the right to capture, try, and punish them, regardless of the nationality of the pirate or the victims. The concept was extended in international law to slave traders in the 19th century, and in the 20th century to perpetrators of war crimes, crimes against humanity, and torture.

The critical feature of hostis humani generis status is its jurisdictional universality: a person who has become an enemy of all mankind may be prosecuted or civilly sued by any state, in any court with jurisdiction, under the principle of universal jurisdiction. Immunity doctrines — diplomatic, sovereign, or judicial — do not apply to hostis humani generis status because the very concept is that the person has placed themselves outside the community of legally protected actors. They have forfeited the protection of law by violating the most fundamental laws that bind the community.

Applied to judicial actors at the most severe end of the spectrum: a judge who systematically subjects disabled litigants to CIDT — through deliberate, malicious, or grossly indifferent denial of accommodations that causes documented physical or psychological harm to a defined class of persons over an extended period — is engaged in conduct that, at its most severe and where the full Istanbul Protocol four-element analysis is satisfied, approaches the category of systematic persecution of a vulnerable group that the Nuremberg Principles identified as a crime against humanity. The Nuremberg Principle IV — that acting pursuant to official orders does not relieve a person from responsibility under international law where a moral choice was possible — applies with particular force to a judge, who by virtue of the independence that judicial immunity is designed to protect, always has the moral choice to act lawfully. This analysis represents the outer limit of the accountability argument. The primary accountability arguments in this thesis operate at the CIDT level — established through the IAJ's Istanbul Protocol investigations — which are fully sufficient for CAT Committee, CRPD Committee, and Special Rapporteur jurisdiction without reaching the crimes-against-humanity threshold. The Nuremberg framework is presented as the doctrinal architecture that international criminal law has built for the most extreme end of the state-actor abuse continuum, not as a claim that every accommodation denial is a war crime.

The most important practical consequence of the hostis humani generis analysis for this thesis operates at two levels. Before international accountability bodies — the CAT Committee, the

CRPD Committee, the Special Rapporteur, and international criminal forums — a judicial actor whose documented conduct rises to the level of an offence against the law of nations has forfeited the immunity that domestic law would otherwise provide. This is fully established international law: the Filartiga principle and the hostis humani generis doctrine apply to official actors in all categories, and no domestic immunity doctrine constrains these international forums' jurisdiction. Domestically, the practical consequence operates through a different mechanism: the Define and Punish Clause empowers Congress — not domestic courts — to provide criminal accountability for offences against the law of nations, and the ATS provides a civil remedy that attaches to the international law violation rather than requiring the domestic court to override its own immunity rules. The thesis does not argue that a US civil litigant can walk into a domestic court today and strip a sitting judge of immunity by invoking hostis humani generis; it argues that the international accountability pathway exists, is legally sound, and is the appropriate forum for the CIDT findings the IAJ investigations have established — precisely because that forum is not subject to the accommodation paradox and the jurisprudence of avoidance that have foreclosed domestic accountability.

Sosa v. Alvarez-Machain *542 U.S. 692 (2004)*

The Alien Tort Statute provides jurisdiction for civil claims based on violations of specific, universal, and obligatory norms of customary international law. The prohibition on torture and CIDT is such a norm. When a judicial actor's conduct toward a disabled litigant is documented as systematic CIDT under the Istanbul Protocol's four-element standard — as established by the IAJ's independent forensic investigations of the Hazari and Minkowski records — the ATS provides a jurisdictional basis for civil claims independent of domestic immunity doctrines. This pathway operates as an international law claim, not as a domestic civil disability claim; it is not subject to Stump v. Sparkman judicial immunity because the ATS's foundation in customary international law operates independently of domestic common-law immunity. The practical significance is international and legislative: it establishes the doctrinal basis on which Congress may act under the Define and Punish Clause, and on which international bodies may accept jurisdiction, rather than requiring domestic civil courts to override their own immunity doctrines through ordinary litigation.

§ 7.10 Systemic vs. Individual Violations: Policy-Level CIDT and the Scope of the Prohibition

Individual Judicial Acts Constituting CIDT

At the individual level, the elements of CIDT by a judicial actor are: (1) a public official (2) knowingly imposes conditions or treatment upon a person with a disability (3) that the official knows or has reason to know causes physical or psychological suffering to the level of cruel, inhuman or degrading treatment (4) without justification proportionate to any legitimate aim. In the disability accommodation context, the elements are met when: (1) a judge (2) denies disability accommodation (3) in circumstances where the judge has been provided with medical evidence establishing that the denial will cause documented physical or psychological harm (MS exacerbation, immune collapse, neurological deterioration) (4) and the judge's basis for denial is formulaic, inadequate, or pretextual rather than a genuine assessment of the medical evidence. The deliberate indifference standard — which courts apply to Eighth Amendment CIDT claims in the prison context under Farmer v. Brennan, 511 U.S. 825 (1994) — is the appropriate domestic constitutional analogue for the mental state requirement.

Institutional and Policy-Level CIDT

At the institutional level, the Istanbul Protocol's framework for systematic CIDT applies. A court system that has adopted policies — or failed to adopt protocols — that result in the systematic denial of disability accommodations to a class of disabled litigants, causing documented physical or psychological harm to multiple individuals over time, is committing CIDT at the institutional level. The state-created danger doctrine (DeShaney), the Youngberg special relationship principle, and the CRPD Article 9 proactive accessibility obligation all converge on this conclusion at the domestic law level. At the international law level, the Istanbul Protocol's instruction that institutional CIDT engages state responsibility independently of individual culpability applies directly.

Policy-level CIDT has important implications for the scope of the prohibition. When a court system's uniform policy of denying accommodation to disabled litigants constitutes CIDT, the prohibition applies to the policy — not merely to individual acts of denial. This means: (1) the policy itself is unlawful under UNCAT Article 16 and CRPD Article 15, independent of any individual judge's state of mind; (2) the judicial officers who implement the policy are implementing an unlawful directive, which is itself grounds for complaint under the Judicial Conduct and Disability Act; and (3) the state bears international law responsibility for the policy and all harm caused by it, without the need to establish individual culpability case by case.

The Significance of the Formulaic Denial Pattern

The formulaic denial pattern identified in § 7.4 of the Implementation Guide — identical language applied to successive accommodation requests without individualized assessment — is particularly significant in the CIDT analysis. Formulaic denial of disability accommodation over years, in the face of escalating medical evidence of harm, is not the exercise of individualized judicial judgment. It is the mechanical application of a policy of denial. When that policy causes documented physical or psychological harm at the CIDT level, the actor implementing it is not exercising protected judicial discretion; they are acting as the instrument of an institutional policy that violates both domestic law and the absolute international prohibition.

§ 7.11 Synthesis: The Preeminent Hierarchy and Its Practical Consequences

The analysis of this Part establishes a hierarchy of legal obligations in which CRPD Article 15 and UNCAT Article 16 — the absolute prohibition on CIDT by public officials — occupy the highest position in the domestic and international legal orders simultaneously:

Legal Framework	Obligation	Consequence for Judicial Immunity
Jus cogens (international)	Absolute prohibition on CIDT; no derogation by any domestic law (VCLT Art. 53)	Judicial immunity cannot shield CIDT; Pinochet principle overrides all domestic immunity for jus cogens violations
UNCAT Art. 16 (ratified treaty)	No CIDT by public officials; state judges bound by Art. VI Supremacy Clause; no immunity; no SOL	State judges cannot invoke state immunity doctrine to override ratified treaty obligation under Art. VI
CRPD Art. 15 (no RUDs)	Full international CIDT standard; no RUD filter; disability-specific; Art. 18 VCLT obligation	No domestic filtering formula available; full standard applies to all judicial actors

Legal Framework	Obligation	Consequence for Judicial Immunity
Art. VI Cl. 2 (Supremacy Clause)	State judges bound by treaties; state immunity laws yield to treaties — expressly	State judicial immunity that shields treaty-violating CIDT is itself unconstitutional
Art. VI Cl. 3 (Oath Clause)	All judicial officers (federal and state, including SCOTUS) bound by oath to support Constitution including treaties	Treaty violations by judicial officers are oath violations; subject to impeachment/removal
28 U.S.C. § 453 (Judicial Oath)	Administer justice without respect to persons; do equal right; discharge duties under the Constitution	Personal oath prohibition on disability discrimination; treaty compliance is a duty 'under the Constitution'
Art. I, § 8, Cl. 10 (Define & Punish)	Congress may define disability-based CIDT by judicial actors as offence against law of nations and override immunity	Congressional power to abrogate judicial immunity for law-of-nations violations is plenary and constitutional
Hostis humani generis / ATS	Systematic CIDT of a class of disabled persons by judicial actors may be an offence against the law of nations	ATS civil liability; universal jurisdiction; immunity forfeited by hostis humani generis status
Istanbul Protocol (2022)	No immunity; no SOL; institutional patterns engage state responsibility	Every defensive assertion of immunity for CIDT violates the authoritative international documentation standard

The practical consequences of this hierarchy for the law of disability rights in U.S. courts are both urgent and transformative. No judicial actor — state judge, federal judge, or SCOTUS Justice — can lawfully claim that their oath of office permits them to subject disabled litigants to CIDT while enjoying complete personal immunity for that conduct. No state can lawfully assert that its judicial immunity doctrine overrides a ratified treaty obligation that the Supremacy Clause makes supreme law. No court system can lawfully maintain policies that produce systematic CIDT of a class of disabled litigants and then claim that international law's absolute prohibition does not apply to judicial institutions.

The existing domestic remedy architecture — institutional liability under ADA Title II and the Rehabilitation Act, injunctive relief under Pulliam and Ex parte Young, judicial conduct complaints under the Judicial Conduct and Disability Act, and DOJ pattern-or-practice enforcement — is insufficient to meet the standards that the absolute international prohibition establishes. The gap between what international law requires and what domestic law currently provides is the measure of the reform mandate that this Part identifies. That mandate is constitutional — rooted in Article VI's Supremacy Clause and the oath obligations of all judicial officers — as well as international. It requires, at minimum: (1) amendment of judicial immunity doctrine to exclude CIDT from its protection; (2) amendment of the Judicial Conduct and Disability Act to mandate effective investigation and meaningful sanction for documented patterns of disability-based CIDT; (3) exercise of the Article I, Section 8 power to define and punish disability-based CIDT by judicial actors as an offence against the law of nations; and (4) establishment of an independent oversight mechanism capable of investigating and remedying institutional patterns of CIDT in court systems — a mechanism not administered by the judicial branch that is simultaneously the alleged violator and the body responsible for self-investigation.

The final point returns to where this Part began: the 61-senator majority vote for CRPD ratification. Those 61 senators voted to bind the United States — including its courts and its

judicial officers — to the full, unmediated, no-RUD-filtered obligation of CRPD Article 15. They were five votes short of doing so with Supremacy Clause binding force. But the jus cogens analysis, the existing UNCAT Article 16 ratification, the Article VI oath obligations, the Article I, Section 8 power, and the Filartiga/hostis humani generis doctrine together establish that the substance of what those 61 senators voted for is already the law — not because of their vote alone, but because it was already required by the deepest levels of the constitutional and international legal order. The vote was not the source of the obligation. It was its recognition.

The Uncontested Istanbul Protocol Record: ECF-145 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)

The Istanbul Protocol's evidentiary framework requires documentation of harm consistent with the CIDT standard, produced through an independent investigation. The Hazari record contains a further element that strengthens the Istanbul Protocol analysis beyond the IAJ investigation itself: the opposing party's litigation conduct amounts to an implicit admission. In Hazari's reply brief (ECF-145, filed January 16, 2026), he documented: 'Under the extraordinary weight of scientific authority and direct medical and expert evidence, Mr. Rossi in effect characterizes the plaintiff's medical claims as speculatory, when in contrast, the Istanbul Protocol investigation considers them to be credible medical authority unopposed by any contrary medical facts. Mr. Rossi and Ms. Freeman had ample opportunity to investigate the medical truths and have admitted to their veracity by conduct.' Critically, neither defense counsel Rossi's opposition (ECF-143) nor the court's final denial order (ECF-148) contains any medical counterevidence. No physician declaration was filed contradicting the plaintiff's treating physicians. No expert report was submitted challenging the Istanbul Protocol's findings. No scientific evidence was produced disputing the documented physiological mechanisms. The medical record — including the Istanbul Protocol investigation — stands uncontested on the official docket of the United States District Court for the Northern District of California.

The UN Secretariat Communication and the International Accountability Trigger

Two documents in the 25-5649 record — DE-17 (Response to OSC, December 2025) and DE-24 (Errata to Rehearing Petition, February 2026) — disclose a communication with the UN Secretariat that preceded the 2025 disqualification motions. DE-17 states: 'Appellant followed information flowing from a communication with the U.N. Secretariat indicating that judicial conduct must be evaluated as the root cause of the human rights violations that he and others reported to U.N. Special Procedures in 2024.' DE-24 confirms: 'Both motions filed in this appeal on 10/15/2025, and other cases, were inspired by communication with the United Nations in 2024.'

This establishes a chronological sequence for the disqualification motions: (1) 2024: Communications with UN Special Procedures regarding judicial disability discrimination; (2) 2024: UN Secretariat responds indicating judicial conduct should be evaluated as the root cause; (3) February 2025: En banc disqualification of all 47 Ninth Circuit judges filed in 24-6312; (4) October 2025: Further disqualification motions in 25-5649 and other cases. The disqualifications were therefore not, as Freeman characterized them in ECF-87, the product of disagreement with court orders. They were the output of a UN-directed evaluation of judicial conduct as root cause. For the UNCAT Article 20 exhaustion analysis, this sequence establishes that the international accountability mechanism was triggered by the domestic process — not as a last resort after all domestic remedies, but as a parallel response to the failure of domestic remedies that the UN itself identified.

ECF-145 (January 16, 2026): The Istanbul Protocol Analysis Is Uncontested in the Reply Brief

ECF-145 is Hazari's reply brief to ECF-143 (County's opposition to reconsideration). It contains the statement that has already been cited in the thesis as the Istanbul Protocol being placed 'uncontested on the docket.' The full text of ECF-145 confirms the specific claim: 'Mr. Rossi has no answer to the medical evidence… Mr. Rossi in effect characterizes the plaintiff's medical claims as speculatory, when in contrast, the Istanbul Protocol investigation considers them to be credible medical authority unopposed by any contrary medical facts.' ECF-145 also introduces Douglas Hughmanick — Brady's original attorney — as appearing in the reconsideration proceedings through an ex parte submission to Judge White: 'Mandy Brady's attorney Douglas Hughmanick does not address the question of impartiality under 28 U.S.C. § 455(a).' Hughmanick's appearance in the BLF reconsideration proceedings, through a Brady ex parte submission to White cited in the reply to Freeman, is the ECF-145 confirmation of the cross-case adversarial coordination documented in the Zela letters.

The legal significance is substantial. An Istanbul Protocol investigation produces a formal evidentiary record. When that record is placed before a judicial forum and neither the opposing party nor the court produces any contrary evidence, the investigative findings achieve a status analogous to uncontested expert testimony. In treaty body proceedings, an uncontested domestic evidentiary record creates a strong presumption of factual accuracy. The defense's strategic decision not to engage the medical evidence on the merits — relying instead on procedural arguments — means that the factual predicate for the CIDT analysis rests on an uncontradicted foundation in the official domestic court record.

PART VIII

Sovereignty, the Lin[6]–IAJ Treaty Framework, and the Complete Treaty Architecture of Disability-Based CIDT

The analysis of Parts I through VII has established a legal architecture of formidable strength: CRPD Article 15 converging with ratified UNCAT Article 16, jus cogens overriding domestic immunity, the Supremacy Clause binding all judicial officers to treaty obedience, and the Article I, Section 8 power to punish offences against the law of nations. But this architecture faces its most sophisticated challenge not from domestic immunity doctrine — which, as Parts VI and VII demonstrate, cannot withstand the jus cogens analysis — but from the foundational structure of the international legal order itself: state sovereignty.

State sovereignty is not merely a political preference. It is the foundational organizing principle of the international legal order established at Westphalia in 1648 and codified in the United Nations Charter. It is the principle that each state has the exclusive authority to govern its own territory, its own people, and its own legal system without external interference. It is also, in the disability rights context, the principle that the United States has historically invoked — explicitly and implicitly — to resist the full implementation of international human rights obligations within its domestic legal system.

The sovereignty question in this thesis has a specific and particularly illuminating dimension that James Lin — Director of the International Rehabilitation Council for Torture Victims (IRCT) and advisor to the Institute for the Advancement of Justice & Human Rights (IAJ), one of the world's foremost authorities on torture documentation and the Istanbul Protocol — has contributed through his work with the IAJ. Lin draws a principled distinction, grounded in the UNCAT's original negotiating history and travaux préparatoires, between the State's initial act of torture against a victim and the State's subsequent judicial persecution of that same victim. On Lin's formulation, the first is torture; the second raises a harder question, because it involves the State exercising its sovereign authority over its legal system — the very domain that the UNCAT's original drafters showed sensitivity toward leaving undisturbed. Lin has offered this distinction in his capacity as a rigorous devil's advocate for the IAJ — the kind of precision challenge that elevates any serious legal treatise and ensures its credibility before international bodies and experienced torture investigators. This Part develops the IAJ–IRCT synthesis that Lin's contribution makes possible, because it illuminates the precise boundary between treaty obligations that are absolute and jus cogens on the one hand, and the genuine sphere of state sovereignty that international law does and must protect on the other. The synthesis ultimately shows that treaty evolution has resolved the tension Lin identifies — and that the resolution provides the exact legal framework needed for the case Lin himself has described: a torture victim who faces judicial persecution that he cannot yet call CIDT under the original treaty text, but can and must call CIDT under the evolved framework the IAJ–IRCT collaboration now supplies.

[6] The IAJ gratefully acknowledges the contributions of our advisor, professor James Lin, to IAJ's work on the modern interpretation of UNCAT and evolution of jus cogens. Professor Lin leads the torture documentation program of the International Rehabilitation Council for Torture Victims (IRCT), a coalition of 160 torture rehabilitation centers in 75 countries.

§ 8.1 The Westphalian Baseline: What State Sovereignty Means in International Law

The Peace of Westphalia (1648) established the foundational principle of the modern state system: cuius regio, eius religio (whose realm, his religion), generalized into the broader principle that each state has supreme authority within its own territory and that other states may not interfere in its internal affairs. By the time the United Nations Charter was drafted in 1945, this principle had been codified in Article 2(1) ("The Organization is based on the principle of the sovereign equality of all its Members") and Article 2(7) ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state").

State sovereignty, in its classical formulation, encompasses three distinct domains of authority that are relevant to the disability rights analysis in this thesis: (1) the authority to organize and operate the state's legal system, including its courts, procedures, and doctrines; (2) the authority to define the rights and obligations of persons within its jurisdiction, including through legislation and constitutional interpretation; and (3) the authority to determine how state actors — including judges — are held accountable for their conduct. Each of these domains is precisely the domain in which the CRPD, UNCAT, and the other treaties invoked in this thesis impose obligations. The tension between treaty obligation and sovereign authority is therefore not incidental to the disability rights question; it is its structural core.

The sovereignty claim as applied to disability-based CIDT by courts takes its most specific form in three arguments that the U.S. government and U.S. courts have, at various times and with varying degrees of explicitness, advanced. First: that the organization and operation of the judicial system, including the doctrines of judicial immunity and sovereign immunity, is a matter of domestic jurisdiction that international human rights law cannot reach. Second: that the United States' RUD framework for ratified treaties, and its Article 18 obligation for signed treaties, exhausts its international obligations and preserves its sovereign authority to interpret rights domestically. Third: that "effective remedy" in the disability accommodation context is provided by the domestic legal system and that international law has no standing to declare those remedies inadequate.

This Part addresses each of these sovereignty claims in turn, through the complete treaty architecture that the thesis has assembled. The conclusion is that sovereignty — properly understood in its contemporary international law form, as qualified and constrained by the jus cogens norms and the human rights treaty framework that the U.S. has itself helped to construct — is not a bar to relief, remedy, or accountability. It is a framework within which the absolute prohibition on CIDT operates as the highest-order norm, overriding every sovereignty-based defense in its specific domain of application.

§ 8.2 The Evolution of Sovereignty: From Westphalian Absolute to Qualified

The Westphalian absolute sovereignty doctrine — the idea that states are supremely autonomous within their borders and owe no account to any external authority — began eroding in the 19th century and collapsed progressively through the 20th. The abolition of the slave trade, the Geneva Conventions on the laws of war, the Nuremberg Trials, the Universal Declaration of Human Rights, and the construction of the entire international human rights treaty architecture are all assertions that sovereign states owe obligations to their people and to the international community that exist independently of and cannot be defeated by the claim of sovereign authority.

The critical doctrinal transformation came in the aftermath of Nuremberg. The Nuremberg Tribunal, established under the London Charter of 1945, rejected the defense that the accused were acting as agents of a sovereign state in performance of state functions. It held that individuals who commit crimes against humanity bear personal criminal responsibility under international law, regardless of their official status and regardless of whether their conduct was authorized by domestic law. This holding — that domestic law cannot confer immunity for conduct that violates the most fundamental norms of the international legal order — is the direct ancestor of the Pinochet principle, the jus cogens doctrine, and the hostis humani generis analysis developed in Part VII.

The contemporary international law doctrine of qualified sovereignty — sometimes called "sovereign responsibility" or "sovereignty as responsibility" — holds that sovereignty is not merely a shield against external interference but an obligation to protect the fundamental rights of persons within the state's jurisdiction. This doctrine was developed systematically in the Responsibility to Protect (R2P) framework, adopted by the UN General Assembly at the 2005 World Summit, which provides that states have a responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity — and that the international community may intervene when states fail this responsibility. While R2P was developed primarily in the context of extreme large-scale atrocities, its underlying principle — that sovereignty entails responsibility, not merely authority — applies across the full spectrum of human rights obligations.

Applied to the disability rights context: a state cannot invoke its sovereign authority over its judicial system as a bar to accountability for systematic disability-based CIDT by judicial actors. The claim of sovereign authority over the legal system is not a defense to the absolute prohibition; it is a description of the domain in which the violation is occurring. The state's sovereign authority over its courts is the mechanism through which the CIDT is perpetrated. To treat that sovereign authority as a defense to accountability for the CIDT would transform the sovereignty principle from a protection of state autonomy into a license for the most insidious category of human rights violation — the violation committed by the institutions that are supposed to prevent it.

Responsibility to Protect (R2P) *UN World Summit Outcome, A/RES/60/1 (2005), ¶¶ 138–139*
States bear the primary responsibility to protect their populations from serious human rights violations. Sovereignty entails responsibility, not merely authority. When a state's institutions — including its judicial institutions — are themselves the instruments of systematic harm to vulnerable persons, the claim of sovereign authority over those institutions is not a defense to accountability. It is a description of the mechanism of the violation.

§ 8.3 The Lin–IRCT Treaty-Historical Framework: Mapping the Original Sovereignty Horizon

The Lin–IRCT Framework: IAJ Collaborative Treaty Analysis
Lin argues that the UNCAT was negotiated against a background of state sovereignty that its drafters deliberately chose to respect. The travaux préparatoires of the UNCAT — the negotiating records, committee reports, and preparatory documents — show that states were willing to accept an absolute prohibition on extreme physical torture by state actors but were not willing to accept external oversight of their broader legal and governmental systems. On Lin's analysis, a state's judicial system — including its handling of cases brought by persons who have been tortured — is precisely the kind of domestic legal arrangement that the UNCAT was designed to leave intact. Lin therefore distinguishes: (1) the

State's initial act of torture against a victim, which constitutes torture under UNCAT Article 1; and (2) the State's subsequent judicial persecution of that same torture victim — through denial of access to courts, manipulation of legal proceedings, or other judicial misconduct — which Lin characterizes as NOT torture, because it is the State exercising sovereign authority over its legal system rather than inflicting the kind of extreme physical or psychological suffering that the UNCAT was designed to prohibit.

The Textual and Historical Foundation of Lin's Analysis

Lin's analysis is grounded directly in the UNCAT's text, and the textual foundation he identifies is entirely sound. UNCAT Article 1 defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official." The definition requires severe pain or suffering inflicted for a specific list of purposes. Lin correctly identifies that judicial persecution — denial of accommodation, dismissal of claims, manipulation of legal proceedings — may not, on the face of this original text, inflict the "severe physical or psychological suffering" that the definition was primarily designed to capture. That is an accurate reading of the treaty as originally negotiated, and it is precisely that accuracy that makes the IAJ–IRCT synthesis necessary: the question is not whether Lin's textual reading was correct at the time of ratification, but whether treaty evolution has since extended the framework beyond it.

Article 16, covering CIDT rather than torture strictu sensu, is somewhat more expansive but also more explicitly tied to the concept of "acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1." Lin's point is that both Article 1 and Article 16 were drafted to cover specific, bounded categories of extreme state conduct and that the UNCAT's drafters consciously chose not to extend its reach to the full range of state conduct that might cause suffering to individuals. The travaux préparatoires of the UNCAT, available in the UN's treaty records, show sustained resistance by multiple states to expansive definitions that would have subjected their legal systems to UNCAT oversight. The final text reflects a compromise that protects a domain of sovereign authority, and Lin argues that this compromised sovereignty domain includes the operation of the judicial system with respect to victims of the state's own prior conduct.

The Analytical Strength of Lin's Framework

Lin's distinction has an internal structural logic that commands attention. The argument is essentially this: there is a categorical difference between the State as torturer (impermissible; the UNCAT prohibition is absolute) and the State as adjudicator (legitimate; the State's sovereign authority over its legal system must be respected). If this distinction is maintained, then a state that tortures a person and then fails, through its courts, to provide adequate compensation to that person is not compounding the torture — it is exercising a distinct and sovereignly protected function. The two acts are, on this analysis, legally incommensurable: one is a UNCAT violation, the other is not.

The practical implication of Lin's analysis, if accepted, would be significant: the UNCAT's absolute prohibition, and its jus cogens status, would extend only to the physical act of torture or extreme CIDT — and would not reach the judicial system's treatment of the person harmed by that act. The state would remain sovereign over its courts, over the remedies those courts provide (or deny), and over the liability of the judicial officers who participate in that denial. For the

disability-based CIDT analysis in this thesis, the Lin distinction would mean: a court that imposes physically or psychologically harmful procedures on a disabled litigant is not covered by the UNCAT/CRPD prohibition unless the physical or psychological harm rises to the level of torture or extreme CIDT as independently defined — the judicial system's organization and operation remains sovereignly protected.

§ 8.3.5 The Sweden Position and the Non-Derogability of Jus Cogens Norms: Why the UNCAT Cannot Be Held to 1994 Signatory State Understandings

Before addressing the five arguments of § 8.4, it is essential to identify with precision the interpretive position this thesis rebuts. The position — associated most prominently with Sweden and with the United States' declaratory practice at ratification — holds that the UNCAT, as originally negotiated and ratified, was deliberately designed not to interfere with the sovereign State's internal judicial or administrative processes. On this view, the Convention's core obligations operate principally in the domain of physical custody: the prisoner, the detainee, the person in the physical control of a state actor. The judicial process, this position maintains, is a sovereign function that the UNCAT's drafters consciously chose to address only through the exclusionary rule of Article 15 (prohibiting use of torture-obtained evidence) and not through a broader prohibition on judicial conduct as CIDT. This section explains why that position, whatever its historical textual support, is legally insufficient — not because the historical record is wrong, but because jus cogens norms are constitutionally incapable of being frozen at the moment of a treaty's drafting.

The Sweden/Sovereignty Position: Its Strongest Statement

The claim that the UNCAT was negotiated with a deliberate sovereignty floor is not a frivolous one. During the 1984 drafting sessions at the UN Commission on Human Rights, Sweden and a number of other States pressed for language that confined the UNCAT's operative scope to custodial and quasi-custodial settings. The Swedish delegation sought to ensure that Article 16's CIDT prohibition — covering acts 'at the instigation of or with the consent or acquiescence of a public official' — would not be read to reach judicial decision-making, which would expose every unfavorable judicial ruling to potential treaty-body review. The argument was rooted in the classical Westphalian conception of sovereignty: the judicial function is the exercise of supreme domestic authority, and international conventions should not be tools for evaluating the soundness of judicial proceedings outside the criminal or custodial domain.

This position found partial expression in the U.S. Senate's ratification conditions. Understanding II(2) in the 1994 ratification limited 'mental pain or suffering' to a narrow definitional formula. Understanding II(5) read the phrase 'at the instigation of or with the consent or acquiescence of a public official' to require an 'intentional act.' The effect of these Understandings, on the Sweden/sovereignty reading, is to create a domestic interpretation of the UNCAT that tracks the original signatory State intent: the treaty reaches physical custody, criminal investigation, interrogation, and detention — but does not reach the ordinary exercise of judicial authority in civil or administrative proceedings.

The strongest version of this argument is structural: the UNCAT creates a Committee with reporting and inquiry mechanisms (Articles 19-24), and those mechanisms are designed around the investigation of custodial abuse. The travaux préparatoires consistently show State parties' concern with prisons, interrogation rooms, and extradition. To read the Convention as reaching civil litigation disability accommodation would, on this view, extend the text far beyond the 'original intent' of States who signed what they understood to be a narrow, custodial-focused convention.

The Jus Cogens Answer: Why Original Intent Cannot Bind a Peremptory Norm

The answer begins with the nature of jus cogens itself. A peremptory norm of general international law is defined in Article 53 of the Vienna Convention on the Law of Treaties (1969) 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.' Three legal consequences flow directly from this definition and are fatal to the Sweden/sovereignty position.

First, jus cogens norms cannot be limited by treaty negotiation. A bilateral or multilateral treaty — including the UNCAT itself — cannot define the scope of a jus cogens norm below the floor of what the norm protects. When the ICTY Trial Chamber in Prosecutor v. Furundzija, IT-95-17/1-T (10 December 1998) held that the prohibition on torture has attained the status of jus cogens, it articulated the controlling consequence explicitly: 'The jus cogens character of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate.' The Court continued: 'The status of the prohibition on State torture as a rule of jus cogens has the consequence that at the inter-State level, any legislative, administrative or judicial act authorising torture is illegitimate.' The final three words — 'or judicial act' — are definitive. The Sweden position that judicial proceedings are sovereign and therefore outside UNCAT's reach is directly contradicted by Furundzija: judicial acts, including judicial acts in civil proceedings, fall within the jus cogens prohibition. The Convention's travaux préparatoires cannot override a peremptory norm.

[1] Prosecutor v. Furundzija, IT-95-17/1-T (ICTY Trial Chamber, 10 December 1998) — https://www.icty.org/x/file/Legal%20Library/jud_supplement/supp1-e/furundzija.htm

[2] ICTY Case Information (press release) — https://www.icty.org/en/press/furundzija-case-judgement-trial-chamber-anto-furundzija-found-guilty-both-charges-and

Second, and following from Furundzija, a jus cogens norm binds the State in all three domains of sovereign authority — executive, legislative, and judicial — simultaneously. Prosecutor v. Furundzija expressly stated that jus cogens 'has to bind the state both in its treaty relations and with respect to acts of the legislature, executive and judiciary.' The Sweden/sovereignty position, by seeking to carve out judicial proceedings as a sovereign domain exempt from UNCAT scrutiny, is an attempt to derogate from a jus cogens norm through a treaty — which is precisely what Article 53 of the Vienna Convention prohibits. Even if the UNCAT had been negotiated with a custodial-only scope (and the thesis challenges this reading), that scope would be superseded by the jus cogens norm that the UNCAT itself was implementing.

Third, jus cogens norms have independent existence outside the treaties that codify them. The prohibition on torture is not created by the UNCAT; it is recognized by the UNCAT. The UNCAT is a codification mechanism, not the source of the obligation. As Cassese has noted in the leading academic treatment: 'It would be senseless to argue, on the one hand that on account of the jus cogens value of the prohibition against torture, treaties or customary rules providing for torture would be null and void ab initio, and then be unmindful of a State say, taking national measures authorising or condoning torture or absolving its perpetrators through an amnesty law... the victim could bring a civil suit for damages in a foreign court, which would therefore be asked inter alia to disregard the legal value of the national authorising act.' This passage acknowledges that jus cogens operates in civil proceedings and across domestic legal architecture — precisely the domain the Sweden position seeks to exclude.

[3] Antonio Cassese, 'The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law', 15 EJIL 97 (2004) — https://academic.oup.com/ejil/article/15/1/97/418241

[4] Vienna Convention on the Law of Treaties, Article 53 (UNTS 1155, 1969) — https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

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The Living Instrument Doctrine: The UNCAT's Meaning Evolves With the International Community's Understanding

Even if the jus cogens argument were not available, the Sweden position would fail on the separate ground that the UNCAT — like all human rights treaties — is subject to evolutionary interpretation that cannot be frozen at 1984 negotiating positions or 1994 ratification conditions.

Authority 1: Vienna Convention Article 31 — Object and Purpose

Vienna Convention on the Law of Treaties Article 31(1) requires that a treaty 'shall 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.' Article 31(3)(b) requires that, together with context, interpreters take into account 'any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.' Article 31(3)(c) requires consideration of 'any relevant rules of international law applicable in the relations between the parties.'

Applied to the UNCAT: (a) the object and purpose of the Convention is to make the struggle against torture and CIDT effective — a goal that does not logically exclude judicial proceedings; (b) subsequent practice of the CAT Committee has consistently expanded the Convention's scope well beyond initial custodial settings, without State party objection; and (c) the relevant rules of international law — including the CRPD (2006), the Istanbul Protocol (2004, revised 2022), and the evolving customary law of torture — have all expanded the scope of the prohibition. Each of these three elements counsels against the custodial-only reading.

[5] Vienna Convention on the Law of Treaties, Articles 31-33 (UNTS 1155, 1969) — https://iilj.org/wp-content/uploads/2016/08/VCLT-Art.-31-33.pdf

Authority 2: Selmouni v. France (ECtHR Grand Chamber, 28 July 1999) — Acts Previously CIDT Become Torture

The European Court of Human Rights Grand Chamber held in Selmouni v. France, Application No. 25803/94 (28 July 1999): 'Having regard to the fact that the Convention is a living instrument which must be interpreted in the light of present-day conditions, the Court considers that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.' This passage is dispositive of the Sweden argument from two directions. First, the classification of conduct moves upward along the severity scale over time — acts that were once CIDT become torture as international standards evolve. Second, the standard 'correspondingly and inevitably' rises with the demands of the international human rights system. These are not stable, 1984-era categories. The Sweden/sovereignty position treats the UNCAT's scope as fixed at the moment of drafting; Selmouni directly contradicts this.

[6] Selmouni v. France (ECtHR Grand Chamber, App. No. 25803/94, 28 July 1999) — https://www.bailii.org/eu/cases/ECHR/1999/66.html

[7] ECtHR HUDOC — Selmouni v France — https://hudoc.echr.coe.int/fre?i=001-58287

Authority 3: CAT General Comment No. 2 (CAT/C/GC/2, 24 January 2008) — 'Evolving Threats, Issues, and Practices'

The Committee Against Torture's General Comment No. 2 on Article 2 is the authoritative interpretive text on the UNCAT's scope. Its most significant passage for the jus cogens evolution argument states: 'The provisions of article 2 reinforce this peremptory jus cogens norm against torture and constitute the foundation of the Committee's authority to implement effective means of prevention, including but not limited to those measures contained in the subsequent articles 3 to 16, in response to evolving threats, issues, and practices.' The phrase 'in response to evolving threats, issues, and practices' is the CAT Committee's own statement that the UNCAT's scope is not fixed at 1984 drafting or 1994 ratification. It is explicitly adaptive. The Committee's authority to implement effective preventive measures extends beyond the enumerated articles 3 to 16 — the detention-focused provisions that form the backbone of the Sweden/sovereignty argument — and encompasses the full range of evolving threats to the prohibition.

General Comment No. 2 also states, on the geographic and contextual scope of the obligation: 'Article 2, paragraph 1, obliges each State party to take actions that will reinforce the prohibition against torture through legislative, administrative, judicial, or other actions that must, in the end, be effective in preventing it.' The word 'judicial' appears alongside 'legislative' and 'administrative' as a domain in which the State's obligation to prevent torture and CIDT operates. The Sweden position, which seeks to treat the judicial domain as sovereign and exempt, reads 'judicial' out of Article 2's mandate. General Comment No. 2 reads it back in.

[8] CAT General Comment No. 2: Implementation of Article 2 by States Parties, CAT/C/GC/2 (24 January 2008) — https://hrlibrary.umn.edu/cat/general_comments/cat-gencom2.html

[9] OHCHR — CAT/C/GC/2 (official OHCHR document) — https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation

[10] Refworld — CAT General Comment No. 2 — https://www.refworld.org/legal/general/cat/2008/en/53514

Authority 4: The ILC Draft Conclusions on Jus Cogens (2019) — Norms Arise from 'Case Law and Changing Social and Political Attitudes'

The International Law Commission's 2019 Draft Conclusions on Peremptory Norms of General International Law (jus cogens), adopted in its final form in 2022, confirm that jus cogens norms are 'not listed or defined by any authoritative body, but arise out of case law and changing social and political attitudes.' The ILC expressly recognized the prohibition of torture as a jus cogens norm in its draft conclusions. Crucially, the ILC confirmed that the identification of a peremptory norm requires 'acceptance and recognition by the international community of States as a whole' and that evidence of this includes 'decisions of international courts and tribunals.' The progressive development of the prohibition through the Furundzija dictum (binding legislature, executive, and judiciary), General Comment No. 2's 'evolving threats' language, and Selmouni's 'living instrument' doctrine collectively constitute the 'changing social and political attitudes' and 'case law' through which the jus cogens norm against torture has evolved beyond its 1984/1994 custodial understanding. The ILC framework provides the meta-legal authority for the entire jus cogens evolution argument.

[11] ILC Draft Conclusions on Peremptory Norms of General International Law (Jus Cogens) — Chapter V of ILC Report (2019) — https://legal.un.org/ilc/reports/2019/english/chp5.pdf

Authority 5: Judge Cançado Trindade — The Expansion of Jus Cogens Content in Contemporary International Law

Former ICJ President and IACtHR Judge Antônio Augusto Cançado Trindade has systematically documented the expansion of jus cogens content in contemporary international case law. In his

separate opinion in the IACtHR case Tibi v. Ecuador (2004) and in his academic work, he identified the key elements of jus cogens expansion relevant here: 'The content of jus cogens, as acknowledged by contemporary international case-law on the matter, in particular that of the IACtHR. Such expansion has covered, as we shall see next, the absolute prohibition of torture and of cruel, inhuman or degrading treatment; the basic principle of equality and non-discrimination; and the fundamental character of the right of access to justice.' The inclusion of 'the fundamental character of the right of access to justice' as an area of jus cogens expansion is directly on point: the denial of access to justice for a disabled litigant through systematic accommodation denial is simultaneously a violation of jus cogens torture/CIDT norms and a violation of the jus cogens norm on access to justice that Cançado Trindade identifies as emergent. These are not two separate claims; they reinforce each other structurally.

[12] Cançado Trindade, 'Jus Cogens: The Determination and the Gradual Expansion of Its Material Content in Contemporary International Case-Law', OAS/OEA — https://www.oas.org/dil/esp/3%20-%20cancado.lr.cv.3-30.pdf

Authority 6: ECtHR Guide on Article 3 — Jus Cogens Status Confirmed and Applied to Evolving Standards

The Council of Europe's authoritative Guide on Article 3 (2025 edition, regularly updated) synthesizes the ECtHR's evolving case law on the prohibition of torture. On the living instrument doctrine applied to Article 3 specifically, it states: 'Having regard to the fact that the Convention is a living instrument which must be interpreted in the light of present-day conditions, acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. The Court has taken the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.' The Guide then confirms: 'the Court has emphasized that the prohibition of torture has achieved the status of jus cogens or a peremptory norm in international law.' These two statements in combination establish that (a) the jus cogens norm on torture has been confirmed by the ECtHR; and (b) the content of that norm evolves upward over time — conduct that was CIDT in 1984 may be torture in 2024, and conduct that was sovereign discretion in 1984 may be CIDT in 2024.

[13] Council of Europe / ECtHR, Guide on Article 3 — Prohibition of Torture (updated 31 August 2025) — https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng

Authority 7: VCLT Article 31 Evolutionary Interpretation — Terms in Long-Duration Treaties Evolve

The International Court of Justice confirmed in Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment of 13 July 2009, ICJ Reports 2009, p. 213, § 66, that 'when the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is "of continuing duration", the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.' The UNCAT is a treaty of 'continuing duration' with no expiration and no fixed implementation period. Its terms — 'severe pain or suffering,' 'public official,' 'any person under its jurisdiction' — are generic enough to encompass conduct that has come to be understood as torture or CIDT even if not contemplated by the original drafters. The Sweden/sovereignty position that the UNCAT's scope was fixed in 1984 is inconsistent with the ICJ's interpretive rule for long-duration treaties.

[14] ICJ, Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), 13 July 2009, ICJ Reports 2009, p. 213 — https://www.icj-cij.org/case/133

[15] VCLT Article 31 — General Rule of Interpretation, commentary — https://iilj.org/wp-content/uploads/2016/08/VCLT-Art.-31-33.pdf

Authority 8: ICCPR Human Rights Committee General Comment 31 — All Branches of the State are Bound

The Human Rights Committee, in its General Comment 31 on Article 2 of the ICCPR (2004), stated definitively: 'All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.' While this is ICCPR rather than UNCAT, the parallel structure of the prohibitions on torture and cruel, inhuman and degrading treatment across both instruments (ICCPR Article 7; UNCAT Articles 1 and 16) means that the Committee's interpretation of institutional scope applies with equal force. The Sweden/sovereignty position that judicial proceedings are shielded from UNCAT review is incompatible with the treaty body's authoritative determination that all branches — including the judicial branch — engage State responsibility.

[16] Human Rights Committee General Comment No. 31 on Article 2 of the ICCPR (2004), CCPR/C/21/Rev.1/Add.13 — https://hrlibrary.umn.edu/gencomm/hrcom31.html

Authority 9: REDRESS Guide to UNCAT — Exclusionary Rule Not Limited to Custodial Contexts

The REDRESS Guide to the UNCAT (2018) confirms: 'The exclusionary rule shall not be limited to acts of torture. As the CAT stated in its General Comment No. 2, this provision, as articles 10 and 11, is also meant to apply to evidence obtained through other forms of ill-treatment.' The Guide specifically notes that Article 15 'is not confined to criminal proceedings, nor to cases directed against the victim of the torture.' This cross-context application of the Convention's provisions — extending UNCAT obligations to proceedings beyond the detention/custodial setting — is directly inconsistent with the Sweden/sovereignty position. If the exclusionary rule of Article 15 extends to civil proceedings, as REDRESS confirms, the logical foundation for confining Articles 1 and 16 to custodial settings collapses.

[17] REDRESS, 'The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment' (2018 Guide) — https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf

[18] REDRESS / APT, 'The Méndez Principles: A Critical Reference Framework for the Implementation of UNCAT' (2024) — https://www.apt.ch/sites/default/files/publications/The%20Mendez%20Principles%20and%20UNCAT_%20final%206.pdf

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The Structural Argument: Jus Cogens Prohibitions Do Not Have Sovereignty Carve-Outs

The Sweden/sovereignty position essentially argues that the UNCAT, properly interpreted, contains an implicit sovereignty carve-out for judicial proceedings. The jus cogens analysis shows why this is a structural impossibility. A peremptory norm that admits of a sovereignty carve-out is not a peremptory norm. The entire point of jus cogens is that State sovereignty cannot override it — whether the State acts through its executive, its parliament, or its courts. As the ILC Draft Conclusions confirm, a jus cogens norm 'cannot be derogated from by the will of the contracting parties,' meaning that even the unanimous agreement of all UNCAT State parties to exclude judicial proceedings from the Convention's scope would be legally ineffective if such exclusion contravened the underlying jus cogens norm. This is not a theoretical point: the Furundzija Trial Chamber said this explicitly — 'any legislative, administrative or judicial act authorising torture is illegitimate.' The source of the illegitimacy is jus cogens, not the UNCAT. The UNCAT implements a norm that pre-exists and supersedes it.

The practical consequence for this thesis is direct. Judicial actors who deny disability accommodation in circumstances where that denial causes severe and progressive neurological

harm — documented in peer-reviewed literature, confirmed by treating physicians, and established by independently-conducted Istanbul Protocol-compliant investigations — cannot shelter behind a theory of UNCAT scope that was negotiated in 1984 and ratified in 1994. The jus cogens prohibition on CIDT that existed in 1994 was not the same as the jus cogens prohibition on CIDT that exists today. It has expanded, clarified, and deepened — through Furundzija, Selmouni, CAT General Comment No. 2, the Istanbul Protocol's codification of psychological harm equivalence, the CRPD's Article 15 convergence with UNCAT Article 16, and the ILC's confirmation that jus cogens arises from 'case law and changing social and political attitudes.' Every one of these developments post-dates 1994.

The Nine-Authority Summary: Why the UNCAT Cannot Be Frozen at 1994 Understanding

[1] Furundzija (ICTY 1998): Jus cogens binds 'legislature, executive and judiciary'; 'any judicial act authorising torture is illegitimate.' The Sweden/sovereignty carve-out for judicial proceedings is directly contradicted. https://www.icty.org/x/file/Legal%20Library/jud_supplement/supp1-e/furundzija.htm [2] Cassese, 15 EJIL 97 (2004): Jus cogens prohibition operates in civil suits for damages in foreign courts; national measures authorizing CIDT must be disregarded regardless of domestic law. https://academic.oup.com/ejil/article/15/1/97/418241 [3] CAT General Comment No. 2, CAT/C/GC/2 (2008): Article 2 authorizes the Committee to implement preventive measures 'in response to evolving threats, issues, and practices.' The scope is explicitly not fixed at 1984/1994. https://hrlibrary.umn.edu/cat/general_comments/cat-gencom2.html [4] Selmouni v. France (ECtHR Grand Chamber, 1999): ECHR is a 'living instrument'; acts previously classified as CIDT may become torture as standards rise; 'increasingly high standard... inevitably requires greater firmness.' https://www.bailii.org/eu/cases/ECHR/1999/66.html [5] ILC Draft Conclusions on Jus Cogens (2019/2022): Peremptory norms 'arise out of case law and changing social and political attitudes'; not defined by any authoritative body at a fixed point in time. https://legal.un.org/ilc/reports/2019/english/chp5.pdf [6] Cançado Trindade, OAS (2005): Jus cogens expansion covers torture prohibition, non-discrimination, AND 'the fundamental character of the right of access to justice' — directly on point for the judicial accommodation denial context. https://www.oas.org/dil/esp/3%20-%20cancado.lr.cv.3-30.pdf [7] ECtHR Guide on Article 3 (2025 ed.): Prohibition of torture confirmed as jus cogens; 'acts... classified in the past as inhuman and degrading treatment... could be classified differently in future.' https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng [8] ICJ, Costa Rica v. Nicaragua (2009): Terms in long-duration treaties 'likely to evolve over time'; parties are presumed to have intended evolving meanings. The UNCAT is a continuing-duration treaty. https://www.icj-cij.org/case/133 [9] ICCPR Human Rights Committee GC 31 (2004): 'All branches of government (executive, legislative and judicial)... are in a position to engage the responsibility of the State Party.' The judicial branch is not exempt. https://hrlibrary.umn.edu/gencomm/hrcom31.html

The Application to This Thesis's Facts

The MS Stress Equation paper (Solomon, Boruta, Horvath, MacKellar, published June 2023 in the Journal of Medical Statistics and Informatics), which appeared before the 23-15221 Schroeder/Berzon/Owens panel as Exhibit A to the show cause response, establishes through peer-reviewed mathematical modeling that judicial distress directly and quantifiably causes MS relapse. The Bakin monitoring records document antibiotic injections, prescription stimulants, steroid abuse with negative health consequences, diabetic coma risk, no antibody development to Covid (contracted during a prior hospital stay), weight loss, and visible aging — all correlated biweekly to the court proceedings. The Buchanan (UCSF) psychiatric record documents ECT-level deterioration. The Choi neuropsychological exam found processing speed at one-third of normal. The SSA independently confirmed total disability as of July 1, 2018.

These facts, taken together, establish that the judicial proceedings themselves are the instrumentality of severe physical and psychological harm. They are not merely incidental to harm that was caused elsewhere — they are the cause. Under the post-2008 jus cogens framework, this

is the paradigm case of judicial-process CIDT: state actors, acting under color of law, with knowledge of the harm they are causing (established through the accommodation request and denial record), inflict documented severe suffering for purposes cognizable under UNCAT Article 1 (punishment for asserting rights; coercion to abandon litigation). The Sweden/sovereignty argument that this falls outside the UNCAT's scope because it involves a 'judicial process' rather than a 'custodial setting' is precisely the kind of sovereign carve-out that jus cogens norms were designed to make legally impermissible.

§ 8.4 The Lin–IAJ Synthesis: Five Arguments From Treaty Evolution

The five arguments that follow represent a collaborative IAJ–IRCT synthesis that builds directly on the foundation of Lin's framework and completes it. Lin's travaux préparatoires reading was legally sound at the time of the UNCAT's negotiation — and his precision in identifying that original sovereignty horizon is precisely what makes his contribution to this thesis so valuable. The IAJ synthesis goes further: it demonstrates that treaty evolution — through jus cogens, the CAT Committee's progressive interpretation, the CRPD–UNCAT convergence, and the Istanbul Protocol (2022) — has provided the precise legal mechanism that closes the horizon Lin identified, extending the absolute prohibition to its full contemporary reach. Each argument develops one dimension of that evolution, and together they establish that the absolute prohibition applies to judicial persecution of a torture victim with the same force that it applies to the initial act of torture. Critically, this synthesis is also the direct answer to the case that Lin has encountered in current practice as an IRCT investigator: a torture victim whose judicial persecution cannot be characterized as CIDT under the original treaty text — but can and must be so characterized under the evolved framework that the IAJ, in collaboration with Lin and the IRCT, now provides.

First Dimension: Jus Cogens Completes the Framework That Travaux Préparatoires Cannot Bound

The first dimension of the IAJ–IRCT synthesis recognizes that Lin's treaty interpretation methodology — reference to travaux préparatoires under VCLT Article 32 — is precisely the right tool for reading the UNCAT's original scope. Lin's contribution is to identify with scholarly precision exactly where the original drafters placed the sovereignty horizon. The IAJ synthesis then demonstrates why that horizon cannot be the final word: Lin's travaux préparatoires analysis engages the treaty at the level of its original negotiated text, but the prohibition on torture has since acquired jus cogens status, which means it now operates outside and above the ordinary framework of treaty interpretation entirely. VCLT Article 32 permits reference to preparatory work as a supplementary means of interpretation where the primary means under Article 31 (text, context, object and purpose) leave the meaning ambiguous or lead to an unreasonable result. But where a treaty provision reflects a jus cogens norm, the preparatory work cannot be used to narrow that norm below its minimum jus cogens content, because jus cogens norms by definition cannot be derogated from by any treaty instrument — and if they cannot be derogated from by treaty, they certainly cannot be narrowed by the pre-treaty negotiations that produced the treaty.

The drafters of the UNCAT could not, by negotiated compromise, have agreed to a version of the prohibition on CIDT that fell below the minimum content of the jus cogens norm. Whatever sovereignty-based limitations they embedded in the travaux préparatoires, those limitations are overridden by the peremptory character of the norm they were giving treaty form to. Lin's travaux préparatoires analysis correctly reads what the original drafters intended; what it also reveals — and what the IAJ–IRCT synthesis makes explicit — is that no drafting compromise could have bounded the jus cogens norm itself, because VCLT Article 53 places that norm beyond the reach of any treaty-level derogation.

Second Dimension: The CAT Committee's Progressive Interpretation Extends the Framework Beyond Its Original Horizon

The UNCAT, like all human rights treaties, is subject to dynamic and evolutive interpretation by the supervisory body established to oversee its implementation: the Committee Against Torture. Under general principles of treaty interpretation affirmed by the ICJ, the interpretation of a human rights treaty must take account of developments in international law and must be read in light of present-day conditions rather than frozen in the understanding of the treaty's original drafters. The ICJ affirmed this principle in the Namibia Advisory Opinion (1971) and the ECHR has repeatedly applied it under the rubric of the "living instrument" doctrine.

The CAT Committee's interpretation of Articles 1 and 16 has progressively expanded the coverage of both provisions far beyond anything that the travaux préparatoires anticipated. The Committee has found UNCAT violations in prison conditions, in the treatment of asylum seekers, in the conditions of psychiatric detention, in the denial of medical care to detained persons, and — most relevantly for this thesis — in the treatment of persons with disabilities in institutional settings. The 2014 Concluding Observations on the United States, the General Comments, and the specific findings in individual cases collectively constitute an authoritative interpretive record that has extended the treaty's reach progressively beyond the original sovereignty horizon that Lin's analysis so precisely maps. The committee's interpretation is not merely persuasive; under VCLT Article 31(3)(b), subsequent practice in the application of the treaty that establishes the agreement of the parties regarding its interpretation is a primary interpretive tool. The CAT Committee's practice over thirty-five years of interpretation constitutes exactly this subsequent interpretive practice — and it is the legal mechanism by which the IAJ–IRCT synthesis advances beyond the original horizon Lin identifies.

Third Dimension: Subsequent Judicial Proceedings Against a CIDT Victim as Continuous State Conduct

Lin's distinction — coherent as an original-intent reading of the UNCAT — reaches its productive limit in the most important category of practical cases, and it is at precisely that limit that the IAJ–IRCT synthesis begins. When the same state that tortured a person then uses its judicial system to deny that person access to justice, the two acts are not legally separate. They are parts of a single continuous course of state conduct whose purpose and effect is to subject the person to harm and to prevent them from obtaining any remedy for that harm.

The CAT Committee has specifically addressed this continuum. In its General Comment No. 3 (2012), the Committee stated: "The obligation to provide redress covers both procedural and substantive aspects. In the substantive sense, the obligation to provide redress encompasses restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. When any of these components are denied, the State party itself is in violation of the Convention." The denial of access to courts to a torture victim is therefore itself a UNCAT violation — not because the judicial proceedings constitute torture, but because the denial of redress violates the Article 14 obligation to provide effective remedy that is inseparable from the prohibition itself. This is precisely where the IAJ–IRCT synthesis closes the gap: the denial of remedy is part of the UNCAT obligation, not a separate sovereign function beyond it.

Furthermore, in cases where the judicial persecution causes documented physical or psychological harm to the victim — as in the case of a disabled litigant whose condition is exacerbated by the court's harmful procedures — the persecution is not merely a denial of remedy. It is itself an additional act of CIDT, causally connected to and compounding the original harm. The causal chain is: state actor causes harm → state judicial actor imposes procedures that exacerbate the harm → state judicial actor uses the exacerbation to justify terminating the

litigant's access to justice. Each step in this chain is state conduct. Each step causes harm to a person whose vulnerability was created by prior state conduct. The notion that international law permits the state to immunize the second and third steps while prohibiting only the first is not a principled reading of the UNCAT. It is a reading that would make the prohibition practically meaningless in the most common and most damaging category of cases.

Fourth Dimension: The CRPD–UNCAT Convergence Creates a Specific Obligation Without Sovereignty Exception

The convergence of CRPD Article 15 and UNCAT Article 16, analyzed in § 7.1, is particularly significant for the sovereignty question. CRPD Article 15 was deliberately drafted to prohibit CIDT against persons with disabilities in all settings — including, explicitly, institutional settings and legal proceedings. The CRPD's drafters were aware of the UNCAT's sovereignty-sensitive original intent and deliberately chose to draft Article 15 to cover conduct that fell within the sovereignty horizon Lin's analysis maps. This deliberate drafting choice is itself evidence of the treaty evolution that the IAJ–IRCT synthesis tracks: the international community, having identified exactly the gap Lin describes, used the CRPD to fill it.

Moreover, because the CRPD has no RUDs in relation to the United States — it has never been ratified, and therefore no RUD package has filtered its content — the CRPD Article 15 obligation operates at the full international standard without any sovereignty-based domestic filtering mechanism. The sovereignty horizon that Lin's UNCAT analysis precisely defines may narrow the reach of UNCAT Article 16 as qualified by the U.S. CAT reservation (limiting "CIDT" to the meaning of the Fifth, Eighth, and Fourteenth Amendments). But CRPD Article 15, through the VCLT Article 18 obligation, imposes the full international CIDT standard directly on courts interpreting the three federal disability statutes — a standard that has no sovereignty exception and no RUD filter. The CRPD–UNCAT convergence fills exactly the gap that Lin's sovereignty analysis identifies: even where UNCAT Article 16 operates within the sovereignty horizon, CRPD Article 15 covers the same conduct beyond it, and courts are obligated by Article 18 to apply it.

Fifth Dimension: The 'Second Bite' Doctrine — Subsequent Harm Compounds Initial Harm

The Istanbul Protocol (2022) addresses the specific scenario of "re-traumatization through legal proceedings" — the documented psychological and physical or psychological harm that torture victims experience when forced to participate in adversarial proceedings related to their torture. The Protocol states: "Legal proceedings conducted without adequate psychological support for survivors, including proceedings in which the survivor must repeatedly relive the traumatic experience, may constitute cruel, inhuman or degrading treatment in their own right, and state parties must take all necessary measures to ensure that legal processes do not compound the suffering of torture survivors."

This "second bite" doctrine confirms the IAJ–IRCT synthesis on precisely the point Lin's devil's advocate precision identified. The Istanbul Protocol — the authoritative international standard for torture documentation and prevention, to which the United States has committed through its treaty obligations — treats legal proceedings that compound torture victims' suffering as potentially constituting CIDT in their own right. The judicial persecution that Lin's original-intent analysis places within the sovereignty horizon is, under the evolved Istanbul Protocol, precisely the kind of conduct that states are now obligated to prevent. The second bite is not separate from the torture; it is part of the state's continuing course of harmful conduct toward the victim — and the international community, through the 2022 Istanbul Protocol revision, has given that conclusion authoritative legal form.

The IAJ–IRCT Synthesis: The Lin Framework Completed

James Lin — Director of the IRCT and IAJ advisor — brings to this synthesis the kind of rigorous treaty-historical precision that only thirty years of front-line torture investigation and international law scholarship can produce. His identification of the original sovereignty horizon in the UNCAT's travaux préparatoires is not a limitation on the framework; it is its indispensable foundation. By mapping exactly what the treaty's drafters left unresolved, Lin defines the precise analytical terrain on which the IAJ–IRCT collaboration now operates. The five dimensions developed in this Part show that treaty evolution — through jus cogens, the CAT Committee's progressive interpretation, and the CRPD–UNCAT convergence — has closed that horizon in favor of the victim. The synthesis is the joint product of Lin's foundational mapping and the IAJ's evolved treaty architecture. Together, they provide the complete framework that neither instrument provides alone.

§ 8.5 The Complete Treaty Architecture: Each Treaty's Relationship to Sovereignty

The following analysis maps each treaty invoked in this thesis against the sovereignty bar, establishing both the treaty's specific content and the specific legal mechanism by which sovereignty cannot defeat it.

The Universal Declaration of Human Rights (1948) — Customary International Law

The UDHR is not a treaty in the technical sense; it has no ratification mechanism and creates no formal treaty obligations. But its provisions have been recognized by the ICJ and by U.S. courts as reflecting customary international law — law that binds all states regardless of treaty adherence, as part of the general international legal order. Articles 5 (freedom from torture and CIDT), 7 (equal protection of the law), 8 (right to effective remedy), and 10 (right to a fair and public hearing) all apply to disability-based CIDT by judicial actors. The sovereignty objection to customary international law is different from the sovereignty objection to treaty law: a state cannot invoke its sovereignty to opt out of customary international law norms that have acquired universal acceptance, because universal acceptance is precisely the characteristic that makes them customary law rather than merely the preferences of some states.

The UDHR's Article 8 — "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" — is of particular relevance to the Lin–IAJ framework. If the state's own courts deny effective remedy for the state's own violations, the courts are violating both UDHR Article 8 and the customary international law norm it reflects. The sovereignty horizon that Lin's analysis maps operates at the level of treaty interpretation; customary international law norms bind independently of treaty consent, and the U.S. has never claimed persistent objector status with respect to the right to an effective remedy — a claim that no responsible U.S. government has made or could make.

The International Covenant on Civil and Political Rights (Ratified 1992)

The ICCPR, ratified by the United States with RUDs in 1992, provides in Article 2 the right to an effective remedy for rights violations; in Article 7 the absolute prohibition on torture and CIDT; in Article 14 the right to a fair hearing; in Article 26 equal protection of the law. The U.S. RUD to Article 7 limits "CIDT" to the meaning of the Fifth, Eighth, and Fourteenth Amendments. But — critically for the sovereignty analysis — the U.S. RUD to the ICCPR was expressly conditioned on the U.S. promise that constitutional protections provide equivalent protection. Where they do not

— as the analysis in Parts V and VI demonstrates — the RUD fails to shield the conduct. The sovereignty bar under the ICCPR is therefore conditioned: the U.S. can invoke sovereignty only where it is actually providing equivalent constitutional protection. It cannot invoke sovereignty where it is simultaneously failing its RUD-based equivalence promise.

ICCPR Article 14's right to a fair hearing applies directly to the Lin scenario: when the state denies a torture victim access to a fair hearing through judicial misconduct, it violates Article 14 independently of the Article 7 torture prohibition. This is significant because Article 14 is precisely about the operation of the judicial system — the domain that Lin's treaty-historical analysis identifies as sovereignty-sensitive. Yet the ICCPR Human Rights Committee has consistently held that Article 14's fair hearing guarantee includes the obligation to provide disability accommodations in legal proceedings. At the ICCPR level, therefore, the sovereignty horizon does not extend to the adjudicatory function as against fair hearing obligations: the obligation has been accepted by treaty ratification, and the RUDs condition the sovereignty reservation on the provision of equivalent domestic protection that is, in fact, not being provided.

The Convention Against Torture (Ratified 1994) — Articles 1, 14, and 16

The U.S. ratified the UNCAT in 1994 with an RUD to Article 16 limiting "CIDT" to the Fifth, Eighth, and Fourteenth Amendments standard. The Lin–IRCT treaty-historical analysis applies most precisely here: Lin's reading that UNCAT Article 16's original scope was bounded by the sovereignty compromise embedded in the travaux préparatoires is a textually and historically sound account of where the drafters placed the horizon. The IAJ–IRCT synthesis shows that the evolved treaty standard extends beyond that original horizon: the sovereignty bar under the CAT has been progressively extended by the Committee's interpretive practice, by the jus cogens status of the underlying norm, and by the CRPD Article 15 convergence that fills the gap the U.S. RUD might otherwise create.

UNCAT Article 14's obligation to provide "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible" is itself a specific treaty obligation that the sovereignty bar cannot shield. When the state's courts deny a torture victim (or a disability-based CIDT victim) the remedy and rehabilitation that Article 14 requires, the denial is itself a UNCAT violation — and the sovereignty bar cannot protect a violation of an obligation that the state accepted by treaty ratification. The IAJ–IRCT synthesis closes the circle here: the judicial denial of remedy is exactly what the treaty explicitly obligates the state to prevent, which means the sovereignty horizon Lin identifies around the adjudicatory function cannot extend to shield the denial of the remedy the treaty itself demands.

The International Convention on the Elimination of All Forms of Racial Discrimination (Ratified 1994)

CERD Article 5(a) requires states to guarantee the right to equal treatment before tribunals and all other organs administering justice without distinction as to race, national or ethnic origin. While CERD's primary domain is racial discrimination, its Article 5 jurisprudence has been applied by the CERD Committee to intersectional discrimination — including cases where racial minority status and disability coincide to compound the discrimination in judicial proceedings. The sovereignty objection to CERD Article 5 is particularly weak: the U.S. ratified CERD and accepted its obligation to ensure equal treatment before tribunals. The sovereignty bar cannot operate against a tribunal-access obligation that the state has accepted by treaty ratification.

The Convention on the Rights of Persons with Disabilities (Signed 2009; 61-Vote Senate Majority)

The CRPD's relationship to sovereignty is unique in the thesis's treaty architecture because it operates through the Article 18 VCLT obligation rather than through Supremacy Clause binding force. The sovereignty question for the CRPD is therefore: can the United States invoke its sovereignty over its legal system as a reason to defeat the CRPD's object and purpose — when the Article 18 obligation specifically prohibits acts that defeat that object and purpose?

The answer is no, for a reason that is architecturally elegant. Article 18 was placed in the VCLT precisely to address the sovereignty gap between signature and ratification. A state that signs a treaty acknowledges the legitimacy of that treaty's principles and commits to not defeating them, while retaining the sovereign right to decline full ratification. The sovereignty claim against the CRPD is therefore not available to the U.S. in its Article 18 posture: the act of signature was itself an exercise of sovereignty that accepted the specific limitation on sovereign action that Article 18 imposes. The U.S. cannot exercise sovereignty to defeat an obligation that it sovereignly accepted in the act of signing.

Furthermore, the 61-senator majority is evidence of the precise scope of sovereignty that the U.S. was prepared to limit. A majority of the Senate voted in favor of accepting the CRPD's obligations — including Article 15's disability-specific CIDT prohibition, without any RUD filtering — but the treaty did not achieve ratification and therefore did not attain full domestic status as supreme law of the land. The sovereignty claim against these obligations is nonetheless substantially weakened by that democratic expression: sixty-one senators voted to constrain U.S. sovereignty in this specific domain. The sovereignty objection is substantially weakened, though not eliminated, by the democratic process through which sovereignty is exercised in the treaty ratification context — a Senate majority endorsed the treaty's principles even if the constitutional threshold for ratification was not met.

The American Declaration of the Rights and Duties of Man (1948) and OAS Charter

The United States, as a member of the Organization of American States (OAS), is bound by the OAS Charter's human rights commitments and by the American Declaration of the Rights and Duties of Man — which the Inter-American Commission on Human Rights has treated as generating binding obligations on all OAS member states, including the U.S. Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights." Article XXVI provides the right to a fair and public hearing. The Inter-American Commission has jurisdiction to receive petitions against OAS member states alleging violations of the American Declaration, and has repeatedly found U.S. violations.

The sovereignty objection to the American Declaration is often framed as a claim that the Declaration, unlike the American Convention on Human Rights (which the U.S. has not ratified), is not a binding treaty. But the IACHR and the Inter-American Court have consistently treated the Declaration as the source of binding obligations for OAS member states that have not ratified the American Convention. The sovereign choice not to ratify the American Convention does not insulate the U.S. from the fundamental OAS Charter commitment to human rights that the Declaration elaborates. For the disability-based judicial CIDT scenario, the American Declaration provides an additional regional human rights law basis for holding the U.S. accountable that operates independently of the UN treaty system.

§ 8.6 The U.S. RUD Framework as Sovereignty Mechanism — and Its Failure

The U.S. practice of attaching RUDs to ratified human rights treaties is the primary formal mechanism by which the United States has sought to reconcile treaty ratification with the sovereignty interests of its legal system. The RUDs are, in effect, a unilateral assertion of sovereignty within the treaty framework: they say that the U.S. will comply with the treaty, but only to the extent that the treaty does not require anything different from what U.S. law already provides.

The most analytically important feature of the RUD framework for the disability rights context is the equivalence promise: the U.S. repeatedly asserts in its RUDs that existing constitutional protections provide equivalent or greater protection than the treaty provisions. This was the core of the CAT Article 16 RUD (limiting CIDT to the Fifth, Eighth, and Fourteenth Amendment standard), the ICCPR Article 7 RUD, and the CERD Article 5 RUD. Each RUD was premised on the U.S. government's representation that constitutional law provides the required protection.

When that representation is false — when constitutional protections demonstrably do not provide the equivalent protection that the RUD promises — the RUD fails as a sovereignty mechanism. The RUD does not merely limit U.S. obligations; it conditions those limitations on U.S. performance of the obligations it substitutes. Where the substituted constitutional protections are not applied in practice, the sovereignty shield created by the RUD is forfeit. The analysis in Parts V and VI of this thesis demonstrates precisely this failure: the constitutional protections that the U.S. RUDs promised as equivalents to the treaty standards have not, in the disability-based judicial CIDT context, been provided. The equal protection guarantee's anti-stereotyping principle (Cleburne), the access-to-courts doctrine (Griffin-Lane), and the substantive due process liberty interests (Youngberg, Obergefell) all require what the RUDs promised — and all have been systematically denied in the documented patterns of court-caused disability harm. The sovereignty mechanism of the RUD framework has therefore failed on its own terms, not merely because of external international law pressure.

§ 8.7 Sovereign Immunity as Domestic Bar: State and Federal Government

Separate from international state sovereignty, the U.S. legal system maintains domestic sovereign immunity doctrines for both state and federal governments. As analyzed in Part VI, these doctrines have been significantly eroded by congressional abrogation and treaty-based waivers in the disability rights context. The complete analysis of domestic sovereign immunity as a bar to relief is as follows:

Federal Sovereign Immunity

The federal government's immunity from suit without its consent is a common-law doctrine derived from the English maxim that the king can do no wrong. It has been progressively waived by Congress through the Federal Tort Claims Act (FTCA), the Administrative Procedure Act (APA), and the Rehabilitation Act's coverage of federal entities receiving financial assistance. For disability-based CIDT by federal courts: the Rehabilitation Act's coverage of federal court systems receiving federal financial assistance provides a statutory cause of action that constitutes a congressional waiver of sovereign immunity for disability discrimination by those systems. The waiver is real but limited: the Rehabilitation Act does not create a general damages remedy for all disability discrimination; it creates a cause of action for discrimination in programs receiving federal financial assistance, subject to remedial standards that courts have interpreted restrictively.

The international law dimension is critical here. The Alien Tort Statute (28 U.S.C. § 1350) provides a cause of action against persons — not the U.S. government — for violations of the law of nations. It does not abrogate federal sovereign immunity. But as Sosa v. Alvarez-Machain confirms, violations of specific, universal, and obligatory norms of customary international law are actionable under the ATS against individuals — including federal judicial officers. The hostis humani generis doctrine, as applied to federal judges who commit or direct systematic disability-based CIDT, operates against the individual, not the federal sovereign. Federal sovereign immunity, while real, does not shield individuals from ATS liability for law-of-nations violations.

State Sovereign Immunity (Eleventh Amendment)

The Eleventh Amendment's state sovereign immunity doctrine bars unconsented suits against state governments in federal court. But as Tennessee v. Lane and United States v. Georgia establish, Congress has validly abrogated Eleventh Amendment immunity for ADA Title II claims asserting the fundamental right of access to courts and for conduct independently violating the Fourteenth Amendment. The abrogation is constitutionally grounded in Section 5 of the Fourteenth Amendment — which itself represents a sovereign choice by the people, through the constitutional amendment process, to limit state sovereignty in favor of individual rights. The sovereignty argument for state immunity in disability-based CIDT cases is therefore constitutionally defeated at its source: the Fourteenth Amendment, which is supreme over the Eleventh, requires what state sovereign immunity would deny.

The international law dimension reinforces this constitutional analysis. Under the Supremacy Clause, a state's Eleventh Amendment immunity cannot override its obligation under the UNCAT — a ratified treaty that Article VI makes supreme over state law and state constitutional provisions. A state that invokes Eleventh Amendment immunity to shield its judicial system from accountability for UNCAT Article 16 violations is invoking a constitutional doctrine — Eleventh Amendment sovereign immunity — against a higher constitutional mandate — the Supremacy Clause's incorporation of treaty obligations. Under the constitutional hierarchy, the Supremacy Clause wins. The UNCAT obligation, as supreme law, overrides the Eleventh Amendment immunity that would otherwise shield it.

§ 8.8 The Special Responsibility of Judicial Actors: The Paradox of Rights-Guarantors as Rights-Violators

The analysis of sovereignty as a bar to relief resolves, ultimately, into the question of who bears the responsibility for ensuring that sovereignty claims do not become shields for human rights violations. In the domestic legal system, that responsibility falls first and most directly on judicial actors — on the courts and on the judges who constitute them. This creates the paradox that runs through the entire analysis of this thesis: courts are simultaneously the institutions whose sovereignty-derived immunity the state invokes as a bar to relief, and the institutions whose function is to ensure that sovereignty claims do not override fundamental rights. When they fail that function — when they use their institutional authority to perpetuate and compound harm to disabled persons rather than to remedy it — they are not exercising legitimate judicial power. They are abusing it.

The Judicial Actor as Treaty Enforcer

Every treaty invoked in this thesis designates judicial actors as a primary mechanism for their domestic implementation. The ICCPR's Article 2(3) obligation to provide effective remedies is to be provided "by the competent judicial, administrative or legislative authorities." The UNCAT's

Article 14 obligation to provide fair and adequate compensation is to be provided through a state's "legal system." CRPD Article 13 specifically addresses access to courts and requires effective participation in "all legal proceedings." The American Declaration's Article VIII provides that every person may "resort to the courts." In each case, courts are designated as the mechanism of treaty implementation, not merely as potential violators of treaty obligations.

This designation carries a specific responsibility. A judicial actor who is aware of a treaty obligation — as every judge in the United States should be, given the Supremacy Clause's command and the 28 U.S.C. § 453 oath of office — and who nonetheless denies the treaty-mandated accommodation to a disabled litigant is not merely violating the treaty. They are failing the specific function that the treaty assigns to judicial actors as the mechanism of rights implementation. The failure is therefore doubly culpable: it is both a violation of the right and a betrayal of the institutional role that gives the judicial actor their authority.

The Paradox of Judicial Immunity in the Treaty Context

The paradox of judicial immunity in the human rights treaty context is both structural and moral. Structurally: the treaties that prohibit CIDT designate courts as the mechanism for their implementation, and courts claim immunity from accountability for violating those designations. Morally: the immunity was designed to protect the fearless administration of justice, but when it shields the denial of justice to disabled litigants, it protects the opposite of what it was designed to serve.

Lin's framework illuminates this paradox with particular clarity — and in doing so performs the essential analytical service that makes the IAJ–IRCT synthesis both necessary and possible. Lin's devil's advocate precision forces the question into its sharpest form: if judicial actors could be insulated from UNCAT accountability for judicial persecution of torture victims on sovereignty grounds, then the treaty that prohibits torture would have been used to create a space in which torturers complete their work through legal processes immune from the very prohibition that outlaws the initial act. The state tortures; the courts deny remedy; the victim is destroyed; and sovereignty shields the second act because it occurs within the protected domain of the judicial function. Lin's rigorous identification of this structural risk is precisely what called upon the IAJ to develop the evolved framework that closes it. On the IAJ–IRCT analysis, the absolute prohibition cannot be made relative by routing the harm through a sovereignly protected institution — and the five dimensions of treaty evolution developed in this Part establish, jointly and conclusively, why not.

The Oath as the Resolution of the Paradox

The resolution of the paradox — the mechanism by which the tension between judicial authority and treaty obligation is resolved in favor of the obligation — is the oath. Every judicial actor in the United States, at every level from magistrate to SCOTUS Justice, has sworn to administer justice without respect to persons, to do equal right to the poor and to the rich, and to faithfully discharge their duties under the Constitution and laws of the United States. The treaties are the supreme law of the land. The oath incorporates them. The judicial immunity doctrine does not and cannot override the oath, because the immunity is a creature of the common law and the oath is a constitutional obligation.

A judge who invokes judicial immunity to shield disability-based CIDT from accountability is not merely violating a treaty. They are violating the oath they swore when they assumed the office whose authority they are now invoking as a shield. The sovereignty of the judicial function — which judicial immunity exists to protect — was accepted by the judge subject to the oath. There is no sovereignty without the oath, and the oath precludes the conduct. The judge who violates

the oath has not merely exceeded their authority; they have repudiated the foundation on which their authority rests.

This resolution is not abstract. It has concrete legal implications. Impeachment — the constitutional mechanism for removing federal judges for "treason, bribery, or other high crimes and misdemeanors" — is available for violation of the judicial oath. A systematic pattern of disability-based CIDT by a federal judge, demonstrably violating their oath to administer justice without respect to persons and to discharge their duties under the Constitution and laws (including treaties), constitutes "high crimes and misdemeanors" within the meaning of Article II, Section 4. Impeachment is not dependent on judicial immunity doctrine — it is an oath-enforcement mechanism that operates outside and above the common law. The sovereignty of the judicial function, properly understood, creates not immunity from accountability but the highest obligation of accountability — an obligation whose ultimate enforcer is the Congress and, through the democratic process, the people themselves.

§ 8.9 The Complete Anti-Sovereignty Hierarchy: Why No Defense Succeeds

The following table provides the complete mapping of every sovereignty-based defense available to judicial actors and court systems, against the treaty, constitutional, and international law authority that defeats it:

Sovereignty / Immunity Defense	Legal Basis Asserted	Override Authority and Why It Prevails
State sovereignty over judicial system	Westphalian sovereignty; Art. 2(7) UN Charter; domestic jurisdiction	Qualified sovereignty doctrine (R2P); jus cogens overrides sovereignty in absolute prohibition domain; state cannot invoke sovereignty to perpetuate what sovereignty is supposed to prevent
U.S. RUD framework (ICCPR, CAT)	Senate conditions of ratification; U.S. reserved domestic equivalence	RUDs condition sovereignty reservation on provision of equivalent constitutional protection; when constitutional equivalents not provided, RUD fails on own terms; CRPD has NO RUDs
Judicial immunity (individual)	Bradley v. Fisher; Stump v. Sparkman; Mireles v. Waco	Jus cogens (Pinochet) overrides domestic immunity for CIDT; oath of office (28 U.S.C. § 453) prohibits the conduct immunity would shield; injunctive relief (Pulliam) available regardless; institutional liability survives
State sovereign immunity (11th Amend.)	Hans v. Louisiana; Alden v. Maine	ADA Title II abrogation under Section 5 (Lane); Georgia co-extensiveness doctrine; Supremacy Clause (UNCAT ratified treaty prevails over 11th Amend. immunity)
Federal sovereign immunity	Common-law sovereign immunity; lack of congressional waiver	Rehabilitation Act § 504 waiver by acceptance of federal funds; ATS individual liability (Sosa/Filartiga);

Sovereignty / Immunity Defense	Legal Basis Asserted	Override Authority and Why It Prevails
		oath violation subjects judges to impeachment outside immunity framework
Lin–IRCT treaty-historical horizon (original UNCAT scope)	UNCAT original intent; sovereignty compromise in negotiating history	Jus cogens operates above travaux préparatoires (VCLT Art. 53 hierarchy); CAT Committee progressive interpretation extends the original horizon; CRPD Art. 15 convergence fills any remaining gap without RUD filter; Istanbul Protocol (2022) confirms the IAJ–IRCT synthesis on judicial persecution as CIDT
Art. 2(7) domestic jurisdiction	UN Charter non-interference principle	Human rights exception to non-interference (Nuremberg, UDHR, ICJ advisory opinions); jus cogens obligations are not 'essentially domestic' matters; R2P doctrine establishes affirmative sovereign responsibility
Separation of powers (judicial independence)	Constitutional structure; checks and balances	Judicial independence was designed to protect honest judging from political interference, not to immunize CIDT; oath obligation overrides; Congress's impeachment power and Art. I § 8 Cl. 10 power are constitutional accountability mechanisms that judicial immunity cannot override
Lin–IRCT framework: original-scope horizon for second-act judicial conduct	Subsequent judicial proceedings constitute a separate sovereign act beyond initial CIDT	CAT Gen. Comment No. 3: denial of redress is itself a UNCAT violation; Istanbul Protocol: re-traumatization through legal proceedings may constitute CIDT; continuous course-of-conduct analysis; CRPD Art. 15 has no original-intent sovereignty exception

§ 8.10 Conclusion: The Architecture of Accountability Without Sovereign Shield

The sovereignty analysis of this Part completes the legal architecture developed across the thesis. Every sovereignty-based defense available to judicial actors and court systems against accountability for disability-based CIDT has been examined and found legally untenable in its application to the absolute prohibition on CIDT. The defenses — Westphalian sovereignty, the RUD framework, judicial immunity, state and federal sovereign immunity, and the separation of powers — all share a common structural failure: they are defenses available within the ordinary framework of domestic and international law, but they operate at a level of the legal hierarchy that

is below the absolute prohibition on CIDT. The absolute prohibition, in its jus cogens character, is not merely superior to these defenses; it is architecturally incompatible with them. A prohibition from which no derogation is permitted cannot be derogated from by a sovereignty claim, however legally sophisticated. The Lin–IAJ treaty-historical analysis, developed in collaboration with the IRCT, supplies the precise cartography of the original sovereignty horizon — and in doing so makes visible exactly why that horizon cannot contain the jus cogens norm.

James Lin's contribution to this thesis — as IRCT Director and IAJ advisor — performs an analytical service of the highest order: by mapping with scholarly exactness the point at which the sovereignty question is most difficult and most consequential, he defines the precise frontier at which the IAJ–IRCT synthesis must operate. The trail he blazes through the original treaty architecture is the path along which the evolved framework now advances. The scenario he has encountered in practice — a state that tortures a person and then uses its judicial system to perpetuate and complete the harm while claiming sovereign authority over its courts — is not a theoretical construct. It is a pattern documented throughout this thesis, and it is the case that the IAJ framework was built to address. That framework is now provided, jointly, by the convergence of CRPD Article 15, UNCAT Article 16, the CAT General Comments, the Istanbul Protocol, and the constitutional oath obligations of judicial actors — a convergence that the international community and, ultimately, the U.S. constitutional structure itself was designed to produce. The IAJ's ambition is that this synthesis becomes the shared standard that every human rights body, treaty committee, and national court applies: a framework that Lin's institutional knowledge helped to forge, and that the IRCT, the IAJ, and the community of international human rights practitioners now hold in common.

The judicial actor who understands this architecture and still denies disability accommodation knowing it will cause documented physical or psychological harm to a disabled litigant is not exercising sovereign judicial authority. They are, in the most precise legal sense, committing an act against the law of nations, violating their oath of office, and betraying the constitutional function that gives their authority its legitimacy. No sovereign shield covers this conduct. No immunity doctrine survives it. And no statute of limitations, under the law that matters most, runs against it.

PART IX

The Senate Record: Congressional Deliberations, the 'No New Legislation' Finding, and the Prospective Consequences of Ratification with RUDs

The preceding nine Parts of this thesis have developed their legal architecture primarily from the text of the CRPD, the constitutional framework, the European comparative materials, and the international law hierarchy. This Part turns to a source of authority that is both domestic and primary: the official record of congressional deliberations on Treaty Doc. 112-7, the Convention on the Rights of Persons with Disabilities. Senate Executive Report 112-6 (112th Congress, July 31, 2012) and Senate Executive Report 113-12 (113th Congress, July 28, 2014), together with the hearing transcripts, witness testimony, minority views, and the proposed RUD packages contained therein, constitute the most authoritative available statement of what the United States Congress — through its treaty deliberation function — has determined about the CRPD's relationship to existing U.S. law. That record, read carefully and in its full legal significance, provides three transformative contributions to this thesis: an authoritative congressional determination — the highest-ranking legislative history evidence available — that existing U.S. law already meets or exceeds the CRPD's requirements; a precise mapping of what ratification with RUDs would and would not change; and a rich record of bipartisan deliberation that constitutes the highest form of legislative authority on the question of the CRPD's relationship to the three federal disability statutes.

§ 9.1 The Senate Record as Constitutional Authority

Senate Executive Reports 112-6 and 113-12 are official documents of the United States Senate, prepared by the Committee on Foreign Relations in the exercise of the Senate's constitutionally assigned function of advice and consent to treaty ratification. They are not merely commentary or policy analysis. They are the formal products of a constitutional process through which the U.S. Senate — the institution charged by Article II, Section 2 with the authority to make treaties effective as the supreme law of the land — evaluated the CRPD and its relationship to existing U.S. law. As such, they carry a weight of authority that CRS reports, advocacy literature, and academic commentary do not: they are the considered institutional judgment of the Senate on the treaty's legal significance.

Both reports were adopted by the SFRC with bipartisan majorities: 13–6 in the 112th Congress (with Senators Lugar, Isakson, and Barrasso — all Republicans — joining all Democrats in the affirmative), and 12–6 in the 113th Congress (with Senators McCain and Barrasso joining all Democrats). The bipartisan character of the affirmative votes is itself legally significant: it establishes that the Senate's finding about the CRPD's relationship to existing U.S. law was not a partisan conclusion but a shared institutional judgment, carrying the authority that cross-partisan agreement in the body charged with treaty ratification commands.

The full Senate's November 27, 2012 vote — 61 senators voting to proceed to executive session to consider the treaty — and the December 4, 2012 final vote of 61 in favor of ratification (Senate Roll Call Vote No. 219, 112th Cong., 2d Sess.) constitute additional layers of the senate record. The official roll call record confirms the precise margin: 61 in favor, 36 against, 3 not voting — five

votes short of the two-thirds supermajority required under Article II, Section 2. These votes establish that a majority of the full Senate agreed with the SFRC's findings. The 61-senator majority is not merely a political datum cited in Parts I and VIII of this thesis. It is a constitutional act: 61 senators affirmatively engaged with, evaluated, and endorsed the CRPD's content, including the proposed RUD package, as a legitimate exercise of the treaty power. Their collective judgment about the CRPD's relationship to existing U.S. law is, in the most direct sense available, the considered view of the legislative branch on that question.

§ 9.2 The 'No New Legislation' Finding: Text and Legal Significance

The central finding of both Senate Executive Reports, stated identically in both Exec. Rept. 112-6 and Exec. Rept. 113-12, is the following:

Senate Exec. Rept. 112-6, § VI (Implementing Legislation); Senate Exec. Rept. 113-12, § VI (Implementing Legislation)

The provisions of the Convention are not self-executing. Accordingly, they cannot be directly enforced by U.S. courts or give rise to individually enforceable rights in the United States. [...] In the vast majority of cases, existing federal and state law meets or exceeds the requirements of the Convention. [...] No additional implementing legislation is necessary with respect to the Convention.

This finding has three components whose individual and combined legal significance has been systematically underappreciated in the literature on the CRPD's relationship to U.S. law.

First: non-self-execution. The committees found that the CRPD's provisions are not self-executing — they cannot be directly enforced by U.S. courts or give rise to individually enforceable rights. This finding is legally consequential for direct enforcement of the CRPD but does not, as § 9.4 below demonstrates, eliminate the Charming Betsy interpretive obligation, the Article 18 VCLT duty, or the constitutional avoidance canon. It does mean that the CRPD cannot be invoked as a free-standing cause of action in domestic courts — but this thesis has never argued that it can. The thesis's argument is that the CRPD functions as an interpretive authority that shapes the meaning of existing statutory and constitutional provisions.

Second: existing law meets or exceeds the requirements. The committees found that, in the vast majority of cases, existing U.S. law already meets or exceeds the CRPD's requirements. This is a finding about the current state of the law — not a finding about the current state of judicial practice. It is a finding that the three federal disability statutes, properly interpreted and applied, already implement the CRPD's obligations. This finding directly and powerfully supports the thesis's central argument: courts that fail to give robust effect to the ADA, the Rehabilitation Act, and the ADAAA are not merely misinterpreting statutes. They are failing to implement law that the Senate — in its most authoritative constitutional voice on the treaty's meaning — has determined already meets the CRPD's standards.

Third: no new legislation is necessary. The committees found that no additional implementing legislation is required. This finding transforms the thesis's argument from an aspirational claim about what the law should be into a description of what the Senate has determined the law already is. If no new legislation is necessary because existing law already

meets the CRPD's requirements, then the gap this thesis identifies — between what the CRPD requires and what courts currently do — is a gap in judicial implementation, not a gap in the statutory framework. The remedy is not legislation; it is proper judicial interpretation of statutes that the Senate has determined are already CRPD-compliant.

The Central Legal Implication of the 'No New Legislation' Finding

If existing U.S. law already meets or exceeds the CRPD's requirements — as the Senate's official treaty deliberations found — then a court that interprets the ADA, Rehabilitation Act, or ADAAA in a manner that falls below the CRPD's standard is not correctly interpreting existing law. It is interpreting the law to mean less than the Senate determined it means. This is not a gap that requires new legislation to fill. It is a failure of judicial fidelity to existing law — a failure that is simultaneously a failure of statutory interpretation and a failure of the constitutional obligations analyzed throughout this thesis.

§ 9.3 'Existing Law Meets or Exceeds': A Binding Legislative Interpretation

The finding that "existing federal and state law meets or exceeds the requirements of the Convention" deserves extended analysis because it is, at its core, a legislative interpretation of the three federal disability statutes — an interpretation made by the constitutional body that enacted those statutes and that is charged with the authority to make treaties effective as the supreme law of the land.

Legislative history, including committee reports, is a primary tool of statutory interpretation under the principles established in TVA v. Hill, 437 U.S. 153 (1978), and Chevron U.S.A. Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984). Where a Senate committee report specifically addresses the relationship between a treaty and existing statutes, it provides the most authoritative available legislative guidance on the meaning of those statutes in the treaty context. The SFRC's determination that the ADA, the Rehabilitation Act, and related statutes already meet the CRPD's requirements is therefore not merely an interesting policy conclusion. It is a legislative interpretation of those statutes that courts applying them must take into account.

The specific finding is expressed in the implementing legislation section of both reports, and confirmed in the committee recommendations section: "in light of the reservations included in the resolution of advice and consent, current federal and state law meets or exceeds the requirements of the Convention, and no changes to federal or state law will be required as a result of U.S. ratification." The phrase "in light of the reservations" qualifies this finding by reference to the proposed RUD package. But the qualifications introduced by the RUDs, analyzed in §§ 9.5–9.8 below, affect the range of obligations, not the committee's determination that existing law, within that range, meets the CRPD's standard.

The senate record also confirms the identity of the specific statutes that the committee determined implement the CRPD: "the Americans with Disabilities Act of 1990; the Rehabilitation Act; the Communications Act of 1934, as amended by the Telecommunications Act of 1996; the Fair Housing Act, as amended in 1988; the Air Carrier Access Act; the Voting Accessibility for the Elderly and Handicapped Act of 1984; the Help America Vote Act of 2002; the Civil Rights of Institutionalized Persons Act; the Genetic Information Nondiscrimination Act; the Individuals with Disabilities Education Act; and the Architectural Barriers Act." The ADA and the Rehabilitation Act are both expressly identified as implementing the CRPD. This is an official Senate determination that these two statutes, which are the primary vehicles of the thesis's legal argument, carry CRPD-equivalent obligations as a matter of existing law.

§ 9.4 The Non-Self-Executing Declaration: Limits and Implications

Both reports state that "the provisions of the Convention are not self-executing. Accordingly, they cannot be directly enforced by U.S. courts or give rise to individually enforceable rights in the United States." This finding would be confirmed by a formal non-self-executing declaration in the resolution of advice and consent. The legal implications of this declaration require careful analysis because they are frequently overstated by opponents of the thesis's interpretive arguments.

A non-self-executing declaration does three things and only three things. First, it prevents the CRPD from creating new, directly enforceable rights in domestic courts that do not already exist in domestic law. Second, it prevents litigants from citing CRPD article provisions as standalone causes of action without a domestic statutory or constitutional hook. Third, it insulates the U.S. legal system from the direct application of CRPD Committee decisions as binding law.

A non-self-executing declaration does not do the following things, each of which is critical for this thesis:

- It does not eliminate the Charming Betsy canon's requirement that existing statutes be interpreted consistently with international legal obligations, including the CRPD's principles.
- It does not eliminate the VCLT Article 18 obligation to refrain from acts that defeat the CRPD's object and purpose, because that obligation is a rule of customary international law that operates independently of whether the treaty is self-executing.
- It does not eliminate the constitutional avoidance canon's requirement that statutes be interpreted to avoid constitutional questions — including the constitutional questions that a narrow interpretation of the ADA raises.
- It does not prevent courts from treating CRPD principles as persuasive interpretive authority, in the same way that courts treat non-self-executing treaty provisions of other ratified treaties as persuasive authority on the meaning of domestic statutes.
- It does not affect the jus cogens analysis in Part VII, which operates at a level of the legal hierarchy independent of whether any particular treaty provision is self-executing.
- Most critically: it does not alter the Senate's own finding that existing law meets the CRPD's requirements. If anything, the non-self-executing declaration makes the 'no new legislation' finding more significant: because the CRPD cannot be directly enforced, the only way its standards are implemented is through the existing statutes that the Senate determined already meet those standards — statutes that courts must therefore interpret robustly enough to deliver on the Senate's determination.

The non-self-executing declaration is therefore not a barrier to the thesis's argument. It is a clarification of the mechanism through which the argument operates: the CRPD's principles reach domestic courts through the interpretive obligation, not through direct enforcement. That interpretive obligation — the Charming Betsy canon, the Article 18 VCLT duty, the constitutional avoidance principle — is not affected by the non-self-executing declaration.

§ 9.5 The Third Reservation: Article 15 and the CIDT Link to the Thesis

The most significant of the proposed reservations for this thesis is the third, which addresses Article 15 of the CRPD directly. Both Executive Reports describe it in identical terms:

Senate Exec. Rept. 112-6 and 113-12, Third Reservation

The third reservation concerns the extent of the United States obligations under Article 15 (Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment). As Article 15 of the Convention covers the same subject matter as Articles 2 and 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights, the third reservation makes clear that the obligations of the United States under Article 15 of the Convention shall be subject to the same reservations and understandings that apply to U.S. ratification of those two treaties.

This reservation, if adopted, would limit U.S. obligations under CRPD Article 15 to the same standard that applies under the U.S. CAT Article 16 reservation — i.e., the standard of the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution. This would domesticate Article 15's prohibition on CIDT to the same constitutional standard that applies under the ratified CAT. For the thesis's Part VII analysis, this reservation has three specific consequences that require examination.

If the Reservation Is Adopted: What Changes

First, the full international CIDT standard — which, as Part VII demonstrates, the CRPD Committee has interpreted more expansively than the domestic constitutional standard — would not apply as a matter of treaty law. Courts would not be required to apply the international standard; they would be required to apply the Fifth, Eighth, and Fourteenth Amendment equivalents.

Second, the specific argument in § 7.1 that CRPD Article 15, having no RUDs, applies in its full unmediated international form, would be altered. Once the reservation is adopted, Article 15 would be filtered through the CAT reservation standard. The thesis's claim that CRPD Article 15 provides a broader prohibition than the domestically filtered CAT Article 16 would no longer hold in the same way after ratification with the proposed RUDs.

Third, the Charming Betsy interpretive obligation would continue to operate but would be calibrated to the reserved standard: courts would be obligated to interpret the three federal disability statutes consistently with the CAT-reservation-qualified Article 15, rather than the unmediated international standard. This is a narrower obligation but it is still an obligation.

If the Reservation Is Adopted: What Does Not Change

Despite these consequences, the reservation cannot eliminate the thesis's central arguments for the following reasons. First, the jus cogens analysis in § 7.2 is not affected by any RUD. A jus cogens norm, by definition, cannot be derogated from by treaty reservation. The absolute prohibition on torture and CIDT, as a peremptory norm of international law, overrides any reservation that attempts to limit its domestic application to constitutional equivalents. A reservation that limits the U.S.'s Article 15 obligations to the Fifth, Eighth, and Fourteenth Amendment standard is a limitation on treaty obligations; it is not a limitation on jus cogens obligations. The Part VII analysis of jus cogens override of judicial immunity survives the reservation entirely.

Second, the constitutional analysis in Part V demonstrates that the Fifth, Eighth, and Fourteenth Amendments, properly applied, already require what the thesis argues. The reservation limits Article 15's scope to the constitutional standard — but Part V establishes that the constitutional

standard, properly understood through the Youngberg-Cleburne-Lane-Obergefell framework, already prohibits disability-based CIDT by judicial actors. The reservation therefore does not reduce the thesis's conclusions; it confirms them by anchoring Article 15's obligations to the constitutional framework that Part V establishes is already violated.

Third, the UNCAT Article 16 obligation — a ratified treaty with its own reservation — continues to apply independently of the CRPD Article 15 reservation. And as § 7.1 demonstrates, UNCAT Article 16 in combination with the failure to provide the constitutional equivalents promised by the CAT reservation creates its own accountability structure that the CRPD Article 15 reservation does not affect.

The Reservation's Paradox for Opponents of This Thesis

The Third Reservation, if adopted, would limit CRPD Article 15 to the constitutional standard of the Fifth, Eighth, and Fourteenth Amendments — the same standard the U.S. promised to provide when it ratified the CAT. But the thesis demonstrates, through extensive constitutional analysis in Part V, that this constitutional standard already prohibits the disability-based CIDT by courts that the thesis identifies. If opponents argue that the reservation limits the CRPD's reach to the constitutional standard, they are simultaneously conceding that the constitutional standard prohibits the conduct. The reservation cannot simultaneously limit CRPD obligations to the constitutional level and shield the conduct from constitutional accountability. The opponents' argument with the reservation applied is self-defeating: it establishes the constitutional violation that the statutory and treaty analysis would otherwise establish independently.

§ 9.6 The Fifth Understanding: Freezing Definitions and the Social Model

The Fifth Understanding in the proposed RUD package addresses the definitional framework of the CRPD in terms that are directly relevant to the thesis's use of the CRPD's social model of disability:

Senate Exec. Rept. 112-6, Fifth Understanding; Senate Exec. Rept. 113-12, Fifth Understanding

> *The terms 'disability,' 'persons with disabilities,' and 'undue burden' (terms that are not defined in the Convention), 'discrimination on the basis of disability,' and 'reasonable accommodation' are defined for the United States of America coextensively with the definitions of such terms pursuant to relevant United States law.*

This understanding, if adopted, would lock the interpretation of these key CRPD terms to current U.S. law — primarily the ADA and the ADAAA — rather than permitting the CRPD Committee's evolving interpretations to influence domestic law. For the thesis, this understanding has two implications that cut in opposite directions.

On the restrictive side: the understanding would prevent courts from using the CRPD Committee's social model definitions to expand the domestic definitions of disability beyond what the ADAAA already provides. The Committee's interpretation of "discrimination on the basis of disability" as encompassing impact discrimination (regardless of intent) would not be binding; only the domestic discriminatory intent/effect analysis would apply.

On the expansive side — and this is the more important implication for the thesis — the understanding locks the terms to "relevant United States law." The most relevant U.S. law on the definition of "reasonable accommodation" is the ADA as interpreted in light of the ADAAA's legislative history and the constitutional access-to-courts doctrine. When courts misinterpret "reasonable accommodation" to permit formulaic denials without individualized assessment, they are not applying "relevant United States law" correctly. The understanding, if it attaches domestic definitions, attaches those definitions as properly construed — and properly construed, as the Senate committee determined in both Exec. Repts., those definitions already meet the CRPD's standard. An incorrect interpretation of domestic definitions cannot shelter behind the definitional understanding.

§ 9.7 The Sixth Understanding: The CRPD Committee and Customary International Law

The Sixth Understanding addresses the authority of the CRPD Committee — the treaty body established under Article 34 to monitor implementation:

> **Senate Exec. Rept. 112-6, Sixth Understanding; Senate Exec. Rept. 113-12, Sixth Understanding; Secretary Kerry testimony**
>
> *The United States does not consider conclusions, recommendations, or general comments issued by the [Disabilities] Committee as constituting customary international law or to be legally binding on the United States in any manner. […] Secretary Kerry confirmed this when he testified that 'the Disabilities Committee has absolutely zero power to change a law, to order a change of law, to compel a change of law.'*

This understanding, if adopted, would formalize the U.S. position that the CRPD Committee's General Comments — which the thesis has used as authoritative interpretive guidance on Articles 12, 13, and 15 — do not constitute binding law and do not constitute customary international law.

The understanding's legal consequences for the thesis are significant but not fatal. The thesis has relied on General Comments as persuasive interpretive authority, not as binding law. Courts already use the interpretive pronouncements of international treaty bodies as persuasive — not binding — authority in statutory interpretation. The Sixth Understanding formalizes a position that many U.S. courts already apply in practice: General Comments are informative, not binding. The thesis's argument does not depend on the General Comments being binding; it depends on them providing the most authoritative available statement of what the CRPD's provisions mean in practice, which is precisely what they do regardless of their legal status.

The Sixth Understanding also contains an important qualification: "While the conclusions, recommendations, or general comments issued by the Disabilities Committee could in some instances reflect established customary international law, the Disabilities Committee has no authority to create customary international law." The qualifying clause — that Committee pronouncements "could in some instances reflect" customary international law — preserves the argument that specific CRPD Committee interpretations that track the broader international consensus (including the CAT Committee's General Comment No. 2 on Article 16 and the Istanbul Protocol's interpretation of CIDT) reflect binding customary international law, regardless of whether the CRPD Committee itself generated that law. The Sixth Understanding denies the Committee's law-making authority; it does not deny that Committee pronouncements may accurately describe existing customary law norms.

§ 9.8 The First and Second Reservations: Federalism and Private Conduct

The Federalism Reservation

The First Reservation addresses federalism: "because certain provisions of the Convention concern matters traditionally governed by state law rather than federal law, and because in very limited instances some state and local standards are less vigorous than the Convention would require, a reservation is required to preserve the existing balance between federal and state jurisdiction." For the thesis's analysis of state court disability-based CIDT, this reservation has limited practical effect because: (a) the thesis's argument against state courts is grounded in the ADA Title II (a federal statute with its own coverage of state courts), the Fourteenth Amendment (which is supreme over state law), and UNCAT Article 16 (a ratified federal treaty); (b) the federalism reservation preserves existing federal/state balance but does not eliminate the Fourteenth Amendment's application to state courts; and (c) the reservation was specifically described as addressing "very limited instances" where state and local standards are less vigorous — not as exempting state judicial systems from the entirety of the CRPD's access-to-justice framework.

The Private Conduct Reservation

The Second Reservation addresses private conduct: "the United States does not accept any obligation under the Convention to enact legislation or take any other measures with respect to private conduct except as mandated by the Constitution and laws of the United States." This reservation is entirely irrelevant to the thesis's analysis, which concerns public court systems, public officials (judges), and state actors acting under color of law. Courts are not private actors. Judges are not engaged in private conduct. The private conduct reservation has no application to the institutional disability-based CIDT that is the thesis's subject.

§ 9.9 The Bipartisan Senate Endorsement: What the Votes and Testimony Establish

The Senate record documents a remarkable degree of bipartisan support for the CRPD across multiple years of deliberation. Senator John McCain (R-AZ), the Republican Party's 2008 presidential nominee, testified at the July 12, 2012 hearing in support of ratification. Senator Tom Harkin (D-IA), the principal author of the ADA, was the leading Democratic champion. Senator Lugar (R-IN), ranking member of the SFRC and a former SFRC chair, voted yes in committee. Senator Barrasso (R-WY), who also offered amendments, voted yes in both 2012 and 2014. Former Attorney General Richard Thornburgh, a Republican, testified in favor. Former Secretary of State Colin Powell called the treaty "the most important global platform for the implementation of best practices in disability rights abroad." Former President George H.W. Bush — whose administration signed the ADA — submitted a letter of support.

The breadth of this support extends beyond individual senators and witnesses. The SFRC record documents letters of support from more than 800 organizations, including: the U.S. Chamber of Commerce; the American Bar Association; every major veterans' service organization (the American Legion, the VFW, Disabled American Veterans, Paralyzed Veterans of America, AMVETS); the National Multiple Sclerosis Society; major faith organizations across the denominational spectrum; and over fifty state disability protection and advocacy organizations representing every region of the country. The only organized opposition came from a small

coalition focused on parental rights and sovereignty concerns, concerns that the committee addressed directly through the RUD package.

For the thesis, this breadth of endorsement is legally significant in two ways. First, it establishes that the CRPD's content — including its Article 15 CIDT prohibition, its Article 13 access-to-justice mandate, and its Article 12 legal capacity framework — was reviewed and endorsed by the full range of American civil society institutions with relevant expertise. The U.S. Chamber of Commerce does not endorse treaties that would impose new and burdensome obligations. Veterans' service organizations do not endorse treaties that would undermine the legal protections their members depend on. The breadth of endorsement is evidence that the treaty's content, as the committee found, is consistent with and does not exceed existing U.S. law obligations.

Second, the testimony of specific witnesses provides interpretive guidance on specific CRPD provisions. Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights — the DOJ's most senior disability rights official — testified and submitted extensive written answers confirming the DOJ's interpretation that the CRPD's requirements, including its procedural accommodation mandates, are consistent with existing ADA and Rehabilitation Act requirements. John Wodatch, former Chief of the Disability Rights Section at DOJ, provided expert testimony to the same effect. These official DOJ interpretations are binding agency views on the meaning of the statutes that the DOJ enforces, carrying Chevron and Skidmore deference weight in courts applying those statutes.

Senator McCain, Testimony of July 12, 2012 (Senate Exec. Rept. 112-6, Annex 1)

I've worked in the Senate for many years on the issue of rights for people with disabilities... The Senate has the opportunity to demonstrate that America still leads the world in the protection of human rights... by ratifying the disability treaty we will have the ability to directly influence the disability rights policies of other nations and help shape standards that will benefit Americans with disabilities around the world.

Senator Harkin, Testimony of July 12, 2012 (Senate Exec. Rept. 112-6, Annex 1)

The Convention on the Rights of Persons with Disabilities was modeled after our own Americans with Disabilities Act. The United States was the first country to pass such comprehensive disability rights legislation... This Convention is our ADA gone global. By ratifying this treaty, we would affirm our belief that the ADA's principles of equality and non-discrimination are not just good American values — they are universal values that should be enjoyed by all persons with disabilities around the world.

Senator Harkin's characterization — "This Convention is our ADA gone global" — is the most succinct possible statement of the thesis's interpretive methodology. The CRPD takes the principles of U.S. disability law and expresses them as universal human rights norms. Interpreting the ADA through the CRPD is not importing foreign principles; it is reading American law through the international framework that American law inspired. Courts that reject this interpretive methodology on sovereignty or foreignness grounds are rejecting an interpretive approach that the author of the ADA himself endorsed in sworn congressional testimony.

§ 9.10 The Minority Views: Opposition Arguments and Their Inadvertent Contributions

The minority views in both Executive Reports — submitted by Senators Risch, Rubio, Inhofe, DeMint, and Lee in the 112th Congress, and Senators Corker, Risch, Rubio, and Johnson plus Senator Flake separately in the 113th — provide a detailed account of the principal arguments against ratification. Reading these minority views carefully reveals that the opposition's strongest arguments inadvertently reinforce the thesis in important ways.

The core opposition argument was that the CRPD's ratification would subject U.S. domestic law — particularly the legal system's organization and the parental rights framework — to oversight by an international committee whose recommendations could ultimately influence domestic law through judicial citation. The minority views stated: "The very purpose of a treaty is to advance a specific U.S. security or economic interest, and the United States should only join those treaties that make us a stronger or safer nation." And: "we firmly believe that the issues concerned in this Convention would be better addressed in a format that would not require the ratification of a legally binding international treaty that would carry the same authority as the Constitution."

The inadvertent contribution of this argument to the thesis is significant. The minority senators objected to ratification specifically because a ratified treaty carries "the same authority as the Constitution." This objection confirms the thesis's Supremacy Clause analysis: ratified treaties are supreme law, and the minority senators knew it. Their objection to ratification — precisely because the CRPD would carry constitutional authority — corroborates the thesis's claim about what ratification would mean legally. And since the U.S. has not ratified, the minority's very argument establishes the context within which the Article 18 VCLT obligation operates: the U.S. signed but chose not to ratify precisely because ratification would carry the legal force that the minority feared. But as Part VIII demonstrates, the choice not to ratify does not eliminate the Article 18 obligation; it merely avoids the Supremacy Clause's full-ratification force.

The minority also argued that "the United States enjoys the moral high ground because we lead the world in advancing the interests of the disabled." This argument, made to oppose ratification, is the strongest possible concession in favor of the thesis: if the U.S. already leads the world in disability rights, then its courts should be implementing that leadership — and when they fail to do so through formulaic accommodation denials and documented disability-causing institutional conduct, they are betraying not just treaty obligations but the national leadership that the treaty's opponents claimed to be defending.

§ 9.11 The Complete RUD Package: Prospective Consequences If Ratified

The following table provides the complete analysis of each element of the proposed RUD package — as it appeared in both Exec. Rept. 112-6 and the modified Exec. Rept. 113-12 — and its specific consequence for each of the thesis's principal arguments:

RUD Element	Content	Effect if Adopted	Effect on Thesis Arguments
Non-Self-Executing Declaration	CRPD provisions cannot be directly enforced by U.S. courts or give rise to individually enforceable rights	Eliminates direct CRPD enforcement as cause of action	Does NOT eliminate Charming Betsy interpretive obligation, Article 18

RUD Element	Content	Effect if Adopted	Effect on Thesis Arguments
			VCLT duty, constitutional avoidance canon, or jus cogens analysis
Reservation 1: Federalism	Federal/state balance preserved; CRPD not to alter existing distribution of authority	Limits CRPD obligations to federal law domain	No effect: thesis's argument against state courts is grounded in ADA Title II (federal), 14th Amendment (federal), and UNCAT Art. 16 (ratified federal treaty)
Reservation 2: Private Conduct	No obligation re: private conduct beyond existing U.S. law	Exempts private actors below ADA threshold	No effect: thesis concerns public courts and judges acting under color of law — not private actors
Reservation 3: Article 15 CIDT	U.S. obligations under Art. 15 subject to same reservations as CAT Art. 16 and ICCPR Art. 7 — i.e., limited to 5th/8th/14th Amendment standard	Domesticates Art. 15 CIDT prohibition to constitutional standard	Reduces but does not eliminate: jus cogens override survives; constitutional standard already violated (Part V); Part V establishes 5th/8th/14th Amendments already prohibit the conduct; UNCAT Art. 16 independently operative
Understanding 1: First Amendment	Convention does not restrict U.S. free speech/association rights	Preserves First Amendment in tension with Art. 8	No effect on thesis arguments
Understanding 2: Economic/Social/Cultural Rights	U.S. obligations limited to non-discrimination in rights already recognized under domestic law	Limits positive rights obligations	Limited effect: thesis's access-to-justice argument is a non-discrimination claim, not a positive rights claim; not affected by this understanding
Understanding 5: Definitions	'Disability,' 'reasonable accommodation,' 'undue burden,' 'discrimination on the basis of disability' defined coextensively with U.S. law	Freezes definitions to current domestic law; prevents CRPD Committee's social model from expanding definitions	Cuts both ways: prevents expansive CRPD Committee definitions from applying; but confirms that properly interpreted

RUD Element	Content	Effect if Adopted	Effect on Thesis Arguments
			domestic definitions already meet the CRPD standard, reinforcing the 'no new legislation' finding
Understanding 6: CRPD Committee	Disabilities Committee has no authority to compel actions; General Comments not customary law and not legally binding	Demotes General Comments from authoritative to persuasive	Reduces but does not eliminate: thesis uses General Comments as persuasive, not binding, authority; their persuasive value survives the understanding; the 'in some instances' clause preserves customary law argument for specific provisions
Understanding 7: Best Interests of Child	Art. 7(2) applied coextensively with U.S. law; no change to parental rights	Limits Art. 7 to domestic parental rights standard	No effect on thesis arguments

§ 9.12 The Paradox of Adequacy: 'No New Legislation' as Both Defense and Indictment

The most intellectually striking feature of the Senate record is the double-edged character of its central finding. The committees determined that no new legislation is necessary because existing law already meets or exceeds the CRPD's requirements. This finding was intended as a reassurance to skeptical senators: ratification would not require Congress to enact new laws, would not alter the balance of federal and state authority, and would not create new individual rights that could be enforced in U.S. courts. In this defensive function, the finding was designed to reduce resistance to ratification.

But the same finding, read through the lens of the thesis's analysis, performs an entirely different and more consequential function: it is an indictment of current judicial practice. If existing law already meets the CRPD's requirements, and if the CRPD requires procedural accommodations in judicial proceedings (Article 13), prohibition of court-caused CIDT (Article 15), and equal recognition before the law (Articles 5 and 12) — then courts that deny these things are not faithfully applying existing law. They are applying it incorrectly, in a manner that the Senate's own treaty deliberations establish falls below the standard that the law has already achieved.

The committee's reassurance to skeptics ("no new legislation is necessary") and the thesis's indictment of judicial practice are, ultimately, the same finding stated from different perspectives. The Senate said: existing law is adequate. The thesis says: courts are not implementing existing law adequately. Neither proposition contradicts the other; both are true simultaneously. The finding that no new legislation is necessary is the finding that the solution to the problem the thesis identifies is judicial interpretation, not legislative action. It is, in the most direct sense, a congressional directive to courts: the statutes you are applying already require what the CRPD demands. Apply them accordingly.

The Ultimate Implication of the Senate Record for Courts

The Senate Foreign Relations Committee, in official committee reports exercising the constitutional treaty ratification function, determined: (1) that the CRPD's requirements are fully consistent with existing U.S. law; (2) that the ADA and Rehabilitation Act, among other statutes, implement the CRPD's obligations; (3) that no new legislation is required because existing law already meets the CRPD standard. A court that interprets the ADA or Rehabilitation Act in a manner that falls below the CRPD standard is therefore interpreting those statutes incorrectly, in a manner that the Senate's own constitutional deliberations determine does not reflect the law's actual content. This is not an argument from foreign law. It is an argument from the Senate's own interpretation of existing American law — the most authoritative domestic source available for that interpretation.

§ 9.X The Institutional Adjustment Obligation: Three Triggers, Zero Discharges

The Senate record's "no new legislation" finding — the conclusion of the 1990 Senate Foreign Relations Committee report that the ADA and existing law already supply UNCAT compliance — is frequently invoked by courts as establishing that the judiciary need not independently examine its accommodation practices. The Institutional Adjustment Obligation analysis demonstrates why this conclusion is wrong in three independent respects, one for each treaty event that post-dates the 1990 Senate report.

UNCAT ratification in October 1994 created the first independent adjustment obligation. Upon ratification, Article VI made UNCAT the supreme law of the land. The judiciary — whose judges are bound by Article VI's "bound thereby" language — had an independent institutional obligation to examine the 1995 Judicial Conference accommodation policy and determine whether it was compatible with UNCAT's requirements for competent authorities under Articles 10–16. The Judicial Conference instead maintained its existing two-tier policy without examination. That failure is now thirty years old.

The ADAAA's enactment in January 2009 — effective January 1, 2009 — created the second independent adjustment obligation. Congress specifically enacted the ADAAA to overturn Supreme Court decisions that had narrowed the ADA's coverage, restoring the broad coverage Congress originally intended. The ADAAA's episodic impairment provision, its "regarded as" expansion, and its rejection of the "severely restricted" standard all bear directly on judicial accommodation determinations for the cognitive and neurological disabilities that the Judicial Conference's Two-Tier Architecture placed in the discretionary tier. The Judicial Conference had an obligation, upon ADAAA enactment, to examine whether its 1995 policy remained compatible with the newly clarified statutory standard. It did not conduct that examination. That failure is now seventeen years old.

The U.S. signature of the CRPD on July 30, 2009 created the third independent adjustment obligation. VCLT Article 18 requires that a signing state refrain from acts defeating the treaty's object and purpose. The CRPD's object and purpose include universal, non-categorical disability accommodation in all legal proceedings under Article 13 and prohibition of CIDT of disabled persons under Article 15. The Judicial Conference had an obligation, upon U.S. signature, to examine whether its accommodation policy was compatible with the CRPD's Article 13 and Article 15 requirements as framed without RUD qualification. It did not conduct that examination. That failure is now sixteen years old.

Three obligation-triggering events — UNCAT ratification (1994), ADAAA enactment (2008), CRPD signature (2009). Zero examinations. Zero adjustments. The Judicial Conference's accommodation policy is thirty years past the UNCAT obligation, seventeen years past the ADAAA obligation, and sixteen years past the CRPD obligation. The "no new legislation" finding of 1990 established that the law as it existed in 1990 was UNCAT-compatible. It did not, and could not, establish that the law as it exists in 2026 — after three independent obligation-triggering events each of which enlarged the accommodation requirement — remains UNCAT-compatible without examination. The Institutional Adjustment Obligation does not require Congress to act. It requires the judiciary, as a branch of the government bound by Article VI, to do what it should have done in 1994, in 2008, and in 2009: examine its own policies and bring them into conformity with the legal obligations each event created.

PART X

Court-Wide Systemic Discrimination as Judicial Policy: Theory, Identification, and the National Empirical Record

Parts VI through XI have developed the individual dimensions of court-caused disability harm: the institutional/individual distinction that structures liability; the jus cogens override of judicial immunity; the Supremacy Clause's command to judicial officers; the Lin–IAJ treaty-historical framework and IAJ–IRCT synthesis (Part VIII); the Senate's 'no new legislation' finding; and the Cleburne rational basis contradiction. This Part addresses a qualitatively different phenomenon: systemic discrimination as judicial policy. Systemic discrimination is not the aggregate of individual bad decisions. It is a category of institutional conduct in which the policy of an institution — whether articulated explicitly or generated implicitly through consistent patterns of decision-making that cannot be explained by individual variation — produces discriminatory outcomes across a class of cases and persons.

Systemic disability discrimination by a court system is the most serious form of the harm this thesis has identified because it is both the most damaging and the most difficult to challenge. Individual judicial decisions, however wrong, can be reversed on appeal. Systemic institutional policies cannot be reversed by winning an individual appeal; they require structural remediation. And systemic policies are immunized not merely by the doctrines of judicial and sovereign immunity that shield individual decisions, but by the structural self-interest of an institution that is simultaneously the alleged discriminator, the adjudicator of discrimination claims, and the appellate authority that reviews those adjudications.

The national empirical record — anchored by Reuters' "Teflon Robe" investigation (2020, 5,122 disciplinary proceedings), the Wall Street Journal financial conflicts investigation (2021, 685 cases, 131 judges), and the GAO's independence report (2023) — establishes that structural judicial accountability failure is systemic across American court systems. The Hazari v. County of Santa Clara case series provides one documented, court-record-verified instance of how this national pattern exhibits in a single litigant's experience. The case illuminates how systemic discrimination, how it may be distinguished from individual judicial misconduct, and how an evidentiary framework for proving systemic discrimination may be constructed from the specific anchors the record contains.

§ 10.1 Systemic Discrimination as Judicial Policy: The Theoretical Framework

12.1.1 What Makes Discrimination 'Systemic'

Systemic discrimination is distinguished from individual discrimination by three characteristics: (1) it operates at the level of institutional policy or practice rather than individual decision; (2) it produces consistent discriminatory outcomes across a class of persons, not merely a single instance; and (3) its persistence cannot be explained by individual error, bias, or misconduct, but only by institutional structure, policy, or the cumulative effect of consistent decision-making patterns.

In the employment discrimination context, systemic discrimination was recognized by the Supreme Court in Teamsters v. United States, 431 U.S. 324 (1977), as a category of discrimination that requires different proof and different remedies than individual disparate treatment claims. The Court held that a pattern-or-practice case rests on proof that "discrimination was the company's standard operating procedure — the regular rather than the unusual practice." The concept of "standard operating procedure" is the key: it describes an institutional policy that produces discriminatory outcomes systematically, not accidentally or episodically.

Translated to the judicial disability accommodation context: systemic discrimination is present when the denial of disability accommodations is the court system's standard operating procedure — when accommodation denial, rather than accommodation, is the default outcome across a class of disabled litigants, applied through a consistent methodology that reflects institutional policy rather than individualized judicial judgment. The proof of systemic discrimination does not require showing that every judge is biased; it requires showing that the institution's policies, practices, and decision-making patterns produce consistent discriminatory outcomes that cannot be explained except as the expression of institutional policy.

12.1.2 Judicial Policy as the Source of Systemic Discrimination

Judicial policy, for purposes of systemic discrimination analysis, encompasses three categories: (1) explicit institutional policies — rules, standing orders, administrative directives, and accommodation protocols (or the absence thereof) that govern how a court system responds to disability accommodation requests; (2) implicit institutional policies — consistent patterns of decision-making that, while not formally articulated, effectively establish a standard approach to disability accommodation requests that produces discriminatory outcomes; and (3) structural policies — features of the court system's design, resource allocation, and incentive structure that predictably produce discriminatory outcomes for disabled litigants regardless of the intent of individual judges.

Each category is judicially cognizable through a different evidentiary framework. Explicit policies are established by documentary evidence of the policy itself. Implicit policies are established by pattern evidence — showing that identical or near-identical outcomes are produced across a sufficient range of cases to exclude individual variation as an explanation. Structural policies are established by expert analysis of the court system's institutional design, demonstrating that its features predictably disadvantage disabled litigants irrespective of individual judicial conduct.

The Policy-Pattern-Structure Trinity

Systemic judicial disability discrimination exhibits through three mutually reinforcing channels. POLICY: absence or inadequacy of formal accommodation protocols, failure to train, absence of ADA Coordinators for litigation proceedings. PATTERN: consistent discriminatory outcomes across cases involving disabled litigants that cannot be explained by variation in individual merits; identical language deployed by multiple judges and across multiple court levels; systematic endorsement of lower-court discrimination on appeal without independent analysis. STRUCTURE: institutional design features (docket pressure, case closure metrics, efficiency mandates) that predictably produce accommodation denials; the self-policing conflict of interest that ensures systemic violations are not internally corrected.

§ 10.2 How Systemic Discrimination Exhibits in Court Systems

12.2.1 The Seven Markers of Systemic Judicial Disability Discrimination

Systemic judicial disability discrimination, as distinguished from individual judicial misconduct, exhibits through the following seven markers, each of which represents an evidentiary anchor for a systemic discrimination claim:

- **Marker 1 — Template Language.** Identical or template language deployed across multiple cases, multiple judges, and multiple court levels without individualized engagement with the specific medical evidence presented in each case. The use of identical formulations ('rapid, prolix filings,' 'demonstrated ability to participate,' 'failure to prosecute') across a time series of cases involving the same disabled litigant, and across different cases involving different disabled litigants, is the signature of a policy of denial rather than individualized adjudication.

- **Marker 2 — Structural Absence.** Absence of accommodation protocols. When a court system has no written disability accommodation protocols for litigation proceedings, no designated ADA Coordinator for litigation, and no training for judicial officers on the ADA's and ADAAA's requirements, the absence of these structural elements is itself evidence of an institutional policy of non-compliance. The absence of policy is policy.

- **Marker 3 — Appellate Rubber-Stamping.** Reflexive endorsement on appeal. When appellate courts consistently affirm lower court accommodation denials without independent medical evidence review, without application of the individualized assessment standard, and without engaging with the ADAAA's episodic impairment provision, the appellate pattern reflects adoption of the lower court's discriminatory approach as circuit-level policy.

- **Marker 4 — Cross-Level Convergence.** Convergent discrimination across court levels. When a disabled litigant faces accommodation denials in the trial court, denial of emergency relief in the appellate court, denial of mandamus or other extraordinary writs, and denial of judicial conduct complaints in the same institutional hierarchy, the convergence of denials across all available relief mechanisms is evidence that the discrimination is systemic to the institution rather than localized to individual decision-makers.

- **Marker 5 — Multi-Case Recurrence.** Recurrence across different proceedings. When a disabled litigant is subjected to identical discriminatory treatment across multiple separate cases before multiple different judges in the same court system, the recurrence establishes that the discriminatory approach is not peculiar to any individual judge but is characteristic of the institution.

- **Marker 6 — Self-Policing Failure.** The self-policing failure. When internal accountability mechanisms — judicial conduct complaints, supervisory judge oversight, chief judge review — consistently fail to identify or remedy the discriminatory pattern despite documented evidence of disability harm, the failure of self-policing is evidence that the institution does not treat accommodation denial as a problem requiring correction, which reflects institutional policy.

- **Marker 7 — Coordinated Defense.** Coordinated institutional defense. When the court system, defendants in underlying litigation, and the appellate hierarchy consistently

deploy the same doctrinal arguments ('docket management,' 'failure to prosecute,' 'demonstrated ability') to defend accommodation denials, without engaging with the medical evidence or the applicable disability law standards, the coordination reflects an institutionally shared approach to disability accommodation requests that constitutes policy.

§ 10.3 Distinguishing Systemic from Individual Discrimination: The Analytical Process

12.3.1 The Baseline: What Individual Discrimination Looks Like

Individual judicial disability discrimination has specific characteristics that distinguish it from the systemic variant. An individual judge's disability discrimination is characterized by: (a) idiosyncratic patterns specific to that judge's cases rather than consistent with court-wide outcomes; (b) variation in approach when the judge is replaced or when a different judge handles a similar case; (c) corrective action by appellate courts or supervisory mechanisms when the individual judge's discriminatory pattern is documented; and (d) absence of the same discriminatory approach in cases before other judges in the same court system.

The probative distinction between individual and systemic discrimination is therefore found in replication. Individual discrimination does not replicate: replace the judge, and the discriminatory pattern should disappear. Systemic discrimination replicates: different judges, different case numbers, different time periods — the same discriminatory outcomes. The replication is the fingerprint of policy.

12.3.2 The Three-Layer Analytical Process

The process for distinguishing systemic from individual discrimination in the judicial context proceeds through three analytical layers, each requiring specific evidence:

Layer 1 — Temporal replication within a single case. Does the same discriminatory approach recur across time within a single case, through multiple judges or magistrates, without variation that would indicate individualized adjudication? Within a single case, the appearance of the same denial methodology across five years and multiple judicial officers — grant accommodations for years, then deny, then deploy identical language to justify each successive denial — is evidence that the approach is institutional rather than individual. The key test: would a different judge in the same court, applying the institution's shared approach, have reached a different result? If not — if the outcome is predictable from the institution's approach rather than from the individual judge's view — the discrimination is systemic.

Layer 2 — Cross-case replication across different disabled litigants. Does the same discriminatory methodology appear in other cases involving disabled litigants before the same court system? Cross-case replication is the strongest evidence of systemic discrimination because it demonstrates that the outcome is not peculiar to the specific litigant, the specific disability, or the specific underlying claims — it is characteristic of how the institution treats disabled litigants as a class. Cross-case replication evidence requires: (a) identification of other cases in the court system involving disabled litigants who sought accommodation; (b) documentation of accommodation denial outcomes in those cases; and (c) comparison of the denial methodology deployed in those cases with the methodology deployed in the index case.

Layer 3 — Appellate and administrative endorsement without independent review. When appellate panels affirm lower court accommodation denials in a disability case without independent review of the medical evidence, without applying the ADAAA's individualized assessment standard, and by applying the same doctrinal formula ('failure to prosecute,' 'docket management,' 'demonstrated ability'), the appellate endorsement elevates the discrimination from a trial court policy to a circuit-level policy. The Ninth Circuit's treatment of appeal 25-3879 — and its treatment of the earlier appeals in the Hazari record (19-16291, 22-16046, 22-16174, 23-15221, 24-3353, 24-6312) — provides the appellate layer of the systemic discrimination analysis.

§ 10.4 Two Case Studies as Evidentiary Architecture for Systemic Discrimination Analysis

Two independently documented case series — Hazari v. County of Santa Clara (19-cv-04392-BLF) and the Minkowski record, both investigated under the Istanbul Protocol — provide the primary evidentiary architecture for the systemic discrimination analysis in this Part. Each is presented not as a personal grievance but as a documented instance of the seven markers in § 12.1, verifiable from the official court record. The Hazari case is analytically valuable not because it is exceptional — Reuters documented over 5,000 disciplinary proceedings nationally — but because its documentation is exceptionally granular. The case is not merely a single instance of accommodation denial; it is a six-year documented chronicle of the precise mechanisms by which a federal court system's institutional approach to disability accommodation produces the discriminatory outcomes that the three federal disability statutes, CRPD Article 13, and UNCAT Article 16 prohibit. The record is organized below by each of the seven systemic discrimination markers.

12.4.1 Marker 1 — Template Language: The 'Rapid, Prolix Filings' Formula

The most striking evidentiary anchor in the Hazari record for systemic discrimination analysis is the deployment of identical language — 'rapid, prolix filings' — across multiple orders by the same judge as the basis for the pivotal 11th accommodation denial (ECF-87 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.), March 10, 2025) and the subsequent denial of reconsideration (ECF-93, March 24, 2025).

ECF-87 (March 10, 2025 — 11th Accommodation Denial) and ECF-93 (March 24, 2025 — Denial of Reconsideration), quoted in ECF-131 and ECF-139

> *The Court found that 'the documented disabilities do not impact Plaintiff's abilities to prosecute this case' based on Mr. Hazari's 'rapid, prolix filings.' [ECF-87] [...] Mr. Hazari 'again demonstrated his capability of prosecuting this case through the rapid, prolix filings in recent days.' [ECF-93]*

The 'rapid, prolix filings' formula is the paradigmatic expression of the Cleburne irrational prejudice analyzed in Part XI. It rests on the stereotype that the ability to file documents during a period of adversarial stress demonstrates the capacity for sustained litigation compliance — a stereotype the ADAAA's episodic impairment provision expressly repudiated. But for systemic discrimination analysis, the template language has an additional significance: it appears without modification across two consecutive orders, and its underlying logic — that any litigation activity disproves a disability accommodation claim — replicates the identical formula deployed by California state courts across multiple proceedings in the same case series.

The IAJ Human Rights Analysis of this case documented that courts across the Sixth District Court of Appeal and the Santa Clara Superior Court had previously deployed identical or near-identical language — 'demonstrated an ability to actively initiate and participate in litigation' — across a time series from 2020 to 2025. The appearance of the same logical formula ('filing = capacity = no accommodation needed') in both state and federal court proceedings, across different judges and different court systems, is evidence that the formula reflects not individual judicial preference but a shared institutional approach to disability accommodation claims that has been adopted as the default analysis across multiple levels of the California/Ninth Circuit judicial hierarchy.

12.4.2 Marker 2 — Structural Absence: 'Not Required to Provide Any Accommodations'

The dismissal order (ECF-139) contains a statement that is, for systemic discrimination analysis, the most legally significant single sentence in the entire six-year record:

> **ECF-139, Order of Dismissal (December 1, 2025), p. 7**
>
> *'Despite not being required to provide any accommodations for Mr. Hazari at all, the Court has repeatedly extended the deadline for Mr. Hazari to file an amended complaint.'*

The phrase 'not required to provide any accommodations' is not a statement about this case. It is a statement about the court's legal framework — its institutional understanding of what disability law requires of it. It reflects the court's policy: that the court does not consider itself legally obligated to provide disability accommodations in its proceedings. This is not judicial error about the facts of a specific accommodation request. It is a policy statement about the scope of the legal duty. And as a policy statement, it is evidence of systemic discrimination of the most direct kind: the institution has articulated, in a judicial order that is part of the public record, its institutional understanding that it is not required to accommodate disabled litigants.

This policy statement is false. Tennessee v. Lane, 541 U.S. 509 (2004), established that courts are covered entities under ADA Title II and are required to provide disability accommodations in their judicial proceedings. Section 504 of the Rehabilitation Act applies to federal courts accepting federal financial assistance. The court's statement that it is 'not required to provide any accommodations' is a misstatement of the governing law that, made in an official judicial order, reflects and perpetuates an institutional policy of non-compliance with disability law. It is Marker 2 — structural absence — made explicit and documentable from the court's own words.

> **The 'Not Required' Statement as Systemic Discrimination Evidence**
>
> When a court states in an official order that it is 'not required to provide any accommodations' to a disabled litigant, it has produced the most direct possible evidence of systemic discrimination: a documented misstatement of the governing legal standard that reveals the institutional policy underlying the specific decision. This statement is admissible in any subsequent proceedings alleging systemic disability discrimination by this court system. It is the smoking gun of institutional non-compliance — not because the judge expressed malice, but because the judge articulated a legal framework that is inconsistent with the governing law and that reflects an institutional approach that denies disabled litigants the protections they are legally entitled to.

12.4.3 Marker 3 — Appellate Rubber-Stamping: The Multi-Appeal Pattern

The Notice of Appeal (ECF-151) identifies eight Ninth Circuit proceedings related to the Hazari case: 19-16291, 22-16046, 22-16174, 23-15221, 24-3353, 24-6312, 25-3879, and 25-50690. Each of these proceedings represents an appellate opportunity to identify and correct the disability discrimination occurring in the trial court. The pattern across this appellate series is itself evidence of systemic discrimination at the Ninth Circuit level.

For Ninth Circuit appeal No. 25-3879 specifically — the most recent in the series — the systemic discrimination framework generates the following analytical questions that the appellate record must answer in order to distinguish individual judicial error from institutional policy: (a) Did the Ninth Circuit panel apply the individualized assessment standard required by the ADA and ADAAA, or did it apply the same 'demonstrated ability to participate' formula the trial court used? (b) Did the panel engage with the medical evidence in the record, or did it affirm without medical evidence review? (c) Did the panel address the trial court's 'not required to provide any accommodations' statement, or did it pass over it in silence? (d) Did the panel apply the ADAAA's episodic impairment provision to assess whether the trial court's reliance on 'rapid, prolix filings' as evidence of capacity was legally permissible? If the answers to (a) through (d) are all negative — if the Ninth Circuit affirmed without any of these inquiries — the appellate panel has adopted the trial court's discriminatory approach as circuit policy.

The multi-appeal pattern — nine Ninth Circuit proceedings spanning more than eight years, each presenting the same disability accommodation issues, each failing to generate a precedential ruling that corrects the trial court's approach — is itself evidence of Marker 3. A court system that repeatedly encounters the same legal question — whether disability accommodations are required in judicial proceedings, and what legal standard governs — without producing a definitive, rights-protective ruling on that question has effectively adopted a policy of deliberate ambiguity that enables the discriminatory trial court practice to continue uncorrected.

12.4.4 Marker 4 — Cross-Level Convergence: State Courts, Federal Trial Court, Ninth Circuit

The IAJ Human Rights Analysis identified a pattern of discrimination across at least ten court systems: the Santa Clara Superior Court, the California Sixth District Court of Appeal, and multiple federal court proceedings. The same logical framework — 'demonstrated ability to participate' disproves disability accommodation need — appeared in all of them. The Notice of Appeal confirms the cross-court scope: the Hazari case series encompasses proceedings in four California Superior Court cases in Santa Clara County (16cv295730, 18cv335914, 18cv337311, 19cv350958); thirty-eight proceedings in the California Sixth District Court of Appeals; seventeen proceedings in the California Supreme Court; three federal district court cases in the Northern District of California (19-cv-01986-LHK, 19-cv-04392-BLF, and 19-cv-04392-BLF), one federal district court case in the District of Colorado (23-cv-03168-RMR-MEH); a bankruptcy court proceeding (23-50690) and Bankruptcy Appellate Panel proceeding (NC-24-1204); nine Ninth Circuit appeals; one Tenth Circuit appeal (24-1107); and twenty-one writ attempts before the Supreme Court of the United States, the majority obstructed or rendered impossible before receiving docket numbers, with four assigned petition numbers (23-7017, 24-5808, 24-6012, and 25-3879) and a twenty-second petition being filed.

This cross-level, cross-jurisdiction convergence on the same discriminatory outcome is the strongest possible evidence of Marker 4. Different courts, different judges, different procedural postures, different underlying case types — and yet the same disability accommodation claim receives the same discriminatory treatment in all of them. The probability that this convergence results from random individual variation rather than a shared institutional approach is vanishingly small. The convergence is the signature of systemic discrimination operating at the level of the California/Ninth Circuit judicial culture.

12.4.5 Marker 5 — Multi-Case Recurrence: Multiple Parallel Cases

The Notice of Appeal (ECF-151) also references CAND 19-cv-01986-LHK and 21-cv-04262-JSW — two separate federal district court cases before different judges (Judge Koh and Judge White) involving the same plaintiff. The appearance of the same disability accommodation issues across three separate federal district court proceedings before three different judges in the same court system (the Northern District of California) satisfies Marker 5. If the discriminatory approach were individual to Judge Freeman, it would not replicate in proceedings before Judge Koh or Judge White. That it does replicate is evidence that the approach reflects the court system's institutional policy rather than any individual judge's personal inclination.

12.4.6 Marker 6 — Self-Policing Failure: Chief Judge, Judicial Conduct, and ADA Coordinator

ECF-138 references a communication 'with Chief Judge Mary Marguía of the Ninth Circuit under preparation,' relating to a draft complaint naming the undersigned district judge and 'most of the active judges of the Court of Appeals for the Ninth Circuit' as defendants. The trial court's ECF-139 order noted this communication dismissively, characterizing the draft complaint as 'from what the Court can gather' an apparent separate filing.

The self-policing failure is documented in two specific ways. First, the court's December 17, 2019 order (ECF-12) referred Mr. Hazari to the Court's 'Disability Access and Accommodation Coordinator.' Yet there is no evidence in the six-year docket that this Coordinator ever played any role in the subsequent accommodation denials — the 11th accommodation denial (ECF-87) makes no reference to any Coordinator review or recommendation. The referral to the Coordinator at the outset, without any Coordinator involvement in the pivotal denial six years later, is evidence of an institutional accommodation process that is formal in structure but absent in substance. Second, the accumulated judicial conduct complaints and disqualification motions across the case series were all denied, consistently, without engaging with the disability discrimination framework that this thesis establishes applies to them. The self-policing mechanism — whether ADA Coordinator review, judicial conduct complaint, or disqualification — generated no correction.

12.4.7 Marker 7 — Coordinated Defense: The Five-Factor Formula Applied Without Medical Engagement

The dismissal order (ECF-139) applied the Ninth Circuit's five-factor Henderson test for failure-to-prosecute dismissal without any engagement with the medical evidence in the record. The five factors are: (1) public interest in expeditious resolution; (2) court's need to manage its docket; (3) risk of prejudice to defendants; (4) public policy favoring disposition on the merits; and (5) availability of less drastic alternatives. The court found four of five factors favoring dismissal. But the analysis of each factor made no reference to the medical evidence documenting that the plaintiff's non-compliance was caused by his documented disability — the very disability that the court had accommodated for ten successive years. The fifth factor — less drastic alternatives — was dismissed with the observation that 'the Court sees little point to imposing less severe sanctions because Mr. Hazari has shown no interest in complying.'

ECF-139, Order of Dismissal, Henderson Factor 5 Analysis

'The Court sees little point to imposing less severe sanctions because Mr. Hazari has shown no interest in complying with this Court's orders or in prosecuting this action. The Court's notice to the Parties on November 6, 2025, expressly warned Mr. Hazari about the potential for imminent dismissal.'

The fifth factor analysis is the most revealing for systemic discrimination purposes. The 'less drastic alternatives' factor is precisely where the disability accommodation obligation should appear in the Henderson framework: a disabled litigant's inability to comply is itself a reason to consider less drastic alternatives — specifically, the accommodation that would have enabled compliance. The court's analysis of this factor made no reference to the accommodation that would have addressed the compliance failure. It treated the plaintiff's non-compliance as an exercise of choice ('shown no interest in complying') rather than as the documented consequence of disability that the medical record established it was. This is Marker 7: the coordinated deployment of the standard doctrinal formula (Henderson five-factor test) without any engagement with the disability law overlay that transforms each factor's application.

§ 10.5 Designing the Evidentiary Process: From Clues to Proof

12.5.1 The Evidence Architecture for Systemic Discrimination

The Hazari/25-3879 record, read through the seven-marker systemic discrimination framework, provides the following evidentiary architecture for a systemic discrimination claim against the Northern District of California/Ninth Circuit judicial system:

Evidence Type	Specific Record Evidence	Legal Significance	Marker(s) Established
Template language across orders	ECF-87, ECF-93, ECF-139: 'rapid, prolix filings'; ECF-131: same methodology; State court: 'demonstrated ability to participate' across 2020-2025	Non-individualized, policy-level denial methodology	Marker 1 (Template Language); Marker 7 (Coordinated Defense)
'Not required to provide any accommodations'	ECF-139, p. 7: explicit policy statement	Direct documentary evidence of institutional legal framework; misstatement of governing law as policy	Marker 2 (Structural Absence); Marker 7 (Coordinated Defense)
ADA Coordinator referral without follow-through	ECF-12 (Dec 2019): referral to Coordinator; no Coordinator involvement in ECF-87 denial (March 2025)	Formal accommodation structure without substantive implementation	Marker 2 (Structural Absence); Marker 6 (Self-Policing Failure)
Eight Ninth Circuit appeals without correction	Ninth Circuit Nos. 19-16291, 22-16046, 22-16174, 23-15221, 24-3353, 24-6312, 25-3879, 25-50690	Six-year appellate failure to generate rights-protective ruling	Marker 3 (Appellate Rubber-Stamping); Marker 6 (Self-Policing Failure)
Three parallel federal cases, three judges	19-cv-04392-BLF (Freeman), 19-cv-01986-LHK (Koh), 21-cv-04262-JSW (White)	Same disability accommodation approach replicated across different judges in same court system	Marker 5 (Multi-Case Recurrence)
Cross-state/federal court convergence	10 courts across state trial, state appellate, federal trial, federal appellate levels (IAJ Human Rights Analysis)	Same logical framework replicated across jurisdictions and court levels	Marker 4 (Cross-Level Convergence)

Evidence Type	Specific Record Evidence	Legal Significance	Marker(s) Established
Henderson five-factor analysis without disability law overlay	ECF-139: failure-to-prosecute analysis with no medical evidence engagement, no accommodation analysis, 'choice' characterization of disability-caused non-compliance	Standard procedural doctrine deployed without disability law modification that law requires	Marker 7 (Coordinated Defense)
Reconsideration denial characterizing CIDT argument as 'without merit'	ECF-139: dismissing torture claim as failing to state a factual basis; ECF-148: renewing dismissal without CIDT analysis	Institutional refusal to engage with the legal framework that applies to its conduct	Marker 6 (Self-Policing Failure); Marker 7 (Coordinated Defense)

§ 10.6 The 'Not Required to Provide Any Accommodations' Statement: Legal Analysis

The dismissal order's statement that the court is 'not required to provide any accommodations' deserves extended analysis as a standalone systemic discrimination anchor because it is the rarest and most legally significant category of evidence: a court's own articulation of its legal framework, in a judicial order, that misrepresents the governing law in a manner that reveals the institutional policy underlying the specific discrimination.

Under Tennessee v. Lane, 541 U.S. 509 (2004), courts are covered entities under ADA Title II and are required to provide disability accommodations in their judicial proceedings. Under Section 504 of the Rehabilitation Act, federal courts receiving federal financial assistance are prohibited from disability discrimination in their programs and activities. Under the ADAAA's individualized assessment requirement, accommodation must be evaluated against current medical evidence, not a history of some participation. Under CRPD Article 13's procedural accommodation mandate — operative through the Article 18 VCLT obligation — effective access to justice requires procedural accommodations for disabled litigants.

The court's statement that it is 'not required to provide any accommodations' is inconsistent with each of these governing authorities. It is not a statement about the specific merits of Mr. Hazari's specific accommodation request; it is a statement about the legal framework that governs all accommodation requests in this court. As such, it establishes:

1. That the court operates under an institutional understanding of disability law that is inconsistent with governing statute, constitutional case law, and treaty obligation.
2. That the court's accommodation denials — including the 11th accommodation denial (ECF-87) and the subsequent dismissal — were made within a legal framework that is itself a violation of the governing law, not merely a misapplication of a correct framework.
3. That the court's statement is not merely judicial error in a single case but a policy statement that applies to all disabled litigants in this court system who may seek accommodations in their proceedings.
4. That any appellate court that affirms without correcting this legal framework misstatement is endorsing it as circuit-level policy.

For the systemic discrimination claim, the 'not required' statement is the institutional equivalent of the 'company policy' evidence that Teamsters v. United States identified as the core of pattern-or-practice systemic discrimination proof. It documents not that a bad decision was made in this case, but that the institutional framework within which all decisions are made is incompatible with the governing legal obligation.

12.6.1 The Freeman Bright Line: A Named National Standard for Court Disability Accommodation

The structural gap documented in this Part has a positive counterpoint in the documented practice of Judge Beth Labson Freeman (BLF) of the United States District Court for the Northern District of California. The orders issued by Judge Freeman in the primary case documented in this thesis — appearing in Appendix D of the Hazari SCOTUS writ and reproduced throughout the ECF record — constitute what the SCOTUS writ characterizes as the "Freeman bright line": the most advanced judicially enacted standard for disability accommodation of pro se litigants in active civil litigation currently existing in any American court. The Freeman bright line is defined by six operational characteristics that distinguish it from the deficient frameworks documented elsewhere in this Part. First, the court determines disability from authentic medical records provided by the litigant's own treating physicians, without adversarial input on the disability determination itself. Second, the court determines independently whether accommodation is warranted, without delegating that determination to opposing counsel or treating accommodation as a contested litigation issue. Third, the court grants stays of proceedings calibrated to medical need rather than administrative convenience — explicitly defying the "indefinite stay" prohibition that California courts have systematically invoked to deny accommodation to severely ill litigants. Fourth, the court does not require the disabled litigant to perform at deadlines she cannot meet in order to demonstrate the need for accommodation — the accommodation precedes the performance demand, not the reverse. Fifth, the court treats UCSF's medical documentation that litigation-induced distress is the established cause of MS relapses as controlling evidence of harm warranting protective judicial action. Sixth, the court does not make accommodation contingent on adversarial challenge, treating it as a due process obligation independent of the parties' litigation interests. The contrast between the Freeman bright line and the standards applied in the California court hierarchy — documented side by side in the Appendix E comparison table of the SCOTUS writ, showing concurrent accommodation of the same disabled litigant under the same medical facts producing radically contradictory outcomes in federal versus state court — constitutes the most powerful single exhibit for the thesis's structural gap argument. If the same litigant, with the same disability, presenting the same medical evidence, receives accommodation that enables civil rights litigation to proceed in the federal court while being denied accommodation and having her cases dismissed in the California courts, the difference cannot be attributed to the disability, the medical evidence, or the merits of the underlying claims. It is attributed to the courts themselves — specifically, to whether the court in which the litigant finds herself operates under a framework that compels accommodation or under a framework that permits denial.

§ 10.7 Systemic Discrimination and the Thesis's Legal Framework

12.7.1 How Systemic Discrimination Interacts with Judicial Immunity

Systemic discrimination as institutional policy is not subject to judicial immunity in the same way that individual judicial decisions are. As analyzed in Part VI, judicial immunity is a defense available to individual judges for their judicial acts; it does not protect the court system as an institution from liability under ADA Title II and the Rehabilitation Act for its policies, practices,

and procedures. A systemic discrimination claim against the Northern District of California as an institution — grounded in its policy of not considering itself required to provide accommodations — is not defeated by the judicial immunity of the individual judge who articulated that policy in a specific order.

Moreover, the 'not required to provide any accommodations' statement may not qualify as a judicial act for immunity purposes. As analyzed in § 6.4, the distinction between judicial and administrative acts is critical for immunity analysis. A statement by a judge about what the law requires of the court's accommodation function is, at least in part, an administrative statement about the court's compliance obligations — a statement that reflects and articulates the court's accommodation policy. Administrative policy statements are not protected by judicial immunity. The statement therefore may be directly probative in an ADA Title II institutional liability claim against the court system.

12.7.2 Systemic Discrimination and the CRPD Article 13 Framework

CRPD Article 13's requirement of effective access to justice through procedural accommodations applies to the court system's institutional policies, not merely to individual judicial decisions. A court system that operates under the institutional understanding that it is 'not required to provide any accommodations' is a court system whose institutional policy defeats the CRPD's object and purpose — triggering the Article 18 VCLT obligation that prohibits acts that defeat the object and purpose of a treaty the U.S. has signed and a majority of the Senate has voted to ratify.

12.7.3 Systemic Discrimination and the Istanbul Protocol Pattern Analysis

The Istanbul Protocol (2022) addresses institutional patterns of CIDT and provides that 'when CIDT occurs as a pattern of institutional conduct rather than as isolated individual acts, state responsibility is engaged at the institutional level.' The seven-marker pattern documented in the Hazari/25-3879 record satisfies the Istanbul Protocol's pattern criteria: it spans six years, multiple court levels, multiple proceedings, multiple judges, and multiple court systems. It is not an isolated individual act. It is an institutional pattern. State responsibility is engaged.

§ 10.8 The Reform Imperative: What Systemic Discrimination Requires

Individual judicial error requires correction on appeal. Systemic judicial discrimination requires structural remediation at the institutional level. The distinction is critical for the reform agenda that the thesis's analysis generates. The following structural reforms address the specific systemic discrimination markers identified in the Hazari/25-3879 record:

- **Reform 1:** Correct the legal framework misstatement. The 'not required to provide any accommodations' statement reflects a circuit-wide misunderstanding of the ADA's and Rehabilitation Act's application to courts as covered entities. The Ninth Circuit Judicial Council should issue a formal statement correcting this misunderstanding and confirming that federal courts in the circuit are covered entities required to provide disability accommodations in their judicial proceedings.
- **Reform 2:** Mandate individualized accommodation review in failure-to-prosecute analysis. The Henderson five-factor test, as applied across the Hazari case series, was consistently deployed without any disability law overlay. The Ninth Circuit should amend its precedent on the application of Henderson to require that, where a disabled litigant's accommodation history is in the record, the five-factor analysis must specifically address: (a) whether the failure to comply was causally attributable to the disability; (b) what

accommodation would have prevented the failure; and (c) whether less drastic alternatives include accommodation rather than merely procedural alternatives.

- **Reform 3:** Implement ADA Coordinator oversight for litigation proceedings. The referral of Mr. Hazari to the ADA Coordinator in December 2019, followed by six years of accommodation decisions with no documented Coordinator involvement, reflects a systemic failure. Every accommodation request filed in a federal court proceeding should be reviewed by the ADA Coordinator, whose recommendation should be part of the record on which the judicial officer acts.
- **Reform 4:** Establish independent review of multi-appeal disability discrimination patterns. When a disabled litigant has filed four or more appeals in the same circuit raising the same disability accommodation issues without a rights-protective ruling, the Judicial Council should trigger an independent review of whether the circuit's accumulated treatment of the issue reflects systemic non-compliance with the ADA's and Rehabilitation Act's requirements.
- **Reform 5:** Create a systemic disability discrimination reporting mechanism. The DOJ Civil Rights Division should establish a reporting mechanism specifically for systemic disability discrimination by court systems, accessible to disabled litigants whose cases document the seven markers identified in this Part, and capable of triggering pattern-or-practice investigation under ADA Title II.

The Systemic Discrimination Summary

The Hazari/25-3879 case series — one documented instance within the national accountability failure confirmed by Reuters, the Wall Street Journal, and the GAO — exhibits all seven markers of systemic judicial disability discrimination: template language deployed without individualized assessment; an explicit policy statement that the court is 'not required to provide any accommodations'; nine federal appellate proceedings and multiple state appellate proceedings without rights-protective correction; convergent discrimination across state and federal court levels; multi-case recurrence across three parallel federal proceedings before three different judges; comprehensive failure of self-policing mechanisms; and coordinated deployment of the failure-to-prosecute formula without disability law overlay. This is not a record of individual judicial error. It is a documented record of systemic institutional policy — policy that violates the ADA, the Rehabilitation Act, the ADAAA, CRPD Article 13, UNCAT Article 16, and the constitutional guarantees that the Senate was told existing law already delivers. The remedy is not another appeal. It is institutional reform, DOJ enforcement, and the application of the institutional liability framework that Tennessee v. Lane and United States v. Georgia established cannot be immunized away.

The 11-Case, 56-Judge, 6.5-Year Record: Documented in ECF-130

On November 4, 2025, in his combined recusal and venue transfer motion (ECF-130), Hazari formally documented the scope of the Ninth Circuit pattern in official court filings: 'The rule of law and the possibility of Justice in the Ninth Circuit have been proven to have failed by precise measurements and documentation in the public records within 11 separate cases involving 56 judges of the Ninth Circuit over a period of six-and-a-half years.' The 11 cases listed in ECF-130: 1. CAND 19-cv-01986-LHK 2. CAND 21-cv-04262-JSW 3. CAND 19-cv-04392-BLF 4. 9th Circuit appeal 19-16291 5. 9th Circuit appeal 22-16046 6. 9th Circuit appeal 22-16174 7. 9th Circuit appeal 23-15221 8. 9th Circuit appeal 24-3353 9. 9th Circuit appeal 24-6312 10. 9th Circuit appeal 25-3879 11. 9th Circuit appeal 25-5649 This is not an estimate or a litigant's rhetorical characterization. It is a precise count, with case numbers, filed on the official federal court docket and never disputed by any party or the court. 56 judges across 11 cases spanning 6.5 years, each case containing formal accommodation requests, each resulting in denial or non-adjudication. The systemic discrimination markers documented in this Part are not derived from a small sample. They are documented across a comprehensive institutional record.

This enumeration — placed on the official court record by Hazari in November 2025 — constitutes the self-documentation of the pattern that Part X's systemic discrimination analysis requires. When a litigant has formally documented the scope of the institutional conduct they challenge in the very court they are challenging, and that documentation goes uncontested and unaddressed by both defendants and the court, the pattern-or-practice record achieves a degree of official acknowledgment that is legally significant for the Teamsters analysis.

The Hazari and Minkowski records, standing alone, establish the pattern-or-practice claim at the individual-case level. The following national investigative record confirms that what those cases document is not an anomaly but a structural condition of American judicial administration.

The National Empirical Record: Reuters, WSJ, and GAO Confirm the Systemic Pattern

The Hazari and Minkowski case records are not isolated anomalies requiring the reader to make an inferential leap from two cases to systemic policy. The national investigative record independently confirms that the structural accountability failures documented in those cases — self-policing, complainant intimidation, retirement as evasion, and the absence of victim compensation — are the standard operating condition of American judicial accountability systems.

Reuters 'Teflon Robe' Investigation (2020) — Key Findings

In the first comprehensive accounting of judicial misconduct nationally, Reuters reviewed 1,509 publicly disciplined cases and 3,613 secret disciplinary proceedings from 2008–2019 — 5,122 total. Key findings directly relevant to the thesis: • NINE-IN-TEN RETURN RATE: 9 of every 10 sanctioned judges were allowed to return to the bench. This is the domestic accountability floor for all judicial misconduct — not just disability accommodation failures. • 5,206 DOCUMENTED VICTIMS: A conservative count of individuals directly harmed by judge misconduct, not including mass-impact cases (the Pennsylvania Kids for Cash scheme alone affected 3,500 juveniles). • COMPLAINANT INTIMIDATION: Commission rules "leave lawyers and litigants fearing retaliation" and "intimidate anyone with a legitimate complaint." Former Alabama Chief Justice Sue Bell Cobb described the system as "ridiculouis — it protects judges." • RETIREMENT AS EVASION: Judges routinely retire or resign with full benefits as part of negotiated deals that terminate investigations. No compensation mechanism exists for victims. • RESOURCE STARVATION: Nationally, judicial conduct commissions have on average one full-time employee for every 155 judges. Arkansas, which has one staffer per 53 judges, disciplines judges at more than twice the national rate — demonstrating that resource adequacy directly determines accountability outcomes.

Wall Street Journal Financial Conflicts Investigation (2021) — Key Findings

The WSJ documented 131 federal judges — 129 district court, 2 appellate — who failed to recuse themselves from 685 cases in which they held financial interests (2010–2018). About two-thirds of their rulings in those cases favored the judge's financial interests. After the Journal alerted them, 63 judges directed clerks to notify parties in 365 cases that reassignment might be warranted. Professor Charles Geyh of Indiana University Law School stated that the findings raise "a more systemic problem of judges chronically neglecting their duty to disqualify." Critically: "there are not ways of compelling judges to disqualify themselves." Even when attorneys discover a conflict, "the problem is recusal is often in the hands of a judge, and it's difficult from a litigator's perspective to decide when to raise the issue when a judge isn't approaching it in a serious way." The structural parallel to disability accommodation disqualification is precise: same statute (28 U.S.C. § 455), same self-policing architecture, same absence of external compulsion, same documented pattern of non-compliance.

GAO Report on Judicial Fraud, Waste, and Abuse Investigations (2023)

The GAO found that the federal judiciary's investigation policies "do not ensure independence." By policy, allegations about a court are referred to the chief judge of that court — the same component from which the allegations originated. "Nothing in documented policy prohibits individuals from being assigned to investigate employees with whom they have a close relationship." The GAO recommended creation of an independent office. The Administrative Office rejected this recommendation, stating that an independent office "would interfere with the internal governance and independence of the judicial branch." This is the federal institutional equivalent of the state "judges judging judges" pattern documented by Reuters. A disability accommodation complaint about a Ninth Circuit judge would, under this architecture, be referred to the Ninth Circuit Judicial Council — the same institution whose members dismissed the appeals in which the complaint arose.

The significance for the thesis's pattern-or-practice analysis is structural. The Hazari and Minkowski records do not ask the reader to infer systemic discrimination from two cases. They demonstrate — through granular, court-verified documentation — how the national pattern identified by Reuters, WSJ, and the GAO exhibits in practice. The national record establishes the systemic baseline; the case records make each mechanism visible at the level of specific orders, specific judges, and specific dates.

ECF-102 Statistical Framework and ECF-130's '11 Cases, 56 Judges, 6.5 Years'

ECF-102 (May 19, 2025 — TRO motion) introduces a precise statistical formulation for the pattern-or-practice claim that Part X documents: 'For a normal distribution, the outlier test for a one-tail test is at 98%, and for a two-tail test is at 99%. The normal distribution represents the range of behaviors of judges that invariably violate human rights.' This statistical framing appears in a footnote in a motion for TRO filed in the BLF district court, and placed on the official federal court record. It contextualizes the '11 cases, 56 judges, 6.5 years' figure from ECF-130 within a specific statistical methodology: Hazari's fact pattern is not simply a large number of adverse outcomes — it is an outcome distribution that exceeds the statistical threshold for a pattern being attributable to chance at the 99th percentile two-tailed confidence level.

ECF-130 (filed October 2025, the recusal/venue transfer motion) is the document that formally enumerates '11 separate cases involving 56 judges of the Ninth Circuit over a period of six-and-a-half years (beginning in 2019).' The eleven cases are: (1) District N. Cal. 19-cv-01986-LHK; (2) District N. Cal. 21-cv-04262-JSW; (3) District N. Cal. 19-cv-04392-BLF; (4) Ninth Circuit 19-16291; (5) Ninth Circuit 22-16046; (6) Ninth Circuit 22-16174; (7) Ninth Circuit 23-15221; (8) Ninth Circuit 24-3353; (9) Ninth Circuit 24-6312; (10) Ninth Circuit 25-3879; (11) Ninth Circuit 25-5649. This is the complete enumeration, on the official court record, of what the thesis treats as the systemic pattern.

PART XI

The Rational Basis Contradiction: How Congress's Constitutional Promise Is Broken by the Courts That Are Supposed to Keep It

The Congressional Research Service report on the CRPD ratification debate, CRS Report R42749, contains the following passage, based directly on the President's transmittal package to the Senate:

CRS Report R42749, The United Nations Convention on the Rights of Persons with Disabilities: Issues in the U.S. Ratification Debate (2015 ed.); Presidential Transmittal Package, Treaty Doc. 112-7

> *Courts therefore have construed laws that discriminate against people with disabilities as unconstitutional when there is no rational basis or legitimate purpose for those laws. In City of Cleburne v. Cleburne Living Center, Inc., for example, the U.S. Supreme Court determined that a city ordinance requiring a special use permit for the operation of a group home for the mentally disabled was unconstitutional. The Court interpreted the Equal Protection Clause as a 'direction that all persons similarly situated should be treated alike,' ultimately concluding that 'requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded.' In sum, as the President observed in his transmittal package to the Senate, the Fifth and Fourteenth Amendments of the Constitution ensure that all individuals are equal before the law.*

This passage is the executive and legislative branches' joint affirmation of a proposition: the Constitution, through the Fifth and Fourteenth Amendments, already prohibits irrational disability discrimination by government actors. The Senate was being told, in the official package transmitting the CRPD for ratification consideration, that existing constitutional law — exemplified by Cleburne — provides the equivalent protection that the CRPD demands. The implication was unambiguous: we do not need the CRPD to protect disabled Americans from government discrimination, because our Constitution already does so.

This Part confronts the central and devastating contradiction at the heart of that representation. The same courts that were cited as the vindicators of the constitutional promise — the same equal protection framework invoked to assure the Senate that no new legislation was needed — routinely employ rational basis analysis not to protect disabled litigants from irrational discrimination, but to justify denying them disability accommodations. Courts invoke "legitimate government interest" in docket management to shield the very conduct that Cleburne's anti-irrational-prejudice standard was designed to condemn. In doing so, they are not applying the constitutional promise that Congress and the President cited. They are betraying it.

The Central Contradiction

Congress told the Senate: 'Courts have construed laws that discriminate against people with disabilities as unconstitutional when there is no rational basis or legitimate purpose.' The same courts then use rational basis review — invoking 'legitimate purposes' like docket efficiency — to justify denying

disability accommodations that cause documented physical or psychological harm. The anti-discrimination weapon Congress cited as proof that existing law is adequate is the same doctrinal tool courts weaponize against disabled litigants. The promise and the practice are in irreconcilable conflict.

§ 11.1 The Cleburne Standard as Congress Understood It

Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985), established a demanding application of rational basis review in the disability context that is routinely mischaracterized as deferential. The Court's holding contains three analytically distinct propositions that the CRS report captured only partially, and whose full significance for the accommodation analysis requires development.

First, the Court established that the equal protection clause operates as a "direction that all persons similarly situated should be treated alike." The word "direction" is not aspirational — it is mandatory. The clause directs courts to ensure equal treatment. When a court fails to provide equal treatment to a disabled litigant — by applying identical procedural standards that produce systematically unequal access — the equal protection clause's direction has not been followed. The clause directs the court. The court is the violator.

Second, the Court held that disability classifications cannot rest on "irrational prejudice." The word "prejudice" encompasses not only hostility but also the assumption, without individualized assessment, that a person with a disability fits a stereotype of reduced capability. When a court denies a disability accommodation on the ground that the litigant has "demonstrated an ability to participate" based on a history of some filings — without assessing the specific current medical evidence, without accounting for the relapsing-remitting character of the condition, and without individualized analysis — the court is applying exactly the kind of assumption-based reasoning that Cleburne characterized as irrational prejudice. The form of prejudice is different from the zoning ordinance's hostility to group home residents, but the constitutional defect is identical: a governmental classification resting on stereotype rather than individual assessment.

Third, and most critically, the Court concluded that the challenged ordinance failed rational basis review because it served no legitimate purpose beyond the irrational prejudice it reflected. The Court's analysis was not merely that prejudice is a bad reason for a law; it was that prejudice, being irrational, cannot constitute a legitimate purpose for governmental action. This proposition is the foundation of the contradiction this Part examines: a court's denial of a disability accommodation, when that denial rests on assumptions about disability capacity rather than individualized medical assessment, does not merely fail the Cleburne anti-prejudice standard. It fails rational basis review entirely, because irrational prejudice — however dressed up in the language of docket management — cannot constitute a legitimate purpose.

City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) — Key Holdings

'The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike.'... '[W]e conclude that the ordinance... requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, and thus conflicts with the requirements of the Equal Protection Clause.'... '[M]ere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently.'

§ 11.2 How Courts Invert the Cleburne Standard in Accommodation Analysis

The constitutional promise that Congress invoked — that Cleburne protects disabled persons from irrational government discrimination — is systematically inverted in the disability accommodation context through three specific mechanisms. Each mechanism uses the rational basis framework not as a shield for disabled litigants, as Congress represented it to be, but as a weapon against them.

Mechanism 1: Clothing Stereotype in the Language of Legitimate Purpose

When a court denies a disability accommodation on the ground that the litigant has "demonstrated an ability to actively participate in litigation," it is classifying the litigant as a person who does not need accommodation. That classification is based not on current medical evidence but on a history of some participation — precisely the kind of stereotype-based reasoning Cleburne condemned. The stereotype is: people who file documents can litigate. The reality, documented by the ADAAA's episodic impairment provision and by the medical evidence in the records of the cases this thesis has examined, is that episodic participation during periods of relative remission does not establish sustained litigation capacity during periods of relapse.

The court then dresses this stereotype in the language of legitimate purpose: docket management, the interest in bringing litigation to conclusion, the interest in preventing indefinite stays. These are legitimate interests in the abstract. But Cleburne holds that a legitimate interest in the abstract cannot save a classification that, in its specific application, rests on irrational prejudice. The interest in docket efficiency is legitimate; the specific application of that interest to deny accommodation to a litigant whose medical records document that their inability to comply is caused by their disability is not — because the specific denial rests on the assumption that episodic participation equals full capacity, an assumption that is factually false and legally condemned by the ADAAA.

Mechanism 2: Treating Identical Treatment as Equal Treatment

Cleburne's direction that "all persons similarly situated should be treated alike" has a corollary that courts in the accommodation context systematically ignore: persons who are not similarly situated should not be treated identically. A disabled litigant and a non-disabled litigant are not similarly situated with respect to standard litigation deadlines. The non-disabled litigant can meet those deadlines without physical or psychological harm; the disabled litigant cannot, because their disability — documented and medically established — makes compliance causally harmful. Treating these two litigants identically — imposing the same deadlines without accommodation — is not equal treatment within the meaning of the equal protection clause. It is the application of an identical standard to non-identically situated persons, producing a systematically unequal outcome.

The rational basis inverted: when a court applies identical procedures to a disabled litigant and rationalizes the refusal to accommodate as "treating everyone equally," it has misapplied the equal protection clause's direction. The clause does not require identical treatment regardless of circumstance. It requires equal treatment — which, for a disabled litigant whose disability prevents equal access to identical procedures, requires accommodation. Congress's transmittal package acknowledged this when it cited the CRPD's non-discrimination framework, which, as Exec. Rept. 112-6 notes, treats accommodation as the mechanism for achieving equality, not as an exception to it.

Mechanism 3: Applying the Standard to Those Who Should Be Governed By It

The most structurally perverse feature of the rational basis inversion in the accommodation context is that courts are simultaneously the actors who should be governed by the equal protection clause's direction and the actors who are applying rational basis review. When a court evaluates whether its own denial of accommodation violates the equal protection clause, it is judging its own conduct under a standard it applies to itself. The conflict of interest is structural: a court that applies rational basis review deferentially to its own accommodation decisions is a court that is denying itself the scrutiny that Cleburne's anti-irrational-prejudice principle demands.

The solution to this structural conflict is the principle established in Tennessee v. Lane: courts are covered entities under the ADA and the Rehabilitation Act. They are not applying those statutes to others; they are subject to them. When a court applies a disability classification — treating a disabled litigant differently from a non-disabled litigant by denying accommodation — it must satisfy the same Cleburne rational basis requirement that it applies to classifications by other government actors. A court cannot claim that its accommodation denials are entitled to greater deference than the city's zoning decision in Cleburne merely because the court made the decision rather than the city council.

§ 11.3 The Irrational Prejudice Taxonomy: Specific Accommodation Denial Patterns

The formulaic denial patterns identified in § 7.4 of the Implementation Guide, and documented in the case materials underlying this thesis, can now be analyzed against the Cleburne irrational prejudice standard directly. Each denial pattern maps to a specific category of irrational prejudice that the equal protection clause and Cleburne prohibit:

Denial Pattern	Purported Rational Basis	The Irrational Prejudice It Actually Reflects
'Demonstrated ability to participate' based on history of some filings	Litigant can participate because they have filed documents in the past	Stereotype that episodic capacity equals sustained capacity; factually false; ADAAA expressly rejected this reasoning; the assumption itself constitutes the irrational prejudice Cleburne condemned
Identical scheduling applied without accommodation	Docket management; equal treatment of all litigants	Non-similarly-situated persons treated identically; conflates formal equality with substantive equality that Cleburne's equal protection direction requires; rational basis is a pretext for avoiding individualized assessment
Formulaic 'fundamental alteration' denial without analysis	Providing accommodation would fundamentally alter the proceeding	Conclusion stated without analysis; cannot constitute rational basis because it provides no factual connection between the accommodation's specific effect and the alleged alteration; pretextual rationalization for prejudice-based denial

Denial Pattern	Purported Rational Basis	The Irrational Prejudice It Actually Reflects
Case dismissal for disability-caused procedural default	Interest in efficient case management; preventing indefinite delay	Does not actually achieve efficiency when the cause of delay is the disability the accommodation would have addressed; the rational connection between the interest and the specific denial is absent; this is the Cleburne 'legitimate purpose' that actually serves no legitimate purpose
'Disingenuous' characterization of disability claims	Preventing abuse of accommodation process	No factual basis for the characterization when contemporaneous medical evidence documents the disability; characterizing medical evidence as disingenuous without rebuttal is the paradigmatic form of the irrational prejudice — negative attitude toward disabled persons — that Cleburne condemned
Repeated identical denial language across multiple requests	Consistency in application of accommodation standards	Demonstrates absence of individualized assessment; repeated application of identical conclusion to different medical evidence is the opposite of rational basis — it is conclusory prejudgment dressed as consistent principle

Each of these denial patterns fails the Cleburne rational basis standard for the same structural reason: the purported legitimate purpose (docket efficiency, equal treatment, prevention of abuse) provides no rational connection to the specific discriminatory classification (denial of accommodation to a person whose disability causes their inability to comply). The connection that rational basis requires — not between the abstract interest and the policy in general, but between the specific interest and the specific application — is absent in each case, because each pattern rests on assumptions about disability capacity that are factually false, medically unsupported, and legislatively repudiated by the ADAAA.

§ 11.4 The Rational Basis Standard and CIDT: The Constitutional Convergence

The most consequential implication of the rational basis analysis for this thesis is the convergence it produces with the CIDT analysis in Parts VII and VIII. The convergence is this: when a court's denial of a disability accommodation fails rational basis review under Cleburne — because it rests on irrational prejudice rather than a legitimate purpose with a rational connection to the specific denial — and when that denial causes documented physical or psychological harm to the disabled litigant (exacerbation of MS, immune system deterioration, neurological progression), the court has committed an act that is simultaneously: (1) unconstitutional under the equal protection clause; (2) a violation of the ADA's and Rehabilitation Act's anti-discrimination mandates; (3) a violation of the court's obligations under UNCAT Article 16 and CRPD Article 15; and (4)

potentially CIDT — cruel, inhuman or degrading treatment — under the international absolute prohibition.

This four-way convergence is not redundant. Each channel independently establishes a violation; their conjunction establishes a violation of the most serious kind. The equal protection violation provides the constitutional basis; the statutory violations provide the remedial vehicles (ADA Title II, Rehabilitation Act); the treaty violations provide the international law basis for jus cogens override of judicial immunity; and the CIDT characterization establishes the absolute nature of the prohibition from which no derogation is possible. All four channels are triggered by the same underlying conduct: a court applying irrational-prejudice-based discrimination to deny accommodation to a disabled litigant, with foreseeable and documented physical or psychological harm as the result.

The Cleburne standard is therefore not merely a doctrinal footnote in the CRPD ratification literature. It is the constitutional key that unlocks the entire multilateral framework. Congress told the Senate that Cleburne proves existing constitutional law is adequate to protect disabled persons. This thesis demonstrates that the same Cleburne standard, faithfully applied, prohibits exactly the judicial conduct that Parts VI, VII, and VIII identify as constitutionally impermissible, internationally prohibited CIDT. The promise that Congress made to the Senate and the conduct that courts engage in are not reconcilable on any principled basis. One or the other must yield: either Congress's representation to the Senate is accurate, in which case the courts' conduct is unconstitutional; or the courts' conduct is defensible, in which case Congress's representation was false.

The Logical Structure of the Contradiction

Congress: 'The Constitution prohibits disability discrimination resting on irrational prejudice (Cleburne).' + 'Therefore, existing constitutional law already meets the CRPD standard.' Courts: [Deny accommodation based on irrational prejudice about disability capacity, causing documented physical or psychological harm.] Conclusion A (if Congress is right): The courts' conduct is constitutionally impermissible irrational prejudice under Cleburne. Conclusion B (if courts are right): Congress misrepresented to the Senate what the Constitution guarantees. There is no third option. Either Congress was right and the courts are wrong, or Congress was wrong and the Senate was misled about the adequacy of existing constitutional protections. In either case, the conduct cannot stand. Congress's representation creates the constitutional standard. The courts' conduct violates it.

§ 11.5 The Fifth and Fourteenth Amendments as the Senate's Guarantee

The transmittal package's statement that "the Fifth and Fourteenth Amendments of the Constitution ensure that all individuals are equal before the law" is not merely a political claim about constitutional values. It is a specific legal representation made in the context of a constitutional process — the treaty transmittal to the Senate — about the legal sufficiency of existing domestic protections. The President was telling the Senate: we do not need the CRPD to be self-executing or to generate new domestic rights, because the Fifth and Fourteenth Amendments already guarantee equality for all individuals, including disabled ones. The Senate, relying on this representation, evaluated the CRPD as a non-domestically-intrusive instrument that would require no new legislation.

The legal significance of this representation for the accountability of judicial actors is profound. If the Fifth and Fourteenth Amendments ensure that all individuals are equal before the law — as the President represented to the Senate — then a federal court that denies a disabled litigant equal

access to its proceedings is violating the Fifth Amendment directly. And a state court that does the same thing is violating the Fourteenth Amendment directly. The executive branch has represented, at the highest level of constitutional formality — a presidential message to the Senate exercising the treaty ratification power — that this constitutional guarantee exists. Courts that breach it are not exercising legitimate constitutional authority. They are violating the Constitution that they are sworn to uphold and that the President specifically cited as the foundation of existing disability protections.

The Fifth Amendment's due process clause applies to federal courts directly. A federal court that denies a disabled litigant equal access to its proceedings on the basis of irrational prejudice about disability capacity — the Cleburne standard applied to the federal due process context through Bolling v. Sharpe, 347 U.S. 497 (1954) — is violating the Fifth Amendment. The Fourteenth Amendment's equal protection clause applies to state courts through the Tennessee v. Lane framework. In both cases, the constitutional violation is established by the very standard that Congress and the President cited as the proof that existing law is adequate. The adequacy representation and the constitutional prohibition are the same standard. Courts that violate the prohibition are proving the representation false.

§ 11.6 Rational Basis as a Shield for Judicial CIDT: The Structural Perversion

There is a deeper structural problem with the use of rational basis review to shield judicial accommodation denials that goes beyond the misapplication of the Cleburne standard. Rational basis review was developed as a tool for courts to evaluate the constitutionality of legislative and executive action — to assess whether the political branches have acted within constitutional limits when they classify persons differently. It was not designed as a tool for courts to evaluate the constitutionality of their own conduct in litigation management. When courts apply rational basis deferentially to their own accommodation decisions, they are not performing the role that rational basis review was designed for. They are using a deferential review standard designed for evaluating others' action to insulate their own action from meaningful constitutional scrutiny.

The structural perversion is complete when the accommodation denial causes documented physical or psychological harm. At that point, the court is not merely applying rational basis deferentially to a classification decision; it is using the framework of rational basis review to justify conduct that, under the CIDT analysis in Part VII, may constitute cruel, inhuman or degrading treatment. The constitutional framework that Congress cited as the adequacy guarantee — rational basis review preventing irrational prejudice — has been transformed into the legal mechanism that shields the CIDT from accountability. The tool of protection has become the instrument of harm.

This transformation is not incidental. It is systematic. It reflects the institutional structure of the judicial accommodation context: the entity that is obligated to provide accommodation (the court) is simultaneously the entity that adjudicates disputes about whether accommodation was required (also the court). The structural conflict of interest — analyzed in § 6.8's discussion of independent oversight mechanisms — creates the conditions under which rational basis deference is not a constitutional standard faithfully applied but a doctrinal resource selectively deployed to shield institutional self-interest.

The Constitutional Indictment

Congress told the Senate that courts protect disabled persons from irrational prejudice using the Cleburne rational basis standard. In the accommodation context, courts deploy that same standard to

shield their own irrational-prejudice-based denials from constitutional scrutiny. They clothe stereotype-based assumptions in the language of docket management, apply identical treatment to non-identically situated litigants while calling it equal treatment, and invoke the legitimate interest in case efficiency to justify denials that rest on no rational connection between that interest and the specific disabled litigant's circumstances. The conduct Congress cited Cleburne as prohibiting is the conduct that courts use Cleburne to justify. This is not a gap in the law. It is a betrayal of the constitutional promise.

§ 11.7 The Faithful Application of Cleburne in the Accommodation Context: What It Requires

The faithful application of the Cleburne standard to judicial disability accommodation decisions — the application that Congress and the President represented to the Senate was already occurring — requires the following specific analytical steps, each of which the documented patterns of accommodation denial systematically omit:

Step 1 — Identify the classification. When a court treats a disabled litigant differently from a non-disabled litigant by applying identical procedures to both without accommodation, it is making a disability-based classification. It is classifying the disabled litigant as 'not different enough to require different treatment,' based on some assumption about their capacity. That classification must be identified and examined.

Step 2 — Assess whether the classification rests on individual assessment or stereotype. Under Cleburne, a classification that rests on 'mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable' is irrational prejudice, not a legitimate purpose. Applied to accommodation denials: a denial based on a history of some litigation participation, without individualized medical assessment of current capacity and current prognosis, rests on the stereotype that 'people who have participated can participate' — an assumption that the ADAAA expressly repudiated. The denial fails Step 2 because it rests on stereotype, not individual assessment.

Step 3 — Identify the legitimate purpose with specificity. Docket management is a legitimate interest in the abstract, just as the city's interest in zoning administration was legitimate in Cleburne. But Cleburne required more than an abstract legitimate interest: it required a rational connection between that interest and the specific classification in its specific application. The legitimate purpose of docket management is not rationally served by dismissing a case for disability-caused procedural default when: (a) the cause of the default is the disability the court refused to accommodate; (b) accommodation would have prevented the default; and (c) the court had medical evidence establishing both the causal relationship and the foreseeable consequence of denial.

Step 4 — Assess the rational connection with specificity. The rational connection between a legitimate purpose and a specific classification must be actual, not merely conceivable, where the classification rests on factors that the government's own record shows are irrational. The court's own record — its accommodation history, the medical evidence before it, its prior grants of disability accommodations — provides the factual foundation for assessing whether the specific denial rationally serves the docket management interest. When that record shows that the

specific denial will cause physical or psychological harm, will prevent merits adjudication, and rests on a stereotyped assumption about disability capacity, the rational connection fails.

Step 5 — Apply the physical or psychological harm as the definitive indicator of irrationality. Cleburne held that a classification resting on irrational prejudice cannot be legitimate. The documented physical or psychological harm caused by accommodation denial — disease exacerbation, immune system collapse, neurological deterioration — is the most powerful available evidence that the denial does not serve a legitimate purpose. A legitimate purpose does not require the infliction of physical or psychological harm to achieve its aim. A court whose accommodation denial causes physical or psychological harm to a disabled litigant has, by that consequence, demonstrated that its purpose is not merely efficient case management; if it were, it would manage the case in a way that does not cause preventable physical or psychological harm to the person whose case it is managing. The physical or psychological harm is the fingerprint of the irrational prejudice.

§ 11.7.5 The Miller Argument: Congress Has Legislatively Declared the Disabled a Suspect Class, and Courts Must Apply Strict Scrutiny

The rational basis framework documented throughout this Part operates on the premise that Cleburne v. Cleburne Living Center (1985) settled the question: disability classifications are subject to rational basis review, not heightened scrutiny. That premise is challenged by a body of scholarship that centers on the ADA itself as a legislative act that overrode Cleburne's constitutional analysis. The seminal statement of this argument is James B. Miller, The Disabled, the ADA, and Strict Scrutiny, 6 St. Thomas L. Rev. 393 (1993-1994), and its implications for every accommodation denial documented in this thesis are direct and dispositive.

The Miller Argument in Summary

Miller argues that the enactment of the ADA in 1990 constitutionally overturned Cleburne's rational basis holding through a two-step mechanism. First, Congress embedded in the ADA's findings section language that constitutes a direct legislative declaration that persons with disabilities are a suspect class — the precise language that triggers strict scrutiny under the Court's own precedents. Second, the Court has historically accorded Congress substantial deference in its fact-finding capacity on Fourteenth Amendment questions, particularly pursuant to its Section 5 enforcement powers; where Congress has made explicit factual findings about a group's characteristics that satisfy the indicia of suspect classification, courts must apply strict scrutiny because Congress's determination controls the constitutional analysis.

Step One: The Suspect Class Declaration in § 12101(a)(7)

The indicia for suspect class status that the Court has developed from United States v. Carolene Products Co. (1938) through San Antonio Independent School District v. Rodriguez (1973) are: (1) history of purposeful discrimination; (2) immutability of the group characteristic; (3) political powerlessness; and (4) status as a discrete and insular minority. These four factors, when present, require the heightened judicial protection that strict scrutiny provides — government action must be narrowly tailored to a compelling interest to survive.

Section 12101(a)(7) of the original ADA (1990) reads:

> *individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.*

Miller observes that every element of the Court's own suspect class test appears in this single statutory provision. 'Discrete and insular minority': the Carolene Products phrase itself. 'History of purposeful unequal treatment': the history-of-discrimination factor from Rodriguez. 'Relegated to a position of political powerlessness': the political powerlessness factor from Rodriguez. 'Characteristics that are beyond the control of such individuals': the immutability factor. Congress did not use casual or approximate language. It used the precise constitutional vocabulary that the Court had developed over half a century to identify when heightened judicial protection is constitutionally required. This was not accidental: the Senate record shows that the drafters were aware of Cleburne and deliberately framed the findings in the language of suspect classification.

§ 12101(a)(7) Mapped Against the Suspect Class Indicia

CAROLENE PRODUCTS FOOTNOTE 4 (1938): Courts should apply searching scrutiny to 'prejudice against discrete and insular minorities' that 'tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities.' → § 12101(a)(7): 'a discrete and insular minority' + 'characteristics that are beyond the control of such individuals' + 'relegated to a position of political powerlessness' + 'stereotypic assumptions not truly indicative of individual ability.' RODRIGUEZ INDICIA (1973): '[T]he class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.' → § 12101(a)(7) directly mirrors this formulation: 'subjected to a history of purposeful unequal treatment' + 'relegated to a position of political powerlessness.' CLEBURNE (1985): Court declined suspect class status but acknowledged 'irrational prejudice,' 'irrational fears,' and 'stereotyping,' and Marshall's dissent documented all the suspect class factors. → § 12101(a)(7) uses 'stereotypic assumptions' as the mechanism — directly addressing the Cleburne majority's own language. CONCLUSION: Section 12101(a)(7) is a legislative declaration, using the Court's own constitutional vocabulary, that persons with disabilities are a suspect class entitled to strict scrutiny review.

Step Two: Congressional Fact-Finding Deference and Katzenbach v. Morgan

Miller's second step relies on the Court's doctrine of substantial deference to Congress in constitutional fact-finding. In Katzenbach v. Morgan, 384 U.S. 641 (1966), the Court held that Section 5 of the Fourteenth Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining the need for and nature of legislation to secure Fourteenth Amendment guarantees. Applying the McCulloch v. Maryland appropriateness standard, the Court held that Congress may expand rights beyond what the Court has independently recognized, and that where Congress has made factual findings relevant to Fourteenth Amendment questions, courts must defer to those findings unless they are constitutionally infirm.

The Cleburne majority itself recognized this dynamic, which is why Justice White explicitly 'punted' to Congress — noting that the existing legislative response to disability discrimination demonstrated that the group was not politically powerless and that further judicial intervention was therefore unnecessary. Congress in 1990 directly rejected this finding. Section 12101(a)(7) constitutes Congress's determination, exercised in its fact-finding capacity, that the politically-powerless factor is satisfied — directly contradicting the factual premise on which Cleburne rested its rational basis conclusion. Under the Katzenbach deference doctrine, Congress's fact-finding on Fourteenth Amendment questions prevails over the Court's prior informal impressions where Congress has conducted legislative hearings and made explicit factual findings as it did in passing the ADA.

Miller further argues that the ADA constitutes an intervening law that displaces Cleburne's holding. The Court has recognized that when Congress enacts a law that directly contradicts the factual predicates of a prior judicial decision, the intervening law must be applied unless doing so

would result in manifest injustice. There is no manifest injustice in applying the ADA's strict scrutiny standard to disability classifications; the entire purpose of the legislation is to expand constitutional protection.

Step Three: Heller v. Doe as a Non-Holding

Miller addresses what might appear to be a reaffirmation of rational basis review: Heller v. Doe, 509 U.S. 312 (1993), decided after the ADA's enactment, which applied rational basis to a Kentucky statute distinguishing between standards for commitment of the mentally ill versus the mentally retarded. Miller characterizes Heller's application of rational basis as a non-holding for two independent reasons that are each sufficient to deprive it of precedential effect on the post-ADA standard of review question.

First, the issue of the standard of review for disability classifications was not properly certified for review in Heller. The Court resolved the case on the merits of the rational basis question without having the ADA's implications for the standard of review briefed or argued. Second, and critically, the Heller majority itself explicitly noted that a different standard of review might be applicable — the Court left the question open rather than definitively settling it. Justice Souter's dissent, joined by three other justices, argued that Heller did not even survive the rational basis standard as applied in Cleburne. When four justices conclude that the statute fails rational basis, and the majority explicitly reserves the question of higher standards, Heller cannot fairly be read as settling the question against strict scrutiny in the post-ADA context.

The ADAAA 2008 and the Deletion of § 12101(a)(7): The Textual Argument's Scope

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) deleted § 12101(a)(7) from the statute. The amendment redesignated the remaining findings provisions and struck the suspect-class-language paragraph. This development affects the textual component of Miller's argument as applied to proceedings after January 1, 2009. However, several observations preserve the argument's force for this thesis.

First, the entire period of Hazari's litigation — from the first denial of accommodation in 2018 through the documented proceedings — occurred after January 1, 2009, meaning the ADAAA text technically governs. However, the legislative history of the ADAAA shows that the suspect-class provision was removed not because Congress repudiated the classification, but because it was considered redundant or potentially counterproductive in light of the ADAAA's primary goal of broadening the definition of disability after the Court's Sutton and Toyota decisions. The Congressional intent remains: the ADAAA's findings section explicitly criticizes the Court for having 'interpreted the definition of disability in a manner that undermines the remedial purposes of the ADA' and demands broader application. The policy logic of § 12101(a)(7) — that disability classifications require heightened judicial protection — was not abandoned; the explicit textual hook was.

Second, and more fundamentally, Miller's Section 5 deference argument operates independently of the specific textual provision. Even after the ADAAA, Congress has exercised its Section 5 power to enact disability rights legislation based on findings of systematic discrimination. The question of what standard of scrutiny courts should apply to governmental disability classifications under the Equal Protection Clause is a constitutional question that the Court itself has never definitively resolved in the post-ADA era. Garrett (2001) addressed the abrogation of state sovereign immunity question — whether Congress could make states pay damages — but did not hold that rational basis is the correct standard of Equal Protection scrutiny for all governmental disability classifications. The Cleburne-Garrett-Heller line of cases is therefore not the settled constitutional landscape it appears to be when viewed through Miller's analytical lens.

The Miller Argument Applied to the Judicial Accommodation Context

The Miller framework generates a specific and powerful argument when applied to the pattern of judicial disability accommodation denials documented throughout this thesis. Under rational basis review, a court denying an accommodation need only articulate a conceivable legitimate purpose — and, as Part XI demonstrates, courts have been inventive in articulating such purposes. Under strict scrutiny, the government (including a court acting as a governmental entity subject to Title II) must demonstrate a compelling interest served by narrowly tailored means. None of the denial patterns identified in § 11.3 would survive strict scrutiny.

The 'demonstrated ability to participate' formula — inferring capacity from the act of filing — is not narrowly tailored to any compelling government interest. The interest in docket management is not compelling in the constitutional sense, and denying accommodation to prevent delay is not narrowly tailored when the cause of the delay is the unaccommodated disability. The 'fundamental alteration' defense, even as a compelling interest, is never demonstrated with the specificity strict scrutiny requires: courts never identify what specifically would be fundamentally altered, why the specific accommodation requested (rather than alternatives) would cause that alteration, and why the alteration would be irreversible.

The Miller Strict Scrutiny Test Applied to the ECF-87 Accommodation Denial

STEP 1 — IDENTIFY THE GOVERNMENT'S COMPELLING INTEREST: The ECF-87 denial ('rapid, prolix filings') identifies docket management and prevention of further delay as the government interest. Under strict scrutiny, this must be a 'compelling' or 'overriding' governmental end — not merely a legitimate one. Courts have never articulated why preventing case delay rises to a compelling interest that overrides the constitutional rights of a disabled litigant. STEP 2 — NARROWLY TAILORED MEANS: Strict scrutiny requires that the means be narrowly tailored to achieve the compelling end. The ECF-87 denial is an outright denial of all further accommodation. Narrowly tailored means would require consideration of less restrictive alternatives — time-limited stays with medical review, phased scheduling, reduced filing obligations. No such analysis appears. STEP 3 — THE DISABILITY CHARACTERISTIC TEST: Under § 12101(a)(7), 'rapid, prolix filings' is a stereotypic assumption 'not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.' The ECF-87 formula is the precise kind of stereotypic classification that Congress targeted in the ADA's findings section. STEP 4 — IMMUTABLE CHARACTERISTIC: The disability causing the filing pattern is 'beyond the control' of the individual under § 12101(a)(7). Courts applying rational basis treat the disability itself as a choice or a manipulable variable. Strict scrutiny treats it as an immutable characteristic that cannot be penalized. CONCLUSION: ECF-87 fails strict scrutiny. The same analysis applies to every accommodation denial documented in this thesis.

The Structural Implication: Strict Scrutiny as the Resolution of the Part XI Contradiction

The central contradiction identified throughout this Part — that Congress represented to the Senate that Cleburne's rational basis standard protects disabled persons from irrational prejudice while courts systematically apply irrational-prejudice-based reasoning to deny accommodations — is resolved, not exacerbated, by the Miller strict scrutiny argument. If strict scrutiny applies, the contradiction is explained: courts are applying the wrong standard, and the systematic denial of accommodations reflects not the proper operation of rational basis review but the systematic misapplication of constitutional law. The § 12101(a)(7) argument gives Congress's representation to the Senate its proper constitutional weight: Congress did not merely rely on the Court's rational basis framework; Congress went further and declared the disabled a suspect class that commands strict scrutiny, which is precisely the protection the Senate was told the Constitution provides.

The Miller argument also reframes the entire structure of the ADA Amendment of 2008. The Amendment explicitly states that the Court 'did not interpret [the ADA] consistent with Congressional intent.' The Amendment is a second act of Congress correcting the Court's constitutional understanding. That two major acts of Congress have been required to enforce

disability rights against judicial resistance is itself evidence of the kind of 'systematic discrimination' and 'political powerlessness' that the suspect class doctrine was designed to address — the group cannot rely on the ordinary political process to protect its rights because the institutions responsible for enforcing those rights (courts) are themselves the discriminators. This is the core insight of Carolene Products footnote 4, and it describes the situation of disabled litigants with precision.

§ 11.8 The CRPD Ratification Record as Constitutional Benchmark

The argument that this Part develops — that the rational basis standard as understood by Congress prohibits the specific accommodation denial patterns that courts currently employ — is not an argument from foreign law, from international treaties, or from judicial activism. It is an argument from the specific constitutional standard that the executive and legislative branches cited, in the treaty transmittal and the CRS ratification debate literature, as the proof that existing U.S. law meets the CRPD's requirements. The argument has three components that work together to create an argument of extraordinary domestic legal force.

First: Congress represented to the Senate that Cleburne's rational basis standard protects disabled persons from irrational prejudice by government actors. This representation is part of the official record of the treaty transmittal process — the process through which the Senate exercised its constitutional advice-and-consent function. It is the most authoritative statement of the executive branch's understanding of existing constitutional law in this context.

Second: Congress represented to the Senate that, because of this constitutional protection (and others), no new legislation was required to implement the CRPD — existing law already meets the treaty's requirements. This representation means that the CRPD's requirements — including its Articles 13 (access to justice), 15 (freedom from CIDT), and 5 (equality) — are already met by existing constitutional and statutory law, properly applied.

Third: Courts that deny disability accommodations in the manner documented throughout this thesis are not properly applying that constitutional law. They are applying a deferential version of rational basis review that shields irrational-prejudice-based discrimination in the name of docket management — the precise conduct that Cleburne condemned. The gap between Congress's representation and judicial practice is not a gap in the law. It is a gap in judicial fidelity to the law.

The CRPD ratification record therefore provides something that no other source of authority can: a congressional and presidential determination, in the context of the highest constitutional process for treaty evaluation, that existing law — including the Cleburne rational basis standard — already does what this thesis argues it should do. Courts that fail to apply the law in the manner Congress represented they were already applying it are not merely falling short of a desirable standard. They are falsifying the congressional representation that the Senate relied on in its treaty deliberations. They are making the constitutional promise that Congress made to the Senate into a lie.

§ 11.9 The Oath, the Promise, and the Conduct: The Personal Dimension

The rational basis contradiction has a specifically personal dimension for judicial actors that the Part VII oath analysis established but that acquires new force in light of the Congressional representation analyzed here. Every federal judge has sworn to "administer justice without respect to persons" and to "do equal right to the poor and to the rich" — a direct anti-

discrimination oath. Every state judge has sworn to uphold a constitution whose equal protection clause, as the President represented to the Senate, guarantees equality for all individuals. The Cleburne standard is not an abstract constitutional principle; it is the specific content of the oath that judicial actors have sworn.

When a federal judge applies irrational-prejudice-based reasoning to deny a disability accommodation — invoking a history of episodic participation to deny current accommodation needs, without individualized medical assessment, in the face of medical evidence of harm — they are doing two things simultaneously. They are violating the constitutional standard that the President cited as proof of the law's adequacy. And they are violating the oath they swore to administer justice without respect to persons. The oath does not permit the administration of justice differently based on whether the person before the court has a disability. The oath is, in the most direct sense, the personal commitment by each judicial officer to apply the Cleburne standard faithfully: to ensure that disability classifications they make or maintain rest on individual assessment, not irrational prejudice.

A judge who employs the denial patterns identified in § 11.3 has breached this oath in a manner that is documented in the judicial record, cognizable under the Judicial Conduct and Disability Act, potentially actionable under the ADA Title II and Rehabilitation Act institutional liability framework, and — where the physical or psychological harm rises to the CIDT level — subject to the jus cogens override of immunity analyzed in Part VII. The rational basis contradiction does not merely establish that courts are applying the law incorrectly. It establishes that they are applying it in a manner that violates the specific constitutional promise they made when they took their oath of office. That is not a gap in doctrine to be filled by the next Congress. It is a breach of a sworn constitutional commitment by individual judicial officers, cognizable through every accountability mechanism that Parts VI and VII identified.

§ 11.10 Synthesis: The Measurement of Promise Against Conduct

The CRS report passage with which this Part opened — the congressional representation that Cleburne proves the Constitution protects disabled persons from irrational prejudice — provides the measure against which judicial accommodation conduct must be assessed. The measurement is not complex. The evidence is not sparse. The conclusion is not ambiguous.

Congress said: courts protect disabled persons from irrational prejudice. The documented patterns of accommodation denial establish: courts apply irrational prejudice to deny disabled litigants equal access to their proceedings. Congress said: the Cleburne standard requires classification to rest on individual assessment, not stereotype. The documented denials establish: courts routinely classify disabled litigants based on stereotype (episodic participation equals full capacity) without individualized assessment. Congress said: the equal protection clause ensures equality before the law. The documented patterns establish: courts systematically deny equality before the law to disabled litigants by applying identical procedures to non-identically-situated persons without accommodation.

The gap between the congressional promise and the judicial conduct is not the distance between aspiration and achievement in a difficult legal domain. It is the distance between a constitutional standard clearly articulated and its systematic violation by the institutions charged with applying it. The promise is specific. The conduct is documented. The violation is clear. And the consequence — when the violation causes documented physical or psychological harm at the CIDT threshold — is absolute: a judicial act that constitutes irrational-prejudice-based discrimination causing physical or psychological harm to a disabled litigant is simultaneously a constitutional violation, a statutory violation, a treaty obligation violation, and a jus cogens violation. No level of deference,

no immunity doctrine, and no invocation of legitimate governmental interest can shield conduct that, measured against the standard that Congress itself cited as the proof of the law's adequacy, is constitutionally indefensible.

The Senate relied on Congress's representation. Disabled litigants relied on the Constitution's promise. Courts have failed both. The obligation — constitutional, statutory, and international — is to restore fidelity to the standard that Congress cited, the oath that judges swore, and the promise that disabled persons were told they already had.

The Miller strict scrutiny argument provides an additional resolution to the contradiction documented in this Part. If § 12101(a)(7) of the original ADA constitutes a suspect class declaration — as Miller argues — then the 'promise' Congress made to the Senate is not merely the promise that Cleburne's rational basis standard will protect disabled litigants. It is the promise that strict scrutiny will protect them. The documented pattern of accommodation denials fails strict scrutiny by a wider margin than it fails rational basis. The constitutional indictment therefore does not depend on the contested question of whether courts are misapplying rational basis; it holds under any defensible standard of review.

§ 11.10A The CRPD-Calibrated Rational Basis: Why "Reasonable" Cannot Mean Governmental Convenience When the CRPD Has Defined What Reasonableness Requires

The preceding sections have documented the gap between Congress's representation to the Senate — that Cleburne's rational basis standard already protects disabled persons from irrational governmental discrimination — and what courts do in the accommodation context: invoke "legitimate governmental interests" such as docket management to justify denials that cause documented physical or psychological harm. This section identifies a deeper structural error in how courts define the very terms of the Cleburne analysis, one that operates prior to the question of whether those terms are properly applied.

Cleburne's rational basis inquiry has two components: a legitimate governmental purpose, and a rational connection between that purpose and the specific classification at issue. Courts in the disability accommodation context have treated "docket efficiency" and "case management" as self-evidently legitimate purposes and have treated accommodation denial as self-evidently rationally connected to those purposes. The analysis proceeds as if "rational" is a concept whose content courts define from their own administrative perspective. It is not. The Equal Protection Clause's disability-protective purpose — rooted in the Thirty-ninth Congress's direct experience of mass disability in the aftermath of the Civil War — requires that "rational" in the disability context be defined by reference to what equal protection for disabled persons actually requires. The CRPD, as the most authoritative contemporary articulation of that requirement, and as the standard the Senate determined existing constitutional law already meets, defines that content with specificity: CRPD Article 5 requires reasonable accommodation as the modification necessary to ensure equal access. A standard that falls below that floor is not a valid version of rational basis in the disability context.

Reasonable accommodation under CRPD Article 5 means the modification necessary to ensure that a disabled person can access on an equal basis the service or program at issue. A denial of that modification is not "rational" in any constitutionally adequate sense, because it produces the deprivation of equal access that the constitutional guarantee exists to prevent. The means defeats the end the guarantee requires. A government that denies the modification necessary for equal access cannot claim that its denial serves the legitimate purpose of equal administration of justice — because the denial produces unequal access through the identical treatment of non-identically situated persons, which is the precise constitutional injury the Equal Protection Clause prohibits.

This argument does not require overruling Cleburne or finding that disability is a suspect class. It requires only the recognition that in the disability context, the content of "rational basis" is not for the government to define by reference to its own administrative preferences. It is defined by the constitutional guarantee's disability-protective historical purpose, elaborated by the CRPD standard the Senate confirmed existing law already meets, and measured by whether the governmental action produces outcomes the Equal Protection Clause was designed to prevent. Accommodation denial that falls below the CRPD's Article 5 floor fails rational basis at the definitional level, before the formal multi-factor analysis begins.

The Senate record makes this argument irresistible. The Senate was told that existing constitutional law already meets the CRPD's requirements — requirements that include reasonable accommodation for equal access under Article 5. If existing constitutional law already delivers that, then a court's denial of accommodation is not "rational" under the standard the Senate confirmed the EP Clause already embodies. The court is not applying a lesser-but-valid rational basis. It is applying a standard that the Senate's authoritative determination of existing law establishes is constitutionally inadequate. The Fifth Amendment applies this to federal courts

through Bolling v. Sharpe: federal courts denying accommodation are direct Fifth Amendment equal protection violators, and their invocation of docket management must be assessed against the CRPD Article 5 standard that the Fifth Amendment's equal protection component requires them to deliver. The oath each federal judge takes to "administer justice without respect to persons" incorporates this standard. Accommodation denial below the CRPD Article 5 floor violates the statutory framework, the international obligation, the rational basis standard, and the personal oath the denying judge swore.

PART XII

The Regulatory Architecture: How the Implementing Rules Support and Contradict the Thesis

Six regulatory frameworks govern disability accommodation by governmental actors. Their text, structure, and official interpretive guidance generate a body of regulatory authority that is simultaneously the most powerful confirmation of this thesis's central claims and — in one structural dimension — its most damning contradiction. The documents analyzed here are: (1) 28 CFR Part 35, the Title II ADA implementing regulation (1991, as amended through 2016); (2) 28 CFR Part 35, Appendix B, the 1991 section-by-section analysis; (3) 28 CFR Part 35, Appendix C, the ADAAA implementing guidance (2016); (4) 28 CFR Parts 35 and 36, the ADAAA implementing rule (2016 final rule); (5) 28 CFR Part 42, the Section 504 federally-assisted programs regulation and its proposed NPRM update (2017); and (6) the Judicial Conference of the United States policy on disability accommodations in federal courts (1995, as codified in the Guide to Judiciary Policy, vol. 5, § 255.10). Each document is analyzed below for the support it provides to, and the contradiction it reveals within, this thesis's architecture.

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§ 12.1 Document 1 — 28 CFR Part 35 (Title II ADA Implementing Regulation, 1991 and 2010 Amendments)

Identity and Authority

28 CFR Part 35 is the Department of Justice regulation implementing Title II of the ADA (42 U.S.C. §§ 12131-12134), applicable to state and local government entities. It was originally published July 26, 1991, and substantially revised on September 15, 2010. The regulation covers 'any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government.' Title II coverage 'includes activities of the legislative and judicial branches of State and local governments.' The regulation is therefore directly applicable to the California Superior Court, the California Court of Appeal Sixth District, and the California Supreme Court — each of which is a state governmental actor — and to every state court that denied accommodation to Hazari and Minkowski.

§ 35.130(b)(7) — The Reasonable Modifications Mandate

The cornerstone provision: 'A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.'

Every element of this regulation supports the thesis and contradicts the documented accommodation denial patterns:

First, the burden. The regulation places the burden of demonstrating fundamental alteration on the public entity — not on the disabled person. The accommodation denial patterns documented in § 11.3 and throughout the case record systematically invert this burden, requiring the disabled litigant to prove that the accommodation would not fundamentally alter proceedings, while courts issue conclusory denials without any demonstration. This inversion is regulatory non-compliance, not a defensible exercise of discretion.

Second, the word 'shall.' The regulation uses mandatory language: the modification shall be made unless the entity demonstrates otherwise. Courts routinely treat accommodation as discretionary. The regulation treats it as mandatory with a narrow, entity-borne exception.

Third, 'necessary to avoid discrimination.' The trigger is necessity to avoid discrimination — not the litigant's convenience. A disabled litigant who cannot meaningfully participate without a time extension or stay satisfies this standard by definition. Denying the accommodation is per se discriminatory unless the entity meets its burden.

§ 35.164 — The Written Statement Requirement

This provision is one of the most operationally important regulatory standards in the entire regulatory corpus: 'In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.'

This provision transforms the regulatory standard into a specific procedural requirement with three mandatory elements that state courts violated in every documented accommodation denial: (1) only the head of the entity (or designee) may make the fundamental alteration determination — not a line judge acting informally; (2) the determination must consider all resources available — courts never conduct this analysis; (3) the determination must be 'accompanied by a written statement of the reasons for reaching that conclusion.'

Not a single accommodation denial in the Hazari or Minkowski record satisfies this requirement. The MC-410 denials in the California courts lack the written-statement-with-reasons from the head of the entity. ECF-87 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.), while in the federal system (and therefore not directly bound by § 35.164), mirrors the same structural defect. The 'rapid, prolix filings' formula is not a written statement of reasons for a fundamental alteration determination; it is a conclusory label. This regulatory provision, applied properly, would have invalidated every documented denial as procedurally deficient regardless of its substantive merit.

§ 35.107 — The ADA Coordinator and Grievance Procedure Mandate

'A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.'

This regulation directly addresses and confirms the conduct documented in the 23-15221 primary source record (V-H-18). Hazari's DE-11 documents that the Sixth District Court of Appeal's

presiding judge contacted the trial court's ADA Coordinator to orchestrate a timed non-response — the ADA Coordinator issued a response long after it was due under California Rules of Court, Rule 1.100 so that the judge could deny Hazari's accommodation request the next day for 'lack of response.' The ADA Coordinator then resigned. Section 35.107 requires that the ADA Coordinator be available to investigate complaints — the documented conduct turned the Coordinator into an instrument of the denial rather than an investigator of it.

The regulation further requires 'grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.' The California Supreme Court's written response to Minkowski — refusing to extend filing time even for disability accommodation, citing Rule 8.500(e)(2) as absolute — is the documented denial of a grievance procedure that the regulation mandates every public entity with 50 or more employees provide. The regulation does not permit the rule-of-court procedural limitation to substitute for the grievance mechanism.

§ 35.103 — The Non-Regression Principle

Section 35.103(a) provides: 'This part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.' This provision requires that the ADA's protective floor be at least as high as the Rehabilitation Act's floor. It creates a ratchet: the more protective of the two statutes controls. As developed in § 12.2 below, Section 504's application to federally-conducted judicial programs is contested; but where it does apply, the non-regression clause ensures no gap between the standards.

28 CFR Part 35: The Regulatory Standard vs. The Documented Judicial Conduct

REGULATORY STANDARD | DOCUMENTED JUDICIAL CONDUCT § 35.130(b)(7): 'shall make reasonable modifications... unless the public entity can demonstrate.' Burden on entity. Modification is mandatory. ↕ CONTRADICTED BY: All documented accommodation denials treat modification as discretionary. Burden placed on disabled litigant. § 35.164: Fundamental alteration determination must be made by the head of the entity; written statement of reasons required; all resources considered. ↕ CONTRADICTED BY: No accommodation denial in the Hazari/Minkowski record includes a written statement, head-of-entity determination, or resource analysis. The California Supreme Court clerk responded by letter. No judge issued a compliant § 35.164 determination. § 35.107(b): 'prompt and equitable resolution of complaints' — grievance procedure required. ↕ CONTRADICTED BY: California Supreme Court invoked Rule 8.500(e)(2) deadline as absolute bar to writ review; no ADA coordinator response in 23-15221 (coordinator resigned after orchestrated manipulation); Sixth District Appeal Court had no ADA coordinator despite publishing one on its website. § 35.103(a): Non-regression — ADA must apply at least as protective a standard as Section 504. ↕ CONTRADICTED BY: State courts invoked California Rules of Court, Rule 1.100 as governing, without analysis of whether it meets the § 35.130 standard. § 35.130(b)(1)(ii): May not 'afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others.' ↕ CONTRADICTED BY: Identical scheduling applied to disabled and non-disabled litigants throughout.

§ 12.2 Document 2 — 28 CFR Part 35, Appendix B (1991 Section-by-Section Analysis)

The Individualized Assessment Mandate

The 1991 section-by-section analysis published by DOJ as the authoritative interpretive guide to Part 35 states: 'A number of commenters asked for clarification about the responsibilities of public

school systems under section 504 and the ADA with respect to programs, services, and activities that are not covered by IDEA... Public entities must comply with the ADA in all of their services, programs, or activities... it is impossible to make a blanket statement as to what level of auxiliary aids or modifications would be required in the integrated program. Rather, each situation must be assessed individually.'

The last five words — 'each situation must be assessed individually' — are the regulatory condemnation of the formulaic denial pattern. The 'rapid, prolix filings' formula is a blanket standard applied identically across all accommodation requests and all requestors. It is the regulatory antithesis of individual assessment. The Appendix B analysis confirms that the ADA does not permit categorical rules against accommodation; it requires individualized determination. Every accommodation denial that used a formula without engaging with Hazari's specific medical condition, specific case posture, and specific accommodation request violated this interpretive standard.

The same Appendix elaborates on the standard for examinations: 'A public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability.' Courts conducting hearings are the precise analogue: the modification must furnish equal opportunity to participate, not equal burden.

The 'Myths, Fears, and Stereotypes' Standard

The Appendix's discussion of the definition of disability builds directly from the Supreme Court's Arline language: 'Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment.' This regulatory articulation is the administrative law expression of what Part XI identifies as the Cleburne irrational-prejudice standard. When JSW refers to Hazari's 'alleged disability,' when Judge Geffon tells Minkowski that 'you look OK' after she was taken to the emergency room, when Manoukian relies exclusively on Cassini's fraudulent neurological examination while ignoring Choi's neuropsychological data — each instance reflects the precise category of 'myths, fears, and stereotypes' that the regulation identifies as equally disabling and equally prohibited.

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§ 12.3 Document 3 — 28 CFR Part 35, Appendix C (ADAAA Implementing Guidance, 2016)

The Episodic Disability Provision

Section 35.108(d)(1)(iv) of the post-ADAAA regulation provides: 'An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.' The Appendix C guidance explains: 'For example, a person with post-traumatic stress disorder who experiences intermittent flashbacks to traumatic events is substantially limited in brain function and thinking.'

This provision is the regulatory refutation of the 'demonstrated capacity' denial pattern — the inference, from the act of filing, that the litigant has general litigation capacity. The regulation makes episodic limitations legally cognizable. Hazari's MS relapse-remission pattern is precisely the episodic condition the regulation addresses. A litigant who files a document during a period of relative capacity is not thereby demonstrated to have capacity during a period of relapse. The regulation expressly rejects the inference: the disability exists even when 'in remission' because it

would be substantially limiting when active. The demonstrated capacity argument — the thesis's Denial Pattern 1 — has no regulatory basis. The ADAAA regulations repudiate it directly.

The guidance further states: 'the primary object of attention in ADA cases should be whether public or other covered entities have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity.' This reorientation — from the question of disability to the question of discrimination — is the regulatory expression of the same structural insight that the thesis develops: courts that focus obsessively on whether the litigant is 'really' disabled are asking the wrong question. The right question, per the regulation, is whether the entity complied.

The Non-Demand for Scientific Evidence

Section 35.108(d)(1)(vii) provides: 'The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence.' This provision contradicts state courts' demands for escalating medical documentation — including the demand for paid expert examinations — to support accommodation requests. The regulation establishes that medical evidence of the type the Cassini examination purported to provide is not a required standard; treating physician records and self-reported symptoms meet the ADA standard. The state courts' elevation of Cassini's paid adversarial neurological examination over Hazari's treating physicians' documentation reversed the regulatory hierarchy.

The Broad Construction Mandate

Section 35.108(a)(2)(i) states: 'The definition of disability shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.' The primary purpose, per the ADAAA implementing rule (28 CFR Parts 35 and 36, Final Rule 2016), is 'to make it easier for people with disabilities to obtain protection under the ADA.' Courts that require extensive proof of disability before granting accommodation, that apply demanding thresholds for 'qualified individual,' and that invoke the 'alleged disability' locution (as JSW did) are acting contrary to the express regulatory mandate to construe broadly.

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§ 12.4 Document 4 — 28 CFR Parts 35 and 36, ADAAA Implementing Final Rule (2016)

The Mitigating Measures Prohibition

Section 35.108(d)(1)(viii): 'The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.' This provision directly addresses the 'capacity demonstrated by performance' inference. Where courts reason that a litigant's successful filing of some documents demonstrates ability to participate fully, they are doing exactly what the regulation prohibits: measuring the impairment's effect in its mitigated state (the litigant's extraordinary effort at great personal cost) rather than its unmitigated state. Hazari's filings are produced, as he documents throughout the record, at the cost of MS relapses, permanent brain and spinal injury, and documented medical deterioration. The regulation requires the disability to be assessed as if the extraordinary coping effort were not made — because requiring extraordinary coping effort to qualify as disabled defeats the entire remedial purpose of the ADA.

The ADAAA's Repudiation of Prior Interpretations

The ADAAA final rule's preamble states: 'Congress enacted the ADA Amendments Act in order to ensure that the definition of disability is broadly construed and applied without extensive analysis, and to supersede Supreme Court decisions that had too narrowly interpreted the ADA's definition of disability.' It further states: 'as the courts began interpreting and applying the definition of disability strictly, individuals have been excluded from the protections that the ADA affords because they are unable to meet the demanding judicially imposed standard for qualifying as disabled.' This is the regulatory acknowledgment that the problem the thesis documents — courts narrowing the ADA to the point of destroying its protective purpose — is not only real but is the express reason the ADAAA exists. The ADAAA is the legislative record of courts having failed to implement the ADA correctly.

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§ 12.5 Document 5 — 28 CFR Part 42 (Section 504 Federally-Assisted Programs Regulation) and 2017 NPRM

This Part describes the current regulatory and institutional position as it exists in practice. It does not foreclose the thesis's separate argument in Part XXVIII that the prevailing noncoverage understanding is textually and structurally misconceived. The point here is empirical and regulatory: federal courts presently operate as though they are outside Title II and Section 504, and that operational reality creates the concrete procedural gap documented throughout this thesis. The federal judiciary's disability-law problem is not simply that courts sometimes misapply a settled accommodation regime. It is that the judiciary operates under a structurally thinner and more discretionary framework than the one imposed on state courts — and that condition, whether understood as misconstruction, legislative gap, or both, is the defect this thesis is designed to correct.

Section 504's Scope: A Critical Limitation

Section 504 of the Rehabilitation Act (29 U.S.C. § 794) states: 'No otherwise qualified individual with a disability in the United States... shall... be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.' The Section 504 implementing regulation at 28 CFR Part 42 applies to 'programs or activities receiving financial assistance' from the Department of Justice.

The critical limitation: the statutory text expressly covers 'any Executive agency.' It does not cover the judicial branch. Courts are not Executive agencies. They do not receive federal financial assistance in the sense contemplated by the statute. The federal judiciary is therefore not covered by Section 504 any more than it is covered by ADA Title II. The 2017 DOJ NPRM to update 28 CFR Part 42 confirms this: 'This subpart does not apply to programs or activities conducted by the Department. The Department's section 504 federally conducted regulation is found at 28 CFR part 39.' The separation of judicial programs from the Section 504 framework is architecturally embedded in the statute and regulation.

This limitation is confirmed by every federal court that has stated the rule. The Eastern District of Oklahoma, the Tenth Circuit, and other federal courts' public ADA accommodation pages state explicitly: 'The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act do not apply to the federal judiciary.' This is not a contested interpretation; it is the settled understanding of the statute and implementing regulation.

The 2017 NPRM: Consistency with Title II as the Governing Standard

The 2017 NPRM to update 28 CFR Part 42 proposes to align Section 504 obligations with Title II of the ADA — requiring reasonable accommodations, applying the ADAAA's broad construction

mandate, and providing the episodic disability framework. For programs covered by Section 504, the NPRM would import the full Title II protective architecture. For the federal judiciary, neither framework applies by its terms.

§ 12.6 Document 6 — Judicial Conference Policy on Disability Accommodations (1995, Guide to Judiciary Policy vol. 5 § 255.10)

The negative finding described below should be read as a statement about the current operational and institutional regime, not as a concession that the prevailing noncoverage position is normatively or interpretively correct. Part XXVIII advances the separate claim that this regime rests on misconstruction — that the canons of statutory construction, applied systematically, compel a reading of the ADA and Section 504 that covers federal courts. This Part XII section's focus is narrower and empirical: to document what standards federal courts actually follow today, and to show how sharply those standards diverge from the Title II framework applied to state courts. The federal judiciary's disability-law problem is not simply that courts sometimes misapply a settled accommodation regime. It is that the judiciary operates under a structurally thinner and more discretionary framework than the one imposed on state courts. Whether understood as misconstruction, gap, or both, the present architecture leaves federal judicial disability access materially underprotected and in need of correction.

The Structural Gap: The Most Critical Regulatory Finding

The most structurally important finding from this regulatory survey is a negative one: neither the ADA (Title II) nor Section 504 applies to the federal judiciary by its terms. Title II covers 'any State or local government' and 'any department, agency, special purpose district, or other instrumentality of a State or States or local government.' Federal courts are not state or local government entities. Section 504 covers Executive agencies and federally-assisted programs. Federal courts are neither.

The regulatory framework that does apply to federal courts is not a statute — it is an internal Judicial Conference policy adopted in 1995 under the authority of 28 U.S.C. § 331. Guide to Judiciary Policy, vol. 5, § 255.10 provides: 'It is the policy of the Judicial Conference that all federal courts provide reasonable accommodations to persons with communications disabilities.' Courts are required to provide sign language interpreters, CART, and other auxiliary aids for participants with hearing, speech, and communication disabilities. Requests for all other accommodations are 'reviewed on a case-by-case basis, and in consultation with the presiding judge, to determine an appropriate solution.'

The gap is specific and profound. The Judicial Conference policy governs only communications disabilities — primarily deafness and hearing impairment. It does not establish any standard for cognitive disabilities, mobility limitations, or the invisible disabilities — including MS, PTSD, chronic fatigue, anxiety, depression — that are the subject of this thesis. For invisible disabilities in federal court, no binding regulatory framework exists at all. Each judge decides, in consultation with herself, what accommodation to provide and what standard governs the determination. There is no burden allocation, no written-statement requirement, no head-of-entity determination, no grievance procedure. The procedural protections of 28 CFR Part 35 — each of which would independently invalidate virtually every accommodation denial documented in this thesis — have no equivalent in the federal judicial accommodation framework.

The Federal Court Gap: What the Regulations Require vs. What Federal Courts Provide

FOR STATE COURTS (covered by ADA Title II / 28 CFR Part 35): — § 35.130(b)(7): Shall make reasonable modifications; burden on public entity to demonstrate fundamental alteration. — § 35.164: Written statement from head of entity required; all resources considered. — § 35.107: ADA coordinator with contact information publicly available; grievance procedure for prompt and equitable resolution. — § 35.108: Episodic disabilities covered; broad construction; no demand for scientific evidence; no mitigating measures. — Appellate oversight available under Title II. FOR FEDERAL COURTS (covered only by Judicial Conference internal policy): — Communications disabilities only (deafness, hearing impairment). — All other accommodations: 'reviewed on a case-by-case basis, and in consultation with the presiding judge.' — No burden allocation. — No written statement requirement. — No head-of-entity determination requirement. — No ADA coordinator required for non-communications disabilities. — No grievance procedure mandated. — No external regulatory enforcement. — No appellate review for denial of accommodation (only internal judicial conduct channels, subject to § 352 limitation). RESULT: A disabled litigant in California state court has more regulatory protection than a disabled litigant in federal district court — yet the federal court is the only venue left once the state court system has been established as subversive. The structural gap is the regulatory architecture of the fundamental problem this thesis documents.

§ 12.7 The Regulatory Analysis: Support and Contradiction Assessed

Support for the Thesis

The regulatory record provides overwhelming support for the central thesis in six specific dimensions.

First, the burden reversal. Section 35.164's placement of the burden of demonstrating fundamental alteration on the public entity directly validates the thesis's claim that courts are applying the wrong standard when they require disabled litigants to prove that accommodations are necessary. Under the regulation, accommodation is the default; denial requires demonstration.

Second, the written-statement requirement. Every accommodation denial in the case record violates § 35.164's written-statement-from-the-head-of-entity requirement. This is not a minor procedural technicality; it is the mechanism by which the regulation ensures that fundamental alteration determinations are made seriously and accountability is maintained. The absence of written statements in the denial record is both evidence of non-compliance and evidence of the seriousness with which the courts have not taken the ADA.

Third, the individualized assessment mandate. Appendix B's insistence that 'each situation must be assessed individually' directly condemns the formulaic denial patterns. The 'rapid, prolix filings' formula and the 'demonstrated capacity' inference are the regulatory definition of prohibited blanket assessments.

Fourth, the episodic disability provision. Section 35.108(d)(1)(iv)'s treatment of episodic conditions as disabilities when active is the regulatory refutation of the 'demonstrated capacity' argument. The inference from performance to capacity is expressly prohibited.

Fifth, the mitigating measures bar. Section 35.108(d)(1)(viii)'s prohibition on considering mitigating measures means that Hazari's extraordinary efforts to produce documents at great personal cost cannot be used as evidence that he does not need accommodation — precisely the inference courts have drawn.

Sixth, the 'myths, fears, and stereotypes' standard in Appendix B confirms Part XI's analysis: the Cassini fraud, the 'alleged disability' locution, the 'you look OK' response to Minkowski's emergency room visit — each represents the regulatory category of prohibited stereotype-based reasoning.

The Fundamental Contradiction

The regulatory record's central contradiction of the thesis is structural rather than substantive. The thesis's primary subject — federal courts' denial of accommodation to disabled litigants — falls entirely outside the regulatory framework that would most powerfully address it. The ADA's Title II and its implementing regulations at 28 CFR Part 35 provide the detailed, procedurally rigorous, burden-allocating framework that would condemn every documented denial. But Title II does not apply to federal courts. Section 504 does not apply to federal courts. The Judicial Conference's internal policy applies only to communications disabilities.

The structural result is that the very entity whose discrimination is most thoroughly documented — the federal judiciary — occupies the one governmental space that the most powerful anti-discrimination regulatory framework expressly excludes. The BAP's citation of Roman v. Jefferson at Hollywood LP in NC-24-1204 is not a legal error; it is the statement of a settled structural fact: federal courts are not covered entities under the ADA. The thesis's response to this contradiction must operate at the constitutional level (Parts V, XI) and the statutory interpretation level (Tennessee v. Lane, United States v. Georgia) rather than through direct regulatory application.

The gap is also, paradoxically, a powerful thesis argument on a different axis. It explains why the pattern of discrimination documented throughout this thesis has been institutionalized: there is no regulatory enforcement framework, no ADA coordinator accountability, no written-statement requirement, and no grievance procedure standing between a federal judge's accommodation denial and the disabled litigant. The absence of regulatory coverage is the architectural precondition for the structural discrimination the thesis documents. Congress has never extended Title II to federal courts; the judiciary has never been required to establish the procedural infrastructure that the regulation mandates for every state and local governmental entity with 50 or more employees. The gap is not incidental — it is the structural origin of the problem.

PART XIII

Vexatious Litigant as Prior Restraint: How the Label Magnifies and Perpetuates Systemic Judicial Disability Discrimination

The preceding Part demonstrated how systemic disability discrimination operates as institutional judicial policy, documented through seven evidentiary markers. This Part addresses a specific instrument through which that systemic discrimination is magnified, entrenched, and rendered effectively permanent: the vexatious litigant label and its associated pre-filing order. When applied to a disabled litigant whose prolific filing is itself a product of the court system's failure to provide disability accommodations, the vexatious litigant designation converts what began as individual accommodation denial into a permanent prior restraint on the disabled person's constitutional right of access to courts. It transforms the court system from an institution that discriminates episodically into one that has formalized its discrimination in a judicial order with the permanent force of law.

The Hazari record, as documented in the IAJ Human Rights Analysis and the case files of Hazari v. Brady (16CV295730, Santa Clara Superior Court) and Hazari v. County of Santa Clara (19-cv-04392-BLF, N.D. Cal.), provides a detailed evidentiary foundation for this analysis. The record documents: a state court vexatious litigant declaration with pre-filing order (August 27, 2021); a subsequent $586,427 fee judgment; a federal court's denial of a vexatious litigant motion with a warning that effectively placed the plaintiff under judicial surveillance (June 26, 2025); and the deployment of the vexatious litigant label by defendants as evidentiary proof that the plaintiff's disability is fabricated. Together, these elements illustrate every dimension of the thesis's analysis of vexatious litigant law as a disability discrimination amplifier.

§ 13.1 The Constitutional Baseline: Prior Restraint and the Right of Access to Courts

13.1.1 The First Amendment Prior Restraint Doctrine

Prior restraint is the most constitutionally disfavored category of governmental restriction on expression. In Near v. Minnesota, 283 U.S. 697 (1931), the Supreme Court established that governmental orders imposing prior restraints on speech — requiring governmental approval before expression occurs — carry a heavy presumption of unconstitutionality. The prior restraint doctrine reflects a foundational constitutional principle: governmental actors may not use the licensing power to decide in advance which speech will be permitted.

The connection to vexatious litigant pre-filing orders is direct and structural. A pre-filing order requires a disabled litigant to obtain judicial approval — specifically, the approval of the presiding judge — before filing any new action or pleading. This is, in the most precise constitutional sense, a prior restraint: a requirement of advance governmental approval as a condition of the exercise of a constitutional right. The constitutional right at issue is not merely the First Amendment right to petition for redress of grievances — though it includes that — but the fundamental right of access to courts established in Griffin v. Illinois, M.L.B. v. S.L.J., and Tennessee v. Lane. A pre-

filing order that requires judicial pre-approval for a disabled person's court filings is a prior restraint on a non-derogable constitutional right.

13.1.2 The Access-to-Courts Right as the Foundation

As Part V established, access to courts is a non-derogable constitutional right rooted simultaneously in the First Amendment's petition clause, the Fourteenth Amendment's due process and equal protection guarantees, and the structural constitutional principle that courts are the mechanism through which all other constitutional rights are vindicated. A vexatious litigant designation that imposes a pre-filing order does not merely restrict one aspect of access to courts; it places the entire access-to-courts right under the control of a single judicial gatekeeper who has the authority to deny access at will, without meaningful judicial review, and without any obligation to apply the disability accommodation standards that the ADA, the Rehabilitation Act, and the Constitution require.

The Griffin-Lane doctrine establishes that the state cannot condition access to its judicial system on characteristics that systematically foreclose access for particular groups. A pre-filing order imposed on a disabled litigant — whose prolific filings are themselves a product of the court system's failure to provide accommodation — conditions access to courts on the absence of disability-caused behavior. It is the most direct possible expression of the equal protection violation that Cleburne condemned: a governmental classification that rests not on individual assessment of the litigant's actual abuse of the court system, but on a stereotype ('prolific filers cannot have legitimate claims') that is applied without any inquiry into the causal relationship between the disability and the filing pattern.

§ 13.2 The Vexatious Litigant Statute: Structure and Constitutional Vulnerability

13.2.1 Federal Vexatious Litigant Law: 28 U.S.C. § 1651

In federal court, vexatious litigant status and pre-filing orders derive from the All Writs Act, 28 U.S.C. § 1651, and the court's inherent authority. The Ninth Circuit has established that before imposing a pre-filing order, a district court must: (1) give the litigant notice and an opportunity to be heard; (2) compile an adequate record for appellate review; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly to fit the specific vice encountered. De Long v. Hennessey, 912 F.2d 1144 (9th Cir. 1990).

Each of these requirements creates a constitutional checkpoint that specifically fails when applied to a disabled litigant without disability accommodation analysis. The substantive finding of 'frivolousness or harassment' cannot be made without determining whether the filing pattern reflects genuine frivolousness or disability-caused behavior. A litigant with a progressive neurological condition, severe cognitive impairment (documented at the 0.1 percentile for processing speed in the Hazari record), and PTSD from litigation stress does not file prolifically because their claims are frivolous. They file prolifically because their disability prevents them from filing efficiently, because the court's refusal to accommodate forces them to repeatedly re-file motions that would have been unnecessary had accommodation been provided, and because the very stress of being denied access to justice generates further psychological deterioration that manifests in further compensatory filing.

The 'narrow tailoring' requirement also fails categorically when applied to a disabled litigant without accommodation analysis. A pre-filing order — the bluntest possible restriction on court access — is not narrowly tailored to the vice of disability-caused prolific filing if the disability itself

is never addressed. The narrowly tailored response to disability-caused prolific filing is disability accommodation, not prior restraint. The De Long requirements, faithfully applied with disability awareness, make pre-filing orders against disabled litigants whose filing patterns are causally attributable to disability nearly impossible to justify.

13.2.2 California's Vexatious Litigant Statute: CCP §§ 391-391.8

California Code of Civil Procedure § 391 et seq. provides a comprehensive vexatious litigant framework that is substantially more expansive than the federal All Writs Act approach. Under CCP § 391(b), a person may be declared vexatious if, among other things, they have 'commenced, prosecuted, or maintained' at least five litigations in the preceding seven years that have been finally determined adversely to the person, or if they repeatedly re-litigate issues previously decided against them.

The California statute has been applied to disabled litigants in ways that compound discrimination with particular severity. Under CCP § 391.7, a vexatious litigant subject to a pre-filing order must obtain a pre-filing review from the presiding judge before filing any new litigation. If the presiding judge denies the pre-filing certificate, the matter is dismissed without a hearing on the merits. The Hazari IAJ Human Rights Analysis documents that 'multiple appeals [were] dismissed under CCP § 391.7(c)' after the vexatious litigant designation was imposed in Hazari v. Brady — meaning that the state appellate courts dismissed his appeals not on their merits but solely on the ground that he had not obtained the required pre-filing certificate.

This mechanism — summary dismissal on pre-filing grounds without any merits review — is the most extreme form of prior restraint available in the civil justice system. It places the entirety of a disabled litigant's access to the judicial system in the discretion of a single judicial officer who may deny access for any reason, or no stated reason, without appellate review of the denial.

The California Vexatious Litigant Cascade

Once declared vexatious under CCP § 391.7, a disabled litigant faces: (1) Pre-filing order requiring presiding judge approval for any new action or pleading; (2) Summary dismissal of any filing made without the certificate, without merits review; (3) The label carries across jurisdictions and is deployable as evidence against the litigant in federal proceedings; (4) Every subsequent filing — however meritorious — is screened through a gatekeeping process controlled by the same court system whose discrimination generated the prolific filing pattern; (5) The financial penalties associated with vexatious litigant status (§ 391.3 security requirements) create a wealth-based additional bar to court access; (6) The label can be renewed and extended by subsequent courts citing the same filing pattern that the original label itself generated.

§ 13.3 How Disability Discrimination Generates the Vexatious Label: The Causal Chain

The most structurally important analytical point in this Part is the causal relationship between the court system's disability discrimination and the filing patterns that lead to vexatious litigant designation. This causal chain has never been adequately addressed in the vexatious litigant jurisprudence, and its exposure is essential to understanding why the vexatious litigant label, when applied to a disabled litigant whose prolific filing is causally attributable to disability and accommodation denial, is not a remedy for abuse of the judicial system. It is a permanent prior restraint that punishes the victim of judicial discrimination for the behavioral consequences of that discrimination.

13.3.1 How Accommodation Denial Generates Prolific Filing

A disabled litigant denied accommodation does not simply fall silent. They adapt — in ways that the unaccommodated litigation environment makes necessary, but that appear from the outside as abuse of the judicial process. The specific mechanisms through which accommodation denial generates prolific filing are the following:

First, the repeat-filing cycle. When a court denies a disability accommodation request, the denial does not resolve the underlying medical need; it simply delays the problem while adding the denial itself as a new matter requiring response. The disabled litigant must re-file the accommodation request, now with additional medical evidence, now with additional argument about why the previous denial was wrong, and now in a context where their health has deteriorated further because the original denial exposed them to additional harmful litigation activity. Each denial generates a new round of filings that would have been unnecessary had the original accommodation been granted.

Second, the disqualification/recusal response. A disabled litigant who correctly perceives that the court's denial of accommodation reflects a discriminatory institutional policy — rather than a good-faith individualized assessment — will seek disqualification of the judge whose decisions reflect that policy. Disqualification motions generate additional filings, additional responses, additional denials, and additional appeals, all of which are attributed to the litigant as evidence of frivolousness or harassment. In the Hazari record, ECF-98 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.), ECF-130, and ECF-131 all reflect this pattern: accommodation denied, disqualification motion filed, disqualification denied, denial cited as evidence of frivolousness.

Third, the venue-change response. When a disabled litigant concludes that the institutional discrimination is court-system-wide rather than judge-specific, they will seek transfer to a different court system. In the Hazari record, ECF-130 combined a disqualification motion with a motion to transfer venue to the Northern District of New York. The motion was denied (ECF-131), generating additional filings and additional adverse holdings attributable to the litigant.

Fourth, the constitutional escalation. A disabled litigant who has been denied accommodation, denied disqualification, and denied venue transfer will escalate to constitutional and international law arguments — the arguments this thesis develops — as the only remaining avenue. These arguments generate voluminous briefing because the legal framework is complex and because the court has not yet engaged with it. The briefing is then characterized as 'prolix,' 'unintelligible,' or 'AI-generated' — as ECF-139 characterized the Hazari briefing — without engaging with its substance. The characterization is cited as further evidence of frivolousness, contributing to the vexatious label.

Fifth, the cognitive impairment contribution. The Hazari neuropsychological record (ECF-37) documents processing speed at the 0.1 percentile and impaired comprehension of complex questions. A litigant with severe cognitive impairment will draft documents that are longer, less organized, and more repetitive than those of a non-impaired litigant — not because they are harassing the court, but because their disability prevents the efficient synthesis and presentation that non-impaired counsel would produce. The 'prolix' characterization is the court's response to the symptom of a disability rather than to an abuse of the judicial process.

13.3.2 The Disability-to-Vexatious Label Pipeline

The complete causal chain from disability discrimination to vexatious label designation can be stated precisely:

Step	Causal Mechanism
1	Court denies disability accommodation — without individualized medical assessment, using template language
2	Disability causes continued health deterioration, further reducing functional capacity
3	Litigant re-files accommodation request with updated medical evidence, generating additional filings
4	Court denies again, using same template language, citing prior denials as supporting current denial
5	Litigant files disqualification motion, venue change motion, emergency motions — each generating additional adverse holdings
6	Litigant's cognitive impairment and disability produce voluminous, repetitive briefing that the court characterizes as prolix and frivolous
7	Accumulating volume of filings and adverse holdings satisfies the statutory criteria for vexatious litigant designation
8	Vexatious litigant label is imposed, with pre-filing order requiring judicial approval for all future filings
9	Label is cited by defendants in other proceedings as evidence that the disability claims are fabricated
10	Pre-filing order bars access to courts as a practical matter, extinguishing all underlying rights claims
11	Each attempt to challenge the pre-filing order generates additional filings that reinforce the vexatious label

The Accountability Inversion

The vexatious litigant label, applied to a disabled litigant whose filing pattern is causally attributable to the court system's disability discrimination, inverts the accountability structure that the ADA, the Constitution, and CRPD Article 13 require. The institution that discriminated against the litigant uses the behavioral consequences of its own discrimination as the basis for permanently restricting the litigant's access to justice. The wrongdoer labels the victim a wrongdoer and imposes a sanction that ensures the underlying discrimination can never be judicially examined on its merits. The label is not a remedy for abuse of the judicial process. It is the judicial system's most powerful tool for completing and entrenching its own discrimination with the permanent authority of law.

§ 13.4 The Hazari Record: Vexatious Label as Discrimination Amplifier

13.4.1 The State Court Vexatious Litigant Declaration (August 27, 2021)

The IAJ Human Rights Analysis documents that on August 27, 2021, the Santa Clara Superior Court declared Hazari a vexatious litigant in Hazari v. Brady (Case No. 16CV295730), imposing a pre-filing order requiring presiding judge approval for any new litigation. This declaration came: after the same court had imposed terminating sanctions on February 4, 2021, finding that Hazari 'repeatedly and willfully failed to obey lawful Court orders and pay sanctions;' after the court awarded $586,427 in attorney fees against Hazari (May 26, 2021); and without any documented individualized assessment of the relationship between Hazari's documented disabilities — progressive MS, neuropsychological impairment, PTSD from litigation stress — and the filing pattern that formed the basis of the vexatious designation.

The causal chain is documentable from the record. The Brady litigation arose from a property dispute in which Hazari had previously prevailed — he won the first lawsuit in 2005. The vexatious designation came after Brady's recidivism forced a second lawsuit, filed in 2016 when Hazari's MS had progressed significantly. The critical fact, established by the IAJ analysis: "The ONLY Variable [between the 2005 victory and the 2021 vexatious designation] was Plaintiff's disability status." Before disability progression, Hazari litigated successfully and prevailed. After disability progression, the same causes of action against the same recidivist defendant produced terminating sanctions, a $586,427 fee judgment, and a vexatious litigant designation. The disability is not a coincidental background fact; it is the only variable that explains the reversal of outcomes across otherwise identical litigation.

13.4.2 The Brady Vexatious Motion in Federal Court (June 26, 2025) and Its Warning

The IAJ Human Rights Analysis documents that Mandy Brady (the defendant in the state court litigation) moved to have Hazari declared a vexatious litigant in the federal court proceedings as well — seeking to extend the state court's pre-filing order into the federal system and across all pending federal cases. Judge Freeman's June 26, 2025 order denied the motion, finding that 'the number of cases Mr. Hazari has filed in this Court [does] not [rise] to inordinate.' But the order contained a warning that functions as the practical equivalent of a conditional vexatious designation:

ECF-117 (IAJ Exhibit 13): Judge Freeman, Order Denying Vexatious Litigant Motion (June 26, 2025)

"However, the Court places Mr. Hazari on notice that, going forward, if it concludes any filing or pleading violates Federal Rule of Civil Procedure 11(b), it will issue an Order to Show Cause why sanctions should not be imposed. The Court also advises Mr. Hazari that the Court will not hesitate to revisit the issue of whether it should impose a pre-filing order should circumstances warrant it."

This warning constitutes what might be called a 'shadow pre-filing order': a judicial notice that any filing the court deems objectionable may trigger sanctions and that pre-filing order consideration is always available. The chilling effect of such a warning on a disabled litigant who already holds a state court vexatious litigant designation is the functional equivalent of a prior restraint even without formal imposition. The litigant must now self-censor every filing in light of the court's warning, weighing whether each filing — however legally justified — might be characterized as a Rule 11 violation and trigger the pre-filing order the court explicitly threatened. For a litigant with severe cognitive impairment and PTSD from litigation stress, this chilling effect is not a theoretical concern. It is an additional, judicially imposed psychological burden that directly exacerbates the very disabilities whose accommodation has been denied.

The warning also performs a specific evidentiary function in the systemic discrimination analysis: it demonstrates that the federal court was aware of the vexatious litigant designation from the state proceeding and was prepared to treat it as a basis for federal pre-filing restraints, without any analysis of whether the state court's designation itself reflected disability discrimination. The use of one court system's discriminatory designation as the foundation for another court system's threatened restrictions is the mechanism by which disability discrimination metastasizes across court systems, ultimately encircling the disabled litigant in a web of prior restraints generated by the cumulative discrimination of multiple courts.

13.4.3 The Brady Litigation's Use of the Vexatious Label Against Disability Claims

The most insidious deployment of the vexatious litigant label in the Hazari record is documented in the defendants' opposition briefs (ECF-83, ECF-84): the label was used not merely as an independent ground for restricting access to courts, but as affirmative evidence that the plaintiff's disability claims are fabricated. The Rossi Declaration (ECF-84) stated:

> **ECF-84, Declaration of Michael L. Rossi, ¶ 10**
>
> *"Not only did a California intermediate court issue that order this week, but Plaintiff has also been declared a vexatious litigant in State court, further indicating that his health condition does not appear to affect his ability to participate in the litigation process."*

This argument — that a vexatious litigant designation proves a disability is not real — is the logical conclusion of the 'filing activity proves capacity' reasoning that the ADAAA's episodic impairment provision expressly repudiates. But in the vexatious litigant context, the argument is structurally circular in a particularly devastating way: the vexatious designation was itself produced by the disability-caused filing pattern; it is then used as evidence that the disability does not prevent participation; that evidence is used to justify denying further accommodation; the denial of accommodation causes further deterioration and further compensatory filing; the further filing reinforces the vexatious label; and the reinforced label is used as stronger evidence that the disability claims are fabricated. The loop is self-sustaining and self-reinforcing. Each iteration makes the discrimination harder to challenge and easier for the court to defend.

§ 13.5 The Legal Framework: How Vexatious Litigant Designations Must Accommodate Disability

13.5.1 The ADA and Rehabilitation Act Apply to Vexatious Litigant Proceedings

As established in Parts II and VI, federal courts are covered entities under Section 504 of the Rehabilitation Act and state courts are covered entities under ADA Title II. This coverage applies to all court proceedings, including vexatious litigant proceedings. A court that applies its vexatious litigant procedures to a disabled litigant without individualized assessment of the causal relationship between the disability and the filing pattern is discriminating against that litigant in its procedures, in violation of both statutes.

The applicable standards require: (a) individualized assessment of the specific litigant's specific filing pattern in light of their specific documented disability; (b) analysis of the causal relationship between the disability and the filing pattern, including through the expert medical evidence

framework that Federal Rule of Evidence 706 authorizes; (c) consideration of whether the filing pattern would exist absent the disability, and in particular absent the court system's failure to provide accommodation; and (d) consideration of whether accommodation — rather than pre-filing restriction — is the appropriate response to disability-caused prolific filing. None of these steps appears in the existing vexatious litigant jurisprudence. All of them are legally required.

13.5.2 The Cleburne Anti-Irrational-Prejudice Standard Applied to Vexatious Designations

As Part XI established, the Cleburne rational basis standard prohibits governmental classifications — including judicial classifications — that rest on irrational prejudice rather than individual assessment. A vexatious litigant designation applied to a disabled litigant whose filing pattern is causally attributable to their disability and to the court system's failure to accommodate it rests on the irrational presumption that prolific filing reflects frivolousness or harassment rather than disability-caused behavioral adaptation. That presumption is irrational — it is contradicted by the medical evidence, by the ADAAA's episodic impairment framework, and by the documented causal chain analyzed in § 13.3. A designation resting on it fails Cleburne rational basis review.

13.5.3 CRPD Article 13 and the Prior Restraint Prohibition

CRPD Article 13's requirement of effective access to justice through procedural accommodations is directly incompatible with a pre-filing order imposed on a disabled litigant without accommodation analysis. The pre-filing order does not accommodate the disability-caused filing pattern; it criminalizes it. It converts a symptom of inadequately accommodated disability into a basis for permanent restriction of access to justice. Under the Article 18 VCLT obligation — reinforced by the 61-senator majority's endorsement of the CRPD's principles as consistent with U.S. law — courts must interpret their vexatious litigant authority in a manner consistent with Article 13's effective access guarantee.

Concretely: before imposing a pre-filing order on a disabled litigant, a court must, as a matter of Article 13-informed statutory interpretation, determine whether the filing pattern that gives rise to the vexatious designation is causally attributable to the disability and to the court's failure to accommodate it. If it is — as the Hazari record demonstrates it is — then the appropriate response under Article 13 is accommodation, not prior restraint. The pre-filing order is the least accommodating response possible; it is the response that Article 13's effective access requirement most directly prohibits.

13.5.4 The Istanbul Protocol and the Punitive Vexatious Designation

The Istanbul Protocol's framework for identifying state conduct that constitutes cruel, inhuman or degrading treatment applies to the vexatious litigant designation when it is used punitively against a disabled litigant whose prolific filing reflects disability-caused behavior. A court that uses the vexatious litigant mechanism not to protect the integrity of the judicial system from genuine abuse but to punish a disabled litigant for the behavioral consequences of the court's own discrimination is engaging in the kind of institutional conduct that the Istanbul Protocol identifies as potentially CIDT: the use of legal process as an instrument of harm against a vulnerable person by state actors who are aware of the person's vulnerability.

The specifically punitive dimension of the Hazari vexatious designation is documented by the IAJ analysis's identification of the sequence: Hazari prevailed in 2005; became disabled; filed a second lawsuit against a recidivist defendant; and was then declared vexatious, sanctioned $586,427, and subjected to a pre-filing order. The outcome sequence — victory when able-bodied,

punishment when disabled, for the same causes of action against the same defendant — satisfies the Istanbul Protocol's pattern indicators for institutionally inflicted harm. The disability was the variable that transformed a legitimate legal claim into a judicially designated abuse of process.

§ 13.6 Systemic Amplification: How Vexatious Labels Magnify Discrimination Circuit-Wide

13.6.1 The Cross-Jurisdictional Cascade Effect

The most systemically dangerous feature of vexatious litigant designations in the disability discrimination context is their cascade effect across jurisdictions. A state court vexatious designation does not remain confined to the issuing court. It is a public judicial record that is deployable in any subsequent proceeding as evidence of the litigant's character, litigation history, and the legitimacy of their claims. In the Hazari record, the California state court vexatious designation was deployed in the Northern District of California federal proceedings as evidence that the disability claims were fabricated (ECF-83, ECF-84). The federal court then issued a warning that it would consider its own pre-filing order in light of the same filing pattern (ECF-117). The state court designation thus cascaded into a federal court threat, creating a coordinated cross-jurisdictional restriction on a disabled litigant's access to the entire federal and state judicial system.

The cascade effect means that a single act of disability discrimination — a state trial court's vexatious designation imposed without disability accommodation analysis — can generate a permanent restriction on the disabled litigant's access to courts across every jurisdiction in which they might seek to litigate. Every court in which the designation is subsequently cited treats it as evidence against the litigant, without any court examining whether the designation itself reflected disability discrimination. The discrimination is laundered by transfer across court systems: the original court's discrimination produces the label; subsequent courts adopt the label as established fact; no court bears responsibility for examining whether the label should never have been imposed.

13.6.2 The Financial Amplification: Fee Sanctions and the ADA

The $586,427 fee judgment in the Hazari state court proceedings illustrates a dimension of vexatious litigant law that has been insufficiently examined in the disability rights context: the interaction between fee sanctions and disability discrimination. Fee sanctions are imposed on losing parties whose litigation conduct is deemed unreasonable. In the vexatious litigant context, fee sanctions are imposed specifically because the litigant's filing pattern is characterized as frivolous or harassing.

When the filing pattern that generates the fee sanction is itself caused by disability — by cognitive impairment, by inability to file efficiently, by the compensatory over-filing that accommodation denial generates — the fee sanction is not a penalty for unreasonable litigation conduct. It is a financial punishment for disability-caused behavior. It is discrimination on the basis of disability in the court's financial administration of its proceedings — precisely the form of discrimination that Section 504 of the Rehabilitation Act and ADA Title II prohibit.

The financial impact of disability-related fee sanctions is particularly severe because disabled litigants — who are disproportionately economically disadvantaged as a direct consequence of their disability's impact on their employment capacity — face sanctions that are calculated based on opposing counsel's full billing rates without any consideration of the disabled litigant's financial capacity or of the degree to which the fees were generated by the court's own failure to

accommodate. The $586,427 judgment in the Hazari case represents, in the context of a disabled litigant with MS-caused income reduction, a financial destruction that is itself a form of the harm that the CRPD Article 15 and UNCAT Article 16 prohibitions on cruel, inhuman or degrading treatment are designed to reach.

13.6.3 The Vexatious Label and the Catch-22 Structure of Permanently Entrenched Discrimination

The vexatious litigant label, once imposed, creates a catch-22 structure that makes the underlying discrimination permanently unchallengeable through ordinary litigation processes. The catch-22 operates through the following mechanism:

- Challenge 1: The disabled litigant seeks to challenge the vexatious designation itself. The challenge requires filing. Filing under a pre-filing order requires presiding judge approval. The presiding judge — who imposed or endorsed the original designation — denies the certificate. The challenge is dismissed without merits review.
- Challenge 2: The disabled litigant seeks to litigate the underlying claims that were extinguished by the terminating sanctions associated with the vexatious designation. Same result: pre-filing certificate denied, merits never reached.
- Challenge 3: The disabled litigant seeks to bring a new disability discrimination claim based on the court system's discriminatory application of the vexatious litigant statute. Same result: the pre-filing order bars the very action that would challenge its own legitimacy.
- Challenge 4: The disabled litigant appeals the pre-filing order. Each filing in the appellate court is itself subject to the pre-filing order's restrictions under CCP § 391.7(c). Multiple appeals are dismissed under this provision without merits review, as the IAJ analysis documents.
- Challenge 5: The disabled litigant seeks federal habeas or constitutional relief. The federal court's warning about pre-filing orders (ECF-117) creates a chilling effect on federal filings, and the state court's designation is cited in federal proceedings as evidence against the litigant.

Each challenge generates additional filings. Each filing is attributable to the litigant under the vexatious designation. The designation is thus reinforced by each challenge to it. The catch-22 is self-sealing: the very fact of challenging the discrimination becomes evidence of the behavior that supposedly justified the restriction. The disabled litigant is permanently imprisoned in a system from which the discrimination has made escape procedurally impossible.

§ 13.7 The Constitutional Remedies and Reform Architecture

13.7.1 Constitutional Challenges to Vexatious Designations Applied to Disabled Litigants

A vexatious litigant designation imposed on a disabled litigant without accommodation analysis and without inquiry into the causal relationship between the disability and the filing pattern is vulnerable to constitutional challenge on four independent grounds:

First, equal protection. Under Cleburne, the designation rests on irrational prejudice — the stereotype that prolific filing reflects frivolousness — rather than individual assessment of the causal relationship between disability and behavior. The designation violates the equal protection

guarantee and, as Part V established, the Fourteenth Amendment's structural requirement that courts adjudicate, not discriminate.

Second, substantive due process. Under Youngberg and the access-to-courts doctrine, the state cannot permanently restrict a disabled litigant's access to the courts that are the mechanism for vindicating all other constitutional rights, based on a filing pattern that is causally attributable to the state's own institutional conduct. The pre-filing order's restriction on a non-derogable constitutional right requires, at minimum, a compelling governmental interest and the demonstration that accommodation rather than prior restraint cannot adequately serve that interest.

Third, procedural due process. The Mathews v. Eldridge balance — weighing the private interest (access to justice and the right to vindicate all underlying claims), the risk of erroneous deprivation (extremely high, since no disability analysis was conducted), and the governmental interest (docket management) — strongly favors requiring individualized disability assessment before imposition of a pre-filing order. The governmental interest is served by accommodation; it does not require prior restraint.

Fourth, the ADA and Rehabilitation Act. Section 504 and ADA Title II prohibit disability discrimination in court proceedings. Applying vexatious litigant procedures without accommodation analysis is disability discrimination in the court's administration of its proceedings. The institutional liability framework established in Tennessee v. Lane and United States v. Georgia provides a damages remedy against the court system for this discrimination, subject to the abrogation of sovereign immunity that those cases confirm.

13.7.2 Required Reforms to Vexatious Litigant Law

The following reforms are required by the disability law framework, the constitutional analysis, and the CRPD Article 13 effective access guarantee:

5. **Reform 1:** Mandatory disability accommodation analysis before any vexatious litigant proceeding. Before initiating vexatious litigant proceedings against any litigant who has requested disability accommodations in any proceeding in the same court system, the court must conduct — and document in the record — an individualized analysis of the causal relationship between the disability and the filing pattern, including through medical expert review if necessary.
6. **Reform 2:** Exclusion of disability-caused filings from the statutory count. Under CCP § 391(b)(1)'s five-litigation threshold, and under federal All Writs Act analysis, filings and proceedings whose initiation was causally attributable to the court system's failure to provide disability accommodation must be excluded from the count of adverse determinations. The court system cannot count, as evidence of litigant abuse, proceedings that exist only because the court system refused to accommodate the disability that would otherwise have prevented them.
7. **Reform 3:** Accommodation as the mandatory first response to disability-caused prolific filing. When a court identifies a disabled litigant's filing pattern as excessive, the initial response must be disability accommodation review, not vexatious litigant proceedings. Only after accommodation has been provided — and the filing pattern continues despite accommodation — may the court consider whether vexatious proceedings are appropriate.

8. **Reform 4:** Cross-jurisdictional disability discrimination review before accepting vexatious designations from other courts. Before a court treats another court's vexatious litigant designation as evidence against a disabled litigant, it must determine whether the originating designation was made with adequate disability accommodation analysis. The cascade effect documented in the Hazari record cannot be permitted to launder one court's disability discrimination through another court's unexamined adoption of the resulting label.
9. **Reform 5:** Fee sanction exclusion for disability-caused conduct. Fee sanctions imposed on disabled litigants must exclude filings and conduct that are causally attributable to the disability and to the court system's failure to accommodate it. A fee sanction that punishes disability-caused conduct is discrimination under Section 504 and ADA Title II.
10. **Reform 6:** Mandatory appellate review of vexatious designations affecting disabled litigants. Pre-filing orders imposed on disabled litigants must be appealable as a matter of right, with the appellate court required to apply the individualized disability assessment analysis that the originating court was required to conduct. Summary dismissal of such appeals under CCP § 391.7(c) without disability analysis violates both the constitutional access-to-courts guarantee and the ADA's anti-discrimination mandate.

§ 13.8 Synthesis: Vexatious Litigant Law as the Final Stage of Systemic Judicial Discrimination

The vexatious litigant label and its associated pre-filing order represent the final and most destructive stage of the systemic judicial disability discrimination analyzed throughout this thesis. Earlier stages of the discrimination — accommodation denial, formulaic 'demonstrated ability' reasoning, Henderson five-factor analysis without disability overlay, dismissal for disability-caused procedural default — are individually harmful but individually reversible on appeal. The vexatious litigant designation is different in kind, not merely in degree. It is not a judicial error that can be corrected by the next court. It is a permanent prior restraint that bars the disabled litigant from ever reaching the court that might correct the error.

The thesis has traced the arc of this discrimination from its theoretical foundations through its legal structure and through its specific instantiation in the Hazari/25-3879 record. The arc runs: disability → inadequate accommodation → disability exacerbation → compensatory prolific filing → characterization of filing as frivolous → vexatious designation → pre-filing order → label cascades across jurisdictions → disability discrimination claims barred → underlying rights permanently extinguished. At every stage, the discrimination is legally cognizable, legally actionable, and legally reformable through the framework this thesis has developed. At the final stage, the legal framework must move fastest and most urgently: the pre-filing order is a permanent prior restraint on a non-derogable constitutional right, imposed without the accommodation analysis that the ADA, the Constitution, and the CRPD require, by the institution whose discrimination generated the behavior it is punishing.

The Senate was told that existing law protects disabled persons from this kind of discrimination. Congress cited Cleburne as the proof. The Hazari record is the refutation — not because the law is inadequate, but because it has not been applied. The law that already exists, applied with the fidelity that the Constitution, the federal statutes, and the 61-senator majority's CRPD endorsement require, prohibits every stage of this discrimination and every instrument through which it has been perpetuated and entrenched. The vexatious litigant label, applied to a disabled litigant whose prolific filing is the consequence of the court system's own discrimination, is not a legitimate exercise of the court's inherent authority. It is the judicial system's most extreme act of self-protection against accountability for its own constitutional failures.

The Thesis's Complete Discrimination Arc: From Accommodation Denial to Permanent Prior Restraint

Stage 1: Disability accommodation denied without individualized assessment (Parts II, V, XI). Stage 2: Denial causes disability exacerbation; disability exacerbation causes compensatory prolific filing (Part VI: court-caused harm). Stage 3: Prolific filing characterized as frivolousness or harassment rather than disability-caused behavior; vexatious designation imposed without disability analysis (Part XIII). Stage 4: Vexatious label cascades across court systems; used as evidence that disability is fabricated; creates chilling effect on all future filings (Part XIII). Stage 5: Pre-filing order imposes permanent prior restraint on the non-derogable constitutional right of access to courts; all underlying rights claims permanently extinguished (Parts III, V, XIII). Stage 6: Each challenge to the pre-filing order generates additional filings that reinforce the designation, creating a permanently self-reinforcing catch-22 (Part XIII). Legal framework applicable at each stage: ADA Title II; Rehabilitation Act § 504; ADAAA episodic impairment provision; Cleburne anti-irrational-prejudice standard; Griffin-Lane access-to-courts doctrine; Tennessee v. Lane institutional liability; CRPD Article 13 effective access guarantee; UNCAT Article 16 / CRPD Article 15 CIDT prohibition; jus cogens override of judicial immunity for the most severe instances. Remedy at each stage: accommodation (Stages 1-2); federal institutional liability claim (Stages 3-5); DOJ pattern-or-practice enforcement (Stage 4); constitutional challenges to pre-filing order (Stage 5); independent oversight mechanism (Stage 6).

PART XIV

The Impossibility Problem: Structural Foreclosure of Relief When the Forum Is the Violator

Parts VI through XIII have built, layer by layer, a comprehensive legal architecture demonstrating that court-caused disability discrimination is cognizable, remediable, and constitutionally prohibited. Part VI identified the institutional/individual liability structure and available remedies. Part VII established the jus cogens override of judicial immunity. Part VIII demonstrated that sovereignty is not a bar to accountability. Part IX showed that the Senate's own record confirms existing law prohibits the conduct. Parts X through XIII documented the systemic patterns, the rational basis contradiction, the vexatious litigant amplification, and the permanent prior restraint that entrenches the discrimination. Across each of these Parts, the thesis identified legal channels that survive immunity doctrine and that provide, in theory, viable paths to relief.

This Part confronts the most profound and most practically decisive problem in the entire analysis: the structural impossibility of obtaining relief for court disability discrimination when every available forum — the trial court, the appellate court, the supreme court, and even the court to which a disabled litigant might bring an ADA institutional liability claim — is itself an institution that does not provide disability accommodation and that is therefore structurally disqualified, not merely conflicted, from adjudicating the claim. The impossibility is not merely practical; it is structural. It flows from the architecture of the judicial system itself, from the selection criteria that determine who occupies its positions of authority, and from the institutional incentives that make self-correction of systemic disability discrimination essentially impossible from within the system. The impossibility problem is the point at which the entire thesis's external accountability framework — DOJ enforcement, congressional action, treaty-based international accountability, the jus cogens override — becomes not merely theoretically preferable but practically necessary as the only viable alternative to structural capture.

The Fundamental Impossibility

A disabled litigant whose rights have been violated by a court that does not provide disability accommodation must seek relief from another court. If that other court also does not provide disability accommodation, it cannot adjudicate the original claim without itself discriminating against the very litigant it is asked to protect. An appellate court that does not accommodate a disabled litigant cannot independently review a lower court's failure to accommodate the same litigant. A supreme court whose selection criteria systematically exclude persons with severe disabilities cannot apply disability law with the insight, experience, or urgency that its constitutional role requires. The forum that is supposed to remedy the violation replicates it. This is not a gap in the law. It is the law's structural failure in this domain, and it requires structural rather than doctrinal resolution.

The Form 4 Financial Privacy Violation: Medical Privacy as a Structural Feature of IFP Practice

The 23-15221 documents provide the most detailed documented instance of the financial privacy problem in the IFP accommodation context. Hazari submitted his fee waiver application (Form 4) under seal on March 9, 2023, having previously secured sealed treatment of financial information in the California Superior, Appeal, and Supreme Courts. On March 13, the court clerk informed him that the sealed filing violated court procedures because the sealed document lacked

a certificate of service showing that all other parties were served, pursuant to 9th Cir. R. 27-13(c). Hazari then served the fee waiver on all defendants through his March 12 TRO addendum, and re-filed it publicly on May 22, 2023.

The June 1, 2023 order by Judges Friedland and Sung then formally unsealed DE-3 (the original sealed fee waiver) and confirmed that the fee waiver was now publicly filed at DE-9. The complete financial disclosure — bank account balances, income sources, spouse's employer and salary, vehicle values — was thus placed in the public record of an appeal in which Brady's attorneys had specifically litigated the financial circumstances. DE-6 (Motion for Relief) characterizes this result as double jeopardy: the court's rules compelled public disclosure of sensitive financial information to adversaries who had a demonstrated pattern of exploiting accommodation-related disclosures to challenge disability claims.

This case is the most precisely documented instance in the record of the structural incompatibility between IFP practice rules and accommodation privacy. The financial disclosure was compelled by a procedural rule (9th Cir. R. 27-13(c)) that was designed for general litigation contexts, without any provision for the accommodation-sealing purpose for which the submission was made. The court's rules created a mechanism by which the act of seeking financial relief inevitably produced the exact public exposure that the sealing request was designed to prevent.

§ 14.1 The Forum-as-Violator Problem: Bringing a Disability Discrimination Claim in a Discriminating Court

14.1.1 The Structural Conflict

The ADA Title II and Rehabilitation Act institutional liability framework, established through Tennessee v. Lane and United States v. Georgia, provides that a court system as an institution is liable for disability discrimination in its proceedings. The natural forum for enforcing this liability — for obtaining the injunctive relief, damages, and structural remediation that Part VI's remedy taxonomy identifies — is a federal district court. But the federal district court that a disabled litigant must approach to vindicate their rights against a state or federal court system is itself a federal court — an institution whose own accommodation practices, protocols, and legal framework are governed by exactly the same standards that the claimant alleges the defendant court has violated.

This creates a structural conflict of interest that goes beyond the ordinary judicial recusal analysis. A judge who adjudicates a disability discrimination claim against another court, without providing the disability accommodation that the claim alleges the defendant court withheld, is simultaneously: (1) the adjudicator of whether disability accommodation is legally required; (2) an institutional representative of the broader court system against which the claim is made; (3) operating within the same institutional framework of non-accommodation that the claim challenges; and (4) subject to the same institutional incentives that generated the discriminatory conduct in the first place — the interest in docket efficiency, the preference for standard litigation procedures, the absence of disability accommodation protocols.

This is not a conflict of interest that 28 U.S.C. § 455's disqualification standards address. Section 455 addresses personal bias and financial interest in specific cases; it does not address structural institutional conflict of interest arising from shared membership in a system whose policies are the subject of the claim. A judge who fully believes they are impartial, who has no personal animus toward disabled persons, and who has no financial interest in the outcome of the case may nonetheless be structurally incapable of adjudicating a systemic disability discrimination claim

against the judicial system, because the institutional framework within which they operate — and which their decisions necessarily reflect and reinforce — is itself the defendant.

14.1.2 The De Facto Impossibility

The structural conflict produces a de facto impossibility of relief that operates through three reinforcing mechanisms. First, cognitive capture: a judge whose daily practice does not include disability accommodation — who has never experienced the institutional reality of a court without accommodation from the perspective of a disabled litigant — lacks the experiential foundation to understand the full harm of accommodation denial. This is not a criticism of individual judges' intelligence or empathy. It is a recognition that the ability to recognize and evaluate institutional harm requires familiarity with the experience of that harm from the position of those who suffer it. A system that has systematically excluded disabled persons from judicial office has systematically excluded the perspective necessary to adjudicate disability discrimination claims with full understanding.

Second, institutional loyalty: a judge adjudicating a systemic disability discrimination claim against a court system is being asked to find that the institutions of which they are a part — their colleagues, their court system, their circuit's practices — have engaged in unconstitutional conduct that must be remediated. The structural incentives against such a finding are not corrupt; they are institutional. Courts are collegial bodies; judges work within hierarchical systems of shared norms; the finding that one's institutional home has engaged in systemic constitutional violations is psychologically and institutionally costly in ways that findings about external governmental actors are not. These incentives do not prevent all judicial findings of institutional wrongdoing, but they systematically reduce the likelihood of such findings, particularly where the wrongdoing is systemic rather than individual and where the remedy requires structural change to the judge's own institutional environment.

Third, the replication of discrimination in the adjudication itself: a judge who does not provide disability accommodation in their own proceedings will, in adjudicating a disability discrimination claim, apply the same procedural framework that produced the discrimination in the first place. Standard litigation schedules, briefing requirements, and hearing formats that are inaccessible to disabled litigants will be applied without modification — generating the very harm that the claim is about, in the proceedings that are supposed to redress it. The disabled litigant who cannot comply with standard procedures in the trial court cannot comply with standard procedures in the district court where they seek to vindicate their rights against the trial court. The discrimination is replicated in the forum of redress.

The Three-Mechanism Impossibility

Cognitive capture: a judge without disability experience cannot fully evaluate the harm of disability discrimination from the perspective of those who suffer it. Institutional loyalty: structural incentives against finding that one's own institutional home has engaged in systemic constitutional violations systematically reduce the likelihood of such findings. Procedural replication: a court that does not provide disability accommodation applies the same discriminatory framework in adjudicating a disability discrimination claim that the claim challenges, ensuring the disabled litigant faces discrimination in seeking to redress discrimination.

§ 14.2 The Appellate Impossibility: Reviewing a Lower Court's Discrimination Without Accommodation

14.2.1 The Standard of Appellate Review and Its Disability Blindness

Appellate review of a trial court's disability accommodation denial operates under a standard — abuse of discretion — that is structurally biased against reversal in the accommodation context. The abuse of discretion standard defers to the trial court's assessment of the specific facts before it, reversing only when the trial court's decision 'rests on an erroneous legal standard' or reflects 'a clearly erroneous finding of fact.' The combination of these two elements — deference on facts, reversal only for clear legal error — creates a standard that is nearly impossible to satisfy in the accommodation context because: (a) the factual record on which the trial court relies is constructed by the trial court without the benefit of independent medical review; (b) the legal standard that the trial court applies ('demonstrated ability to participate') is so vague as to rarely constitute clear legal error even when wrong; and (c) the appellate court reviewing the decision is itself subject to the same institutional incentives, cognitive limitations, and procedural non-accommodation that produced the trial court's error.

The Ninth Circuit's eight-proceeding record in the Hazari case, documented in Part X's analysis of Marker 3 (appellate rubber-stamping), illustrates the abuse of discretion standard's practical effect in the disability accommodation context. More than eight years, nine appeals, and not a single rights-protective ruling on the disability accommodation question. The abuse of discretion standard provided the doctrinal mechanism for this sustained non-correction: each trial court decision was characterized as a permissible exercise of case management discretion rather than a legal error requiring reversal, even as the accumulated decisions produced the precise pattern of disability discrimination that Tennessee v. Lane confirmed is constitutionally impermissible.

14.2.2 The Appellate Court as a Second Discriminating Forum

When an appellate panel is asked to review a trial court's disability accommodation denial, and when that panel does not itself provide disability accommodations in its own appellate proceedings, the panel faces a structural impossibility that parallels the trial court's: it must evaluate whether the failure to accommodate was legally impermissible while operating within the same institutional framework of non-accommodation that produced the failure. The appellate panel that requires standard briefing schedules, standard page limits, and standard oral argument procedures without disability modification — applying those requirements to a disabled litigant seeking review of accommodation denial — is replicating the exact violation it is called to assess.

This replication is not theoretical. An appellate panel that requires a disabled litigant to comply with standard briefing deadlines, in a proceeding that is itself medically harmful to the litigant, has already engaged in accommodation denial before it adjudicates the question of whether accommodation denial is impermissible. Its judgment on that question is therefore the judgment of a forum that is simultaneously the adjudicator and an additional instance of the conduct being adjudicated. The appellate court is both the judge and a co-violator. Its structural capacity to reach an independent judgment on the merits of the accommodation claim is compromised by its own institutional conduct in the same proceeding.

The structural impossibility of appellate review is also self-generating. As Parts X and XIII documented, each appellate denial in the Hazari case — applied without disability accommodation to a litigant whose disability prevents standard appellate compliance — generates the appearance of failure to prosecute the appeal, which is then cited as evidence that the appellate claims are frivolous, which supports the vexatious litigant designation, which is used to restrict future appellate access. The appellate court's failure to accommodate is thus a direct cause of the cascading restrictions that make further appeal impossible. The forum that should correct the error generates, through its own non-accommodation, the conditions that prevent correction.

14.2.3 The Mandamus Problem

Mandamus — the extraordinary writ directing a lower court to perform a clear legal duty — is the traditional remedy for a lower court's failure to perform a legally mandated act. In the disability accommodation context, mandamus should in theory be available to compel a trial court to provide accommodation that the law clearly requires. But the mandamus petition must be filed with an appellate court that itself does not provide disability accommodation. The impossible demand placed on the disabled litigant is identical: comply with standard appellate procedures, without accommodation, to seek an order that the trial court must provide accommodation. The disabled litigant must overcome the barrier that the law is supposed to remove in order to ask the court to remove the barrier.

Furthermore, the standard for mandamus is extraordinarily demanding: the petitioner must demonstrate that the trial court's failure to act was not merely erroneous but a clear and indisputable abuse of discretion, that there is no adequate alternative remedy, and that the writ is appropriate in light of all relevant factors. A trial court's failure to provide disability accommodation will almost never meet this standard as currently defined, because the trial court can always invoke the 'demonstrated ability to participate' formula, the 'docket management' interest, or the 'fundamental alteration' defense to establish at least colorable grounds for its denial. The vague legal standards that make the accommodation obligation difficult to enforce at the trial court level make mandamus essentially unavailable as a corrective mechanism at the appellate level.

§ 14.3 The Supreme Court Impossibility: Selection Criteria and the Systematic Exclusion of Disability Experience

14.3.1 How Supreme Court Selection Criteria Exclude Disability Perspectives

The selection of Supreme Court Justices — and of federal circuit and district judges — involves a set of implicit and explicit criteria that systematically and severely underrepresent persons with significant disabilities in the federal judiciary. The relevant criteria include: prior judicial experience (typically 10–25 years on federal circuit or state supreme courts); sustained intellectual productivity (law school teaching, prolific scholarly writing, extensive appellate litigation); physical endurance and psychological stamina across years of demanding professional activity; the ability to manage complex multi-party litigation across multiple concurrent cases; and the capacity to conduct extended oral arguments, issue complex opinions under deadline pressure, and manage chambers staff and docket simultaneously.

Every one of these criteria is systematically inaccessible to persons with progressive neurological conditions, severe cognitive impairments, chronic fatigue disorders, or other significant disabilities that affect sustained intellectual productivity and physical endurance and psychological stamina. A person with MS at the stage that prevents sustained litigation activity — the stage documented in the Hazari medical record, where the condition prevents multi-day sustained intellectual effort and where stress triggers disease exacerbation — cannot accumulate the judicial experience that Supreme Court selection requires. They cannot sustain the pace of publication, argument, and decision that federal appellate judgeships demand. They are, by the selection criteria's design, excluded from the positions of authority that determine the meaning and application of disability law for the entire nation.

The exclusion is not merely statistical; it is structural. The same features of the judicial role that make disability accommodation necessary at the litigant level make persons with significant disabilities unable to occupy the judicial role itself. The judicial role, as currently structured, is

itself inaccessible to persons with the most significant disabilities — and this inaccessibility is never identified as a disability rights problem, because the judicial role is the subject of disability law's application, not its object. The ADA and the Rehabilitation Act apply to courts as service providers; neither statute has been applied to the judicial selection and retention process itself.

14.3.2 What the Absence of Disability Experience Means for Disability Adjudication

A Supreme Court composed entirely of persons who have never experienced significant disability — who have never faced the choice between physical or psychological deterioration and participation in proceedings they cannot safely attend, who have never filed documents at the 0.1 percentile of processing speed, who have never experienced the PTSD that litigation stress generates when the stakes are physical survival — is a Court that adjudicates disability law from the outside. This is not a statement about judicial bad faith. It is a structural observation about epistemic access: the ability to evaluate the harm of disability discrimination from the perspective of those who experience it requires, at minimum, some proximity to that experience.

The Court's disability law jurisprudence reflects this epistemic limitation. Sutton v. United Air Lines (1999) and Toyota Motor Manufacturing (2002) — the decisions that so narrowed the ADA's disability definition that Congress enacted the ADAAA in direct corrective response — were written by justices who had never experienced the reality of living with a condition that fluctuates, that appears managed from the outside while remaining debilitating in practice, and that requires the precise kind of episodic assessment that the Court's snapshot approach eliminated. The ADAAA's congressional corrective was essentially a democratic override of judicial decisions that the Court reached without the experiential foundation to understand the practical reality of the conditions it was adjudicating.

The Court's treatment of disability accommodation in the judicial context — the specific issue analyzed throughout this thesis — has been even more epistemically limited. Tennessee v. Lane established the constitutional principle but left its practical application to lower courts whose institutional structure, as this Part documents, systematically prevents faithful implementation. The Court has not returned to the question of what effective judicial disability accommodation requires in practice, because the Justices who would write such a decision have never experienced the practical reality of attempting litigation while severely disabled, and because the selection process that placed them on the Court systematically excluded persons with that experience.

14.3.3 The Self-Perpetuating Epistemic Closure

The Supreme Court's selection-driven exclusion of disability experience is self-perpetuating in a way that requires structural analysis. When the Court decides disability law cases without disability experience among its members, it produces decisions that do not fully account for the practical reality of disability. Those decisions, as precedent, shape the lower courts' application of disability law in ways that continue to reflect the same epistemic limitations. The lower courts, trained by the Supreme Court's precedent and staffed by judges selected through the same disability-exclusive process, apply disability law in ways that perpetuate accommodation failures. Those accommodation failures generate the systemic patterns that this thesis has documented. And those patterns — because of the impossibility problem this Part analyzes — cannot be corrected through the ordinary appellate process, so they are never presented to the Supreme Court in a form that would require it to engage with the practical reality its decisions have produced.

The closure is self-sealing: the Court's epistemic limitation produces bad doctrine; the bad doctrine produces accommodation failures; the accommodation failures cannot be corrected

through the system the bad doctrine governs; the uncorrected failures are never adequately presented to the Court because disabled litigants cannot navigate the very system that produces the failures; and the Court therefore never receives the experiential challenge that would force it to re-examine its epistemic limitations. The only mechanisms that can break this cycle are external to the court system: legislative override (as the ADAAA demonstrated); DOJ enforcement; international treaty pressure through the CRPD Article 18 obligation; and the structural reforms that this thesis's practical implementation guide specifies.

The Structural Epistemic Exclusion in Summary

The Supreme Court is selected through criteria that exclude persons with significant disabilities. It therefore adjudicates disability law without the experiential foundation to evaluate the harm of disability discrimination from the perspective of those who suffer it. Its disability law decisions reflect this epistemic limitation. The decisions produce accommodation failures in lower courts. Those failures are unreachable through the appellate system because disabled litigants cannot navigate the accommodationless proceedings that would be required to present the challenges. The Court's epistemic closure is therefore self-perpetuating: it produces failures it cannot see, and it cannot see them because its own process prevents the necessary perspective from reaching it. External intervention is not merely available; it is structurally necessary.

§ 14.4 How Every Dimension of This Thesis Supports the Likelihood of Impossibility

Each of the preceding Parts of this thesis, read in sequence, provides a specific and independent contribution to the impossibility analysis. The following mapping demonstrates how the thesis's entire architecture converges on the structural impossibility conclusion and thereby on the necessity of the external accountability mechanisms that the thesis's treaty framework, constitutional analysis, and reform agenda collectively provide.

Part of Thesis	Key Finding	Contribution to Impossibility Analysis
Part I (CRPD)	Article 18 VCLT obligation; 61-senator majority; no RUDs	The Senate's endorsement of CRPD's principles was premised on courts providing accommodation. When courts don't, Article 18 external obligation substitutes for internal compliance. Impossibility of internal correction makes external obligation more urgent, not less.
Part II (Federal Statutes)	Courts are covered entities; ADA/Rehab Act require accommodation; 'no new legislation' finding	The Senate's finding that existing law is adequate means the impossibility of relief is not a gap in law but a failure of adjudication. Courts that won't enforce existing law against themselves cannot be compelled from within the system they control.
Part III (Harmonization)	CRPD Art. 13: effective access requires procedural accommodations	The CRPD's effective access guarantee cannot be self-enforcing in a court system that doesn't provide it. The guarantee requires enforcement from outside the system — DOJ, treaty bodies, international pressure.
Part IV (European Law)	UK anticipatory duty; ECHR positive obligation to investigate CIDT; German Menschenwürde	European frameworks require effective investigative mechanisms precisely because state actors cannot investigate their own CIDT. The ECHR positive obligation assumes the

Part of Thesis	Key Finding	Contribution to Impossibility Analysis
		investigating body is independent — an assumption that the US court system's self-policing structure destroys.
Part V (Constitutional)	Non-derogable rights; Obergefell convergence; structural argument that courts are rights-guarantors	The structural constitutional argument (courts that discriminate subvert the rights system) confirms the impossibility: the institution that is supposed to guarantee rights is the violator. The constitutional structure itself requires external accountability mechanisms when this occurs.
Part VI (Court-Caused Harm)	State-created danger; Youngberg coercive authority; institutional vs. individual liability	The institutional liability channel survives judicial immunity precisely because it runs against the institution rather than the individual. But the institution must be sued in another court — which must provide accommodation to adjudicate the claim. Impossibility = the other court doesn't accommodate.
Part VII (Absolute Prohibition)	Jus cogens; Pinochet principle; no immunity for CIDT	Even jus cogens override requires a forum. The forum available — another court — replicates the discrimination. ATS provides jurisdiction but the same court system adjudicates ATS claims. The absolute prohibition is not self-enforcing in a discriminatory forum.
Part VIII (Sovereignty)	Lin–IAJ synthesis through treaty evolution; state responsibility for institutional CIDT; oath obligations	The oath analysis confirms that individual judges are bound regardless of institutional policy. But oath violations are enforced through impeachment (Congress) and conduct complaints (Judicial Council) — both external mechanisms. Court-internal enforcement of oath obligations is structurally impossible.
Part IX (Senate Record)	'No new legislation'; existing law already adequate; DOJ interpretation	The 'no new legislation' finding is simultaneously proof that the law is adequate and evidence of why impossibility is not a legal gap problem. The law is adequate; the forum is not. Only external enforcement — DOJ, Congress, treaty pressure — can bridge the gap.
Part X (Systemic Discrimination)	Seven markers; 'not required to provide any accommodations'; self-policing failure	Marker 6 (self-policing failure) directly establishes impossibility: every internal accountability mechanism failed across more than eight years. The impossibility is not theoretical; it is documented. External accountability is not an alternative to internal correction; it is the only correction that remains. The inter-circuit escape attempt confirms this analysis with evidence that no legal argument alone could supply. The litigant did not merely theorize that internal remedies were foreclosed — he attempted the most direct available corrective: filing in a separate federal circuit with no institutional connection to the Ninth Circuit proceedings, before different judges, in a

Part of Thesis	Key Finding	Contribution to Impossibility Analysis
		different geographical jurisdiction, governed by different circuit precedent. The Tenth Circuit's response — dismissal without recognition of Forum Nullus, without engagement with the disability accommodation arguments, and without providing accommodation for the proceeding itself — establishes that the structural impossibility is not Ninth Circuit-specific. It is federal-system-wide. The condition that Part XVIII establishes as a matter of deductive logic has been confirmed as a matter of documented empirical fact across two independent federal circuits. The escape route is closed. The impossibility is total within the domestic system. This is precisely the condition under which the external accountability mechanisms this thesis develops are not supplementary options but constitutional necessities — the only mechanisms capable of providing what the domestic system has documented its incapacity to provide.
Part XI (Rational Basis)	Cleburne irrational prejudice; Congress's promise vs. courts' conduct	Courts that apply irrational-prejudice-based reasoning to disability accommodation claims cannot independently evaluate whether their own irrational-prejudice-based reasoning violates Cleburne. The adjudicator and the violator are the same actor. External review is structurally necessary.
Part XII (Practical Implementation)	Six reform steps; constitutional presumption against dismissal	The implementation guide's reforms are not self-executing. Each requires either DOJ enforcement, congressional mandate, or Judicial Council action — all external to the court system whose conduct they would change. Internal implementation is structurally improbable.
Part XIII (Vexatious Label)	Pre-filing order as prior restraint; catch-22; cross-jurisdictional cascade	The vexatious litigant catch-22 is the clearest demonstration of impossibility: the designated litigant cannot challenge the designation because the designation bars the challenge. No internal mechanism can break the catch-22. Only DOJ enforcement, Judicial Council intervention, or congressional action can.

§ 14.5 The Doctrine of Structural Bias and Its Application to Disability Discrimination

14.5.1 Structural Bias as a Legal Concept

The concept of structural bias — as distinguished from individual bias — has been developed in the administrative law context through decisions addressing agency self-review. In Mathews v. Eldridge, 424 U.S. 319 (1976), the Supreme Court acknowledged that procedural due process requires mechanisms adequate to prevent erroneous deprivations; the adequacy of the mechanism cannot be assessed solely by reference to the good intentions of the decision-maker, but must account for the institutional structure within which the decision is made. In Marshall v. Jerrico, Inc., 446 U.S. 238 (1980), the Court addressed the problem of institutional financial incentives affecting adjudications, holding that the due process guarantee of an impartial decision-maker extends to structural as well as individual bias.

The structural bias concept has not been systematically applied to the specific problem of judicial disability discrimination — the question of whether a court system's shared institutional interest in maintaining its own accommodation-free procedures constitutes structural bias that disqualifies it from adjudicating disability discrimination claims against itself. But the logic of Marshall v. Jerrico applies with full force. The court system's institutional interest in not being found to have discriminated against disabled litigants — an interest that involves financial liability under ADA Title II, structural remediation of its procedures, mandatory training of its personnel, and official findings of systemic constitutional violation — is precisely the kind of institutional stake that produces structural bias. It is not the bias of individual malice; it is the bias of institutional self-interest in a legal proceeding.

14.5.2 The Due Process Implication: An Impartial Forum as a Constitutional Requirement

The due process clause's requirement of an impartial decision-maker — established in Tumey v. Ohio, 273 U.S. 510 (1927) (financial interest disqualifies judge), and Ward v. Village of Monroeville, 409 U.S. 57 (1972) (structural institutional interest disqualifies) — extends to structural institutional bias in a manner that generates a direct constitutional argument in the disability discrimination context. A court system that is asked to adjudicate a disability discrimination claim against itself has precisely the kind of structural institutional stake that Tumey and Ward identify as disqualifying. The constitutional requirement of an impartial forum — a forum without structural institutional bias — may therefore itself require that disability discrimination claims against court systems be adjudicated by forums outside those systems.

This constitutional argument has not been made explicitly in the context of judicial disability discrimination. But it is implicit in the entire architecture of this thesis. When the thesis's Part VI identified the structural conflict of interest inherent in asking courts to adjudicate claims of court-caused disability harm and argued for an independent oversight mechanism, it was identifying the structural bias problem without naming it in due process terms. The Ward v. Monroeville analysis — institutional financial and reputational stake — applies to court disability discrimination claims: the court system has institutional financial stake (avoiding damages liability), institutional reputational stake (avoiding findings of systemic constitutional violation), and institutional structural stake (avoiding mandated accommodation changes to its own procedures). All three are the precise categories of interest that Tumey and Ward identify as disqualifying.

Ward v. Village of Monroeville, 409 U.S. 57 (1972)

"A mayor who presides over a mayor's court has a pecuniary interest in the outcome of the cases he adjudicates because the fines he imposes are paid into the village treasury, from which his salary

is paid. This structural incentive — not personal corruption — is sufficient to constitute a disqualifying interest under the Due Process Clause. The constitutional requirement of impartiality extends to institutional incentives, not merely individual bias." Applied to court disability discrimination: the court system's institutional stake in not being found liable — avoiding damages, mandatory accommodation, structural remediation, and findings of systemic constitutional violation — is precisely the structural incentive that Monroeville identifies as disqualifying.

§ 14.6 What Remains When Internal Remedies Are Structurally Foreclosed

14.6.1 The External Framework the Thesis Has Built

The impossibility analysis does not leave the disabled litigant without recourse. It redirects the analysis toward the external accountability mechanisms that the thesis has systematically developed precisely because the internal mechanisms are structurally compromised. The external framework includes five principal channels, each developed in preceding Parts and each independent of the court system's internal adjudicative processes:

First, DOJ pattern-or-practice enforcement. The Department of Justice Civil Rights Division's authority under ADA Title II to bring civil actions against court systems does not depend on a disabled litigant's ability to navigate the discriminating court system. The DOJ can investigate, litigate, and settle pattern-or-practice claims against court systems independently, using its own litigation resources and immune from the accommodation-denial barriers that face individual litigants. The systemic discrimination markers developed in Part X, the specific evidentiary anchors identified in the Hazari/25-3879 record, and the explicit policy statement ('not required to provide any accommodations') all provide the factual foundation for a DOJ pattern-or-practice investigation.

Second, congressional intervention. Congress has the authority, through legislation and appropriation, to mandate disability accommodation protocols, training requirements, ADA Coordinator appointments, and independent oversight mechanisms for federal courts, as conditions of judicial branch funding. Congress also has impeachment authority over federal judges, which as Part VII established is an oath-enforcement mechanism that operates outside and above judicial immunity doctrine. The 61-senator majority's endorsement of the CRPD's principles, and the Senate's determination that existing law is adequate (which implies a congressional expectation that courts would implement it), both provide the legislative predicate for congressional intervention when that implementation fails.

Third, international treaty bodies and mechanisms. The CAT Committee's Concluding Observations, the CRPD Committee's examination process (to which the U.S. would be subject upon ratification), the ICCPR Human Rights Committee's periodic review, and the Inter-American Commission on Human Rights' individual petition mechanism all provide forums for accountability that are genuinely external to the U.S. judicial system. As Part VIII established, international accountability mechanisms are not barred by the sovereignty defenses that might otherwise shield U.S. court systems; the jus cogens character of the CIDT prohibition and the Supremacy Clause's incorporation of ratified treaty obligations both provide pathways to

international accountability that the impossibility of domestic judicial self-correction makes uniquely important.

Fourth, the Judicial Conduct and Disability Act — with reform. The existing Judicial Conduct and Disability Act mechanism, as Part VI identified, is inadequate in practice. But the mechanism, properly reformed in accordance with the reform agenda developed in Part VI, provides a channel of accountability that runs through the Judicial Council rather than through individual case adjudication. The Judicial Council's authority to issue circuit-wide rules and policies is not subject to the individual case adjudication dynamics that produce structural impossibility; it is an administrative authority that can be exercised systemically in response to documented patterns of non-compliance.

Fifth, the structural standing argument in the federal courts. The impossibility analysis generates a novel constitutional standing argument that has not been adequately developed in the existing literature. If a court system's structural bias prevents it from adjudicating disability discrimination claims against itself — because the forum is itself a co-violator and has an institutional stake in the outcome — then the disabled litigant has standing to bring the claim in a genuinely independent forum. The Article III 'case or controversy' requirement and the due process impartial-forum requirement may together support a claim that disability discrimination cases against court systems must be adjudicated by an independent tribunal rather than by the court system itself. This argument has analogues in the administrative law context (agency self-review) and the conflict-of-interest jurisprudence (Tumey, Monroeville), but has not been applied to the judicial disability discrimination context. Its development is an important agenda item for future litigation.

14.6.2 The Treaty Framework as the Indispensable External Forum

Of the five external channels, the treaty framework — specifically the CRPD's Article 18 obligation and the UNCAT's Article 16 ratified prohibition — is the most constitutionally and legally powerful precisely because it operates from outside and above the domestic judicial system. A treaty obligation does not require the domestic court system's concurrence to be binding; it is binding by virtue of its international legal character and its incorporation as supreme law of the land through the Supremacy Clause. When the domestic court system fails to provide the effective access and CIDT-free treatment that the treaties require, the treaty violation is established regardless of whether any domestic court acknowledges it. The violation engages U.S. state responsibility at the international level, regardless of whether the domestic forum can adjudicate the claim.

This is the deepest significance of the CRPD's Article 18 VCLT obligation and the 61-senator majority's endorsement: they establish an external standard against which the domestic court system's conduct can be measured and found wanting, without requiring that measurement to be performed by the court system itself. The Senate recognized, by voting 61-38 to ratify, that the CRPD's principles are consistent with and required by existing U.S. law. When the court system fails to implement those principles, it is not merely a domestic legal failure. It is a breach of the international commitment that the Senate endorsed and that the executive branch represented the existing law already fulfills. The impossibility of domestic adjudication does not extinguish this international accountability; it makes it the primary accountability mechanism available.

§ 14.7 Toward Resolution: Structural Reforms That Address the Impossibility

- **Reform 1:** Establish an independent Federal Disability Rights Tribunal. Congress should create an Article I tribunal — analogous to the Court of Federal Claims or the Tax Court — with exclusive jurisdiction over disability discrimination claims against federal court systems. The tribunal would be staffed by adjudicators selected through a process that explicitly includes persons with disabilities among the required qualifications, and that is administered by an authority independent of the federal judicial branch. This tribunal would eliminate the forum-as-violator problem for federal court disability discrimination claims.
- **Reform 2:** Mandate disability representation on federal judicial selection committees. The judicial selection process — through the Senate Judiciary Committee, the Federal Judicial Center, and the Department of Justice Office of Legal Counsel — should establish explicit requirements that persons with significant disabilities be considered in the judicial nomination and confirmation process, and that the selection criteria be reviewed for disability-excluding features that have no legitimate relationship to judicial performance. The ADA's mandate that covered entities take reasonable steps to ensure that qualified individuals with disabilities have equal access to employment opportunities applies to the court system as an employer, including its judicial officer positions.
- **Reform 3:** Require disability inclusion in Judicial Council composition. Circuit Judicial Councils — which exercise supervisory authority over district courts and which administer the Judicial Conduct and Disability Act process — should be required to include disability rights experts and persons with disabilities as non-voting participants in deliberations addressing disability accommodation policies and judicial conduct complaints involving disability discrimination claims. This reform addresses the structural bias problem by introducing the perspective necessary to evaluate accommodation failures from the position of those who experience them.
- **Reform 4:** Create independent disability accommodation monitors for federal courts. Each federal judicial circuit should be required to appoint an independent disability accommodation monitor — analogous to a consent decree monitor in civil rights settlements — with authority to review accommodation requests, audit accommodation protocols, investigate complaints, and report directly to Congress. The monitor would be independent of the judicial branch and would report annually on the circuit's compliance with ADA Title II, the Rehabilitation Act, and CRPD Article 13's effective access standards.
- **Reform 5:** Establish a treaty-based complaint mechanism through Senate CRPD ratification. The most structurally powerful resolution of the impossibility problem is CRPD ratification, which would subject the U.S. to the CRPD Committee's periodic review process and — if the Optional Protocol is ratified — to individual petition review by the Committee. The CRPD Committee is the only international body specifically designed to evaluate state conduct in the disability rights domain, staffed by experts with disability expertise who are genuinely external to the U.S. judicial system. The 61-senator majority's endorsement of ratification is the congressional predicate for this reform.

§ 14.8 The Forum Nullus Doctrine: Structural Disqualification of the Entire Institutional Framework

This section extends Caperton v. A.T. Massey Coal Co.'s Due Process institutional-conflict principle from individual adjudicator bias to systemic institutional conflict, and proposes that this

extension be recognized as a structural doctrine requiring external standards wherever the forum whose conduct is challenged also controls the adjudication of the challenge. This section extends Caperton v. A.T. Massey Coal Co.'s Due Process institutional-conflict principle from individual adjudicator bias to systemic institutional conflict, and proposes that this extension be recognized as a structural doctrine requiring external standards wherever the forum whose conduct is challenged also controls the adjudication of the challenge. The impossibility problem analyzed in this Part — that no court within the system can neutrally adjudicate a claim that the system itself is inflicting the harm — has a named structural doctrine in international human rights law: Forum Nullus. The doctrine identifies the condition that exists when a dispute involves an actor that is simultaneously the alleged perpetrator of the harm and the institutional authority empowered to adjudicate the remedy. When that condition exists, the forum is not merely biased; it is structurally incapable of neutral adjudication, because the institutional interests of the forum in the outcome of the adjudication are identical to the institutional interests being challenged.

The constitutional foundation for the Forum Nullus doctrine, as this thesis develops it, is Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009). Caperton held that the Due Process Clause prohibits adjudication by a decision-maker with a direct and substantial interest in the outcome of the proceeding — establishing that institutional conflict of interest is a constitutional disqualification, not merely a ground for discretionary recusal. Caperton addressed one judge's financial conflict. This thesis proposes the structural extension, which Caperton's logic compels but which no court has yet recognized: where the conflict is not one adjudicator's financial stake but an entire institution's policy of unreviewable accommodation discretion — where every decision-maker within the forum operates under the same conflicting institutional interest in preserving that policy — the constitutional disqualification principle applies with greater, not lesser, force. The Forum Nullus condition in the judicial disability discrimination context is therefore more constitutionally acute than the condition Caperton addressed: the institutional interest is structural and systemic, not individual and financial. Every court in the documented record has applied that policy. Every denial in the record has treated it as beyond review. The structural conflict is not individual; it is institutional. No individual judge recusal resolves it, because recusing one judge produces another judge operating under the same institutional policy with the same institutional interest in its preservation.

The Tenth Circuit has now confirmed this on the official record. Seeking to escape the Ninth Circuit's Forum Nullus condition, the litigant filed in the District of Colorado (No. 23-cv-03168-RMR-MEH) and appealed to the Tenth Circuit (No. 24-1107), invoking Forum Nullus expressly as the ground for seeking a neutral forum. The Tenth Circuit dismissed, stating that it does not recognize the Forum Nullus doctrine. This response is analytically significant in three respects, each of which the thesis's framework predicted.

First, the Tenth Circuit's non-recognition is precisely what this section anticipated. The thesis does not claim Forum Nullus is currently settled domestic doctrine; it claims that Caperton's due process principle logically compels it as a structural extension that no court has yet adopted. The Tenth Circuit's dismissal confirms the doctrinal gap. It is not a refutation of the argument — it is the argument's own characterization of the current state of domestic law, validated from the bench.

Second, and more fundamentally, the Tenth Circuit's dismissal without engaging the disability discrimination or treaty arguments replicates the Forum Nullus mechanism at the inter-circuit level. The litigant sought a neutral forum specifically because the Ninth Circuit had demonstrated structural incapacity for neutral adjudication. The Tenth Circuit, rather than providing the neutral forum that constitutional due process requires, dismissed without providing accommodation for the proceeding in which the subject of the claim was accommodation denial. The alternative

forum reproduced the violation. The escape route was not a route — it was another door into the same structural condition.

Third, the combined record — Ninth Circuit accommodation denial across nine appeals, Tenth Circuit refusal to recognize the doctrine that explains why those appeals produced no relief — establishes that no domestic appellate forum is currently capable of adjudicating the Forum Nullus condition from within the domestic system. This is not a record of one circuit's idiosyncrasy. It is a record of the entire federal appellate architecture declining to engage with a due process argument that the Supreme Court's own precedent in Caperton logically supports. The refusal is now documented across two independent federal circuit courts, spanning three district court proceedings and ten appellate proceedings, over more than eight years. That is the empirical proof of what the logical analysis in Part XVIII establishes deductively: the system cannot correct the Forum Nullus condition from within itself. External accountability — treaty bodies, congressional action, the independent oversight mechanisms this thesis develops — is not theoretically preferable. It is the only available path, confirmed by the documented failure of every domestic alternative including the deliberate attempt to access a circuit entirely outside the Ninth Circuit's jurisdiction.

The Forum Nullus condition is the structural reason why the external accountability mechanisms this thesis develops — the IAJ investigations, the treaty body proceedings, the IDAT proposal of Part XXIII, the independent arbiter argument of Part XIX — are not supplementary to the domestic system but constitutionally necessary in its place. When the domestic forum is structurally disqualified from neutral adjudication by its own institutional interest in the outcome of the dispute before it, the Due Process Clause requires an alternative forum. Caperton supplies the constitutional premise for this conclusion. Applied to the systemic judicial disability accommodation context: the federal judiciary cannot neutrally adjudicate whether the federal judiciary must accommodate disabled litigants, because the federal judiciary's institutional interest in the outcome — preservation of its unreviewable accommodation discretion, maintenance of its docket management authority, avoidance of the structural reform that ADA-compliant accommodation would require — is the institutional interest being adjudicated. This is the Accommodation Paradox of Part XVIII operating at the systemic level: the forum whose conduct is the subject of the challenge is the forum empowered to resolve the challenge, and that forum's resolution of the challenge will necessarily serve its own institutional interests. The Forum Nullus doctrine, as this thesis develops it, names this structural incapacity and articulates the constitutional basis — grounded in Caperton's due process principle, extended to its systemic application — for requiring an external standard-setter. Within the domestic system, this means the Supreme Court exercising supervisory authority over a structural constitutional violation; on the international plane, it means the treaty bodies whose jurisdiction over state conduct is precisely calibrated for the condition where domestic forums have failed.

§ 14.9 Synthesis: The Impossibility as the Thesis's Central Organizing Principle

The impossibility problem documented in this Part is not a defect in the thesis's legal framework. It is the thesis's central organizing principle — the reason that every Part of the analysis has been constructed as it has been constructed. Each Part builds a layer of the legal architecture precisely because the ordinary domestic judicial channels are structurally foreclosed. The condition that produces this foreclosure has a name in international human rights law and, as § 14.8 demonstrates, a constitutional foundation in domestic law: Forum Nullus. The forum is not merely biased; it is structurally incapable of neutral adjudication because its institutional interests

in the outcome of the dispute are identical to the institutional interests being challenged. Every legal argument in this thesis is constructed in response to that condition.

The documented record of that condition is without precedent in American disability rights litigation. Beginning in March 2018 — when the first disability accommodation request was ignored — and continuing without interruption through April 2026, the courts and legal institutions of the United States, at every level and across every available domestic pathway, have demonstrated that they will not apply the law they are sworn to administer. The record encompasses more than eight years of continuous, unaccommodated litigation harm. It spans four California Superior Court proceedings in Santa Clara County; thirty-eight proceedings in the California Sixth District Court of Appeals; seventeen proceedings in the California Supreme Court; three federal district court cases in the Northern District of California; nine appeals in the United States Court of Appeals for the Ninth Circuit; one federal district court case in the District of Colorado; one appeal in the Tenth Circuit; one bankruptcy proceeding and one Bankruptcy Appellate Panel proceeding; and, at the Supreme Court of the United States, twenty-one writ filings — the majority obstructed, suppressed, or rendered impossible by invariant deadlines before they could be assigned docket numbers — with a twenty-second being filed as the fourth edition of this thesis goes to press. That is more than seventy-nine numbered proceedings across nine distinct court systems, with an indeterminate number of additional actions that could not be brought due to the very incapacity the courts' own conduct produced, and with SCOTUS access itself obstructed for approximately four years before the first numbered writ was accepted. Every one of those proceedings encountered the same structural reality: the forum that violated the rights controlled the adjudication of the remedy. This is not anecdote. It is an exhaustively documented, publicly accessible, multi-jurisdictional evidentiary record of the Forum Nullus condition operating at scale across the American legal system.

The CRPD Article 18 obligation is not invoked merely as an additional interpretive tool; it is invoked because the courts that are supposed to interpret the ADA faithfully have demonstrated, across this unprecedented record, that they will not do so. The jus cogens analysis is not developed merely as an interesting international law argument; it is developed because the jus cogens override of judicial immunity is the only available mechanism for accountability that does not run through the court system that is simultaneously the violator and the forum. The Senate's "no new legislation" finding is not cited merely for its evidentiary value; it is cited because it establishes that the impossibility is not a gap in the law — it is a failure of adjudication by courts that have the law but will not apply it to themselves. The Cleburne rational basis contradiction is not identified merely to expose judicial hypocrisy; it is identified because Cleburne's anti-irrational-prejudice standard, faithfully applied, prohibits exactly the conduct that the courts engage in — and the impossibility analysis explains why faithful application does not and cannot come from within the court system.

The thesis has built fourteen Parts of legal architecture not because any single Part alone is inadequate, but because the Forum Nullus condition — structural impossibility of internal correction — requires the construction of external accountability structures that are simultaneously international (CRPD, UNCAT, ICCPR, CERD), constitutional (Supremacy Clause, oath obligations, Article I Define and Punish power), statutory (ADA Title II, Rehabilitation Act), administrative (DOJ enforcement, Judicial Council), and ultimately democratic (congressional intervention, public accountability). The impossibility is the diagnosis. The Forum Nullus doctrine names the pathology with precision. The thesis's architecture is the treatment — one that does not rely on the patient to heal itself.

The Thesis's Architecture as a Response to Structural Impossibility

Each layer of the thesis addresses a specific dimension of the Forum Nullus condition:

CRPD/Treaty (Parts I, III, VII, VIII) provides an external standard and external accountability mechanisms that do not require domestic court system concurrence.

Constitutional Non-Derogability (Part V) establishes that the rights cannot be abolished by the institution that violates them, because they exist above that institution's authority.

Institutional Liability Framework (Part VI) runs against the institution rather than the individual, surviving individual immunity while targeting the structural source of harm.

Jus Cogens Override (Part VII) provides the highest-order legal basis for accountability that no domestic immunity doctrine can defeat — the layer of law that operates precisely where the Forum Nullus condition is most severe.

Senate Record (Part IX) establishes that the impossibility is not a gap in law but a failure of adjudication — redirecting the remedy to external enforcement of existing adequate law.

Systemic Discrimination Markers (Part X) provide the evidentiary foundation for DOJ pattern-or-practice enforcement — the external channel that most directly addresses the Forum Nullus condition by routing accountability through an institution that is not itself the violator.

Rational Basis Contradiction (Part XI) demonstrates that the court system's conduct violates the standard that Congress and the President certified it already meets, generating congressional accountability through the institution constitutionally empowered to correct what courts will not.

Vexatious Label (Part XIII) shows the final stage of structural capture and the catch-22 that makes internal relief permanently impossible — the Forum Nullus condition operating at its most acute, where the court weaponizes the litigant's own responses to the impossibility as further grounds for foreclosure.

Forum Nullus (§ 14.8) names and constitutionalizes the impossibility directly, establishing that the structural disqualification is not merely a practical obstacle but a due-process violation grounded in Caperton's principle — confirming that the thesis's external accountability architecture is not merely theoretically preferable but constitutionally required.

This Part (XIV) synthesizes those layers into their organizing principle: the entire thesis exists because the forum that violated the rights is the forum that controls the remedy. That condition — Forum Nullus — is the reason the thesis exists in the form it does. It is the diagnosis from which reform begins.

PART XV

Litigation Privilege, Disability Discrimination, and the Case for Human-Rights-Treaty Limitation

The thesis has established that courts cause, exacerbate, and perpetuate disability harm; that systemic judicial policy produces discrimination that is structurally impossible to correct from within the court system; and that vexatious litigant designations operate as permanent prior restraints on disabled litigants whose prolific filing is itself a product of accommodation denial. Each of these institutional harms has been analyzed against the framework of judicial immunity, sovereign immunity, and structural bias. But a critical enabling actor has operated throughout the analysis without receiving systematic treatment: the attorney. This Part addresses the doctrine of litigation privilege — the absolute immunity that protects attorneys, parties, and witnesses from civil liability for statements and conduct in judicial proceedings — and demonstrates how that privilege, when deployed strategically against a disabled litigant whose disability accommodation requests are before the court, functions as a force multiplier for judicial discrimination. It enables attorneys and opposing parties to obstruct accommodation with impunity, to fabricate or distort evidence about disability capacity, to coordinate strategies of persecution with discriminating judges, and to extract unjust enrichment from the resulting discrimination — all without civil liability and with the practical immunity that the litigation privilege provides.

The thesis then develops the central normative and legal argument: that litigation privilege, when used as an instrument to obstruct disability accommodation, to deliver false evidence about disability status, and to enable judicial conduct that rises to the level of cruel, inhuman or degrading treatment under CRPD Article 15 and UNCAT Article 16, must yield to the absolute international prohibition. The proper conclusion is that litigation privilege must be strictly limited in circumstances where its exercise enables or constitutes conduct prohibited by the CRPD, UNCAT, and the jus cogens norm against CIDT — and that this limitation is required not as a matter of policy preference but as a necessary consequence of the Supremacy Clause's incorporation of treaty obligations as the supreme law of the land.

The Enabling Dynamic

When attorneys know that disability accommodation obstruction is judicially welcome, legally unaccountable, and financially rewarding, they will deploy it without restraint. When those attorneys are also protected by absolute litigation privilege from any civil liability for false characterizations of disability, fabricated evidence of capacity, and malicious coordination with discriminating judges, the privilege becomes the legal infrastructure that enables the court to discriminate while maintaining plausible deniability. The judge cites the attorney's evidence. The attorney's evidence is privileged. The judge's citation is a judicial act. Every link in the chain is immune. And the disabled litigant is destroyed without any individual actor bearing legal responsibility for the outcome.

§ 15.1 The Doctrine of Litigation Privilege: Scope and Rationale

15.1.1 Federal Common Law and the Noerr-Pennington Doctrine

The doctrine of litigation privilege in federal courts derives from several intersecting sources. The Noerr-Pennington doctrine, originating in Eastern Railroad Presidents Conference v. Noerr

Motor Freight, Inc., 365 U.S. 127 (1961), and United Mine Workers v. Pennington, 381 U.S. 657 (1965), protects petitioning activity — including litigation — from liability under the Sherman Act. While Noerr-Pennington is grounded in the First Amendment right to petition, it has been extended in lower courts as a general immunity for litigation conduct. The Restatement (Second) of Torts § 586 provides that 'an attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.' This absolute privilege protects statements that are relevant to the proceeding, regardless of the attorney's motive, good faith, or truthfulness.

The rationale for the absolute privilege is the promotion of candid advocacy: witnesses, parties, and attorneys must be free to speak without fear of retaliatory litigation in order for the adversarial system to function. The privilege operates as a categorical rule — once the relevance threshold is satisfied, the privilege is absolute. Malice is not a defense; falsity is not a defense; harm to the opposing party is not a defense. The privilege is not a qualified immunity that yields to countervailing considerations; it is, in its traditional formulation, absolute within its scope.

15.1.2 California's Civil Code § 47(b): The Broadest Formulation

California Civil Code § 47(b) provides an absolute privilege for 'publication or broadcast' made 'in any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law.' In Silberg v. Anderson, 50 Cal.3d 205 (1990), the California Supreme Court held that the privilege applies to 'any communication, whether or not it amounts to a publication, made in judicial or quasi-judicial proceedings by litigants or other participants authorized by law, to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved.'

The Silberg formulation is extraordinarily broad: it covers all communications related to litigation, by all participants, whether in or out of court, regardless of truth or falsity, and regardless of malicious or corrupt intent. The California Supreme Court in Flatley v. Mauro, 39 Cal.4th 299 (2006), created a narrow exception for conduct that constitutes a crime — specifically extortion — but otherwise maintained the privilege's absolute character. Under § 47(b) as interpreted by Silberg, an attorney who submits a declaration containing statements the attorney knows to be false about a disabled litigant's disability capacity — for the express purpose of obstructing the litigant's accommodation request — is absolutely immune from civil defamation, fraud, or intentional infliction of emotional distress liability arising from that declaration.

The Scope of Absolute Litigation Privilege

Under the absolute litigation privilege as broadly formulated in California and in many federal courts: (1) False statements about a disabled litigant's disability capacity made in declarations opposing accommodation requests are privileged regardless of their falsity or the attorney's knowledge of their falsity. (2) Malicious characterizations of disability claims as 'disingenuous,' 'fabricated,' or evidence of 'serial abuse of disability law' are privileged regardless of their accuracy or the purpose behind them. (3) Coordination between attorneys and judges regarding accommodation denial strategy cannot be the basis of civil liability if it occurs in the context of litigation. (4) The financial benefit attorneys derive from successfully obstructing disability accommodation — continuing litigation that would have been resolved or stayed, resulting in attorney fees that would not otherwise have been incurred — cannot be the basis of a civil claim grounded in the privileged statements.

§ 15.2 How Litigation Privilege Enables Disability Discrimination: Five Mechanisms

15.2.1 Mechanism 1: Fabricating or Distorting Evidence of Disability Capacity

The most direct mechanism through which litigation privilege enables disability discrimination is the use of privileged statements to create a false evidentiary record about a disabled litigant's capacity. In the Hazari record, the Rossi Declaration (ECF-84 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)) stated — under penalty of perjury but protected by litigation privilege from civil liability — that the plaintiff 'appears to be relatively unhampered by the conditions he has ostensibly described to the physicians.' The word 'ostensibly' is the tell: it characterizes the plaintiff's physician-documented disability as a performance rather than a medical reality, without any countervailing medical evidence, and without any individualized assessment of the specific conditions documented in the sealed medical record the attorney had reviewed.

The Rossi Declaration further stated that the plaintiff's vexatious litigant designation in state court 'further indicate[s] that his health condition does not appear to affect his ability to participate in the litigation process.' This statement is legally and medically false: the vexatious designation was itself the product of disability-caused filing patterns, as Part XIII established. But the statement is privileged: even if knowingly false, it cannot be the basis of a defamation or fraud claim against the attorney. And the court adopted it as a basis for the accommodation denial in ECF-87 — citing the attorney's privileged mischaracterization as support for the court's finding that 'the documented disabilities do not impact Plaintiff's abilities to prosecute this case.'

ECF-84, Rossi Declaration (March 7, 2025) — Under Penalty of Perjury; Protected by Litigation Privilege

> *"Plaintiff has also been declared a vexatious litigant in State court, further indicating that his health condition does not appear to affect his ability to participate in the litigation process." [...] "Contemporaneously, however, Plaintiff has engaged in litigation involving other parties in which, on information and belief, he appears to be relatively unhampered by the conditions he has ostensibly described to the physicians mentioned above."*

The mechanism operates in three steps. First, the attorney makes privileged statements characterizing the disability as fabricated or exaggerated, without medical basis, knowing they are protected from civil liability for those statements. Second, the court — which is itself institutionally disposed to deny accommodation — adopts the attorney's characterization as evidentiary support for the denial, transforming the privileged statement into a judicial finding. Third, the judicial finding is cited in subsequent proceedings as established fact, with the origin in a privileged attorney statement having disappeared into the procedural history. The privilege launders the attorney's potential misconduct into judicial authority.

15.2.2 Mechanism 2: 'Serial Abuser of Disability Law' — The Disability Identity Attack

The Hughmanick Declaration in ECF-144 characterized the plaintiff as a 'serial abuser of disability law' (paragraph 20) — a statement that the plaintiff's ECF-147 reply identified as a direct attack on protected ADA status under the ADA's anti-retaliation provision, 42 U.S.C. § 12203. Whether or not the specific ADA retaliation claim succeeds, the 'serial abuser' characterization illustrates

a distinct and particularly damaging mechanism through which litigation privilege enables disability discrimination: the attack on disability identity itself.

To characterize a disabled litigant as a 'serial abuser of disability law' is not merely to dispute the merit of a specific accommodation request. It is to assert that the disabled person's entire relationship to disability — their disability status, their medical history, their accommodation-seeking across multiple proceedings — constitutes a pattern of abuse rather than a legitimate exercise of legal rights. This characterization, if accepted by the court, transforms the disabled litigant's disability from a medical reality requiring accommodation into a litigation strategy requiring punishment. It inverts the ADA's protective structure: instead of the disability status generating a legal obligation of accommodation, it generates a judicial response of heightened suspicion and sanction.

The absolute privilege means that this identity attack — 'serial abuser' — cannot be the basis of civil liability for defamation, regardless of its truth or falsity, its motive, or the harm it causes. The statement is relevant to the proceeding. It is made in a court filing. It is protected. The disabled litigant who suffers harm to their disability-rights credibility, to their standing in subsequent proceedings, and to their prospects for accommodation in any court that reads the filing has no civil remedy against the attorney who made the statement.

ECF-147, Reply to ECF-143 and ECF-144 (January 2026) — Citing Tudor v. Whitehall, 132 F.4th 242 (2d Cir. 2025)

> *"Attack on Disability Legitimacy: Hughmanick calls Plaintiff a 'serial abuser of disability law' (¶20) — a direct attack on his protected status. [...] Under Tudor v. Whitehall, 132 F.4th 242 (2d Cir. 2025), and A.J.T. v. Osseo Area Schools, 89 F.4th 821 (8th Cir. 2024), conflating 'ability to file documents' with 'ability to litigate' is an impermissible legal standard. [...] Both filings attack Plaintiff's disability status directly — Hughmanick labels him a 'serial abuser of disability law' (¶20). Discrimination Based on Protected Status: The filings urge denial of accommodations specifically because Plaintiff is disabled."*

15.2.3 Mechanism 3: Strategic Cross-Case Coordination to Exhaust and Destroy

The Hazari record documents, across the plaintiff's filings, an alleged coordination among attorneys across multiple proceedings — Hugmanick, Rossi, Wendt, Pardo de Zela — to systematically oppose disability accommodations across all forums simultaneously, ensuring that denial in one forum (state appellate court) could be cited as evidence in another forum (federal district court) in an escalating cross-case strategy. Whether or not this alleged coordination rises to the level of RICO or other civil conspiracy claims, the mechanism it illustrates is real and legally significant: attorneys who coordinate accommodation-obstruction strategies across multiple proceedings are, if that coordination is conducted through court filings, protected by litigation privilege in each individual forum.

The cross-case coordination mechanism is particularly damaging because it exploits the cascading effect identified in Part XIII: a denial in Court A, produced by privileged attorney statements in Court A, is cited as evidence in Court B; the attorney's privileged statements in Court B then incorporate the Court A denial as 'established fact'; the denial in Court B reinforces the vexatious litigant designation; and the entire cascade moves forward, driven by attorney statements that are absolutely privileged at each individual step. The privilege immunizes each tree while the forest burns.

15.2.4 Mechanism 4: Privileged Perjury and the Penalty-of-Perjury Paradox

Declarations submitted under penalty of perjury in federal court proceedings are subject to criminal prosecution for perjury under 18 U.S.C. § 1621 and false declarations under 18 U.S.C. § 1623. But the criminal threshold for perjury — requiring proof of willful false swearing about a material fact — is very high, and criminal prosecution of attorneys for false declarations is extraordinarily rare. In practice, a false declaration in opposition to a disability accommodation request — characterizing the disability as fabricated, the accommodation need as pretextual, and the litigant as a serial abuser — is protected from civil liability by litigation privilege and from criminal liability by the high bar of criminal perjury prosecution. The result is that false declarations about disability capacity are effectively without legal consequence in the overwhelming majority of cases.

The penalty-of-perjury paradox is this: the oath is supposed to ensure truthfulness; the litigation privilege ensures that non-truthfulness has no civil consequence; and the practical non-prosecution of attorney perjury ensures that non-truthfulness has essentially no criminal consequence either. The oath is the form; the privilege is the substance. Attorneys who wish to obstruct disability accommodation have every incentive and essentially no disincentive to make false statements in privileged declarations.

15.2.5 Mechanism 5: Unjust Enrichment Through Accommodation Obstruction

The financial dimension of litigation privilege's enabling function has not been adequately identified in the disability rights literature. When attorneys successfully obstruct disability accommodation — causing a case to continue through litigation that would otherwise have been resolved through settlement, stayed pending recovery, or concluded more efficiently — they generate attorney fees that would not otherwise exist. In the Hazari state court proceedings, the attorney fee judgment was $586,427 — $291,882 to Terra Law and $294,545 to Messner Reeves. These fees were generated in substantial part through proceedings that the plaintiff's disability prevented him from effectively opposing.

The financial incentive structure created by litigation privilege in the disability accommodation context is therefore perverse: attorneys who obstruct accommodation generate more litigation, which generates more fees, which constitutes unjust enrichment directly attributable to the disability discrimination they enabled. The privilege shields the statements that produced the obstruction. The court's accommodation denials, citing those statements, protect the obstruction from legal challenge. The fee awards, entered on the resulting adverse judgments, convert the obstruction into profit. The entire sequence — from privileged false statement to unjust fee enrichment — is legally unreachable at each individual step and devastating in its cumulative effect.

§ 15.3 Existing Limitations on Litigation Privilege: The Current Framework

15.3.1 The ADA Anti-Retaliation Provision: 42 U.S.C. § 12203

The ADA's anti-retaliation provision, 42 U.S.C. § 12203, prohibits retaliation against individuals who exercise rights under the ADA or oppose practices made unlawful by the ADA. The provision expressly includes protection from 'intimidation, threats, coercion, or interference' with the exercise of ADA rights. In the disability accommodation context, attorney conduct that constitutes opposition to the exercise of accommodation rights — by filing declarations characterizing accommodation requests as fraudulent, attacking disability identity, and coordinating across forums to systematically deny accommodation — may fall within § 12203's prohibition.

The Second Circuit's decision in Tudor v. Whitehall Central School District, 132 F.4th 242 (2d Cir. 2025), cited in ECF-147, addressed the illegality of conflating 'ability to file documents' with 'ability to litigate' as a legal standard for disability accommodation. The Eighth Circuit's decision in A.J.T. v. Osseo Area Schools, 89 F.4th 821 (8th Cir. 2024), similarly rejected the snapshot approach to disability capacity assessment. These decisions, properly applied, establish that attorneys who knowingly invoke the discredited 'demonstrated ability' standard in opposing accommodation requests are assisting courts in applying an illegal legal standard — which may itself constitute interference with ADA rights under § 12203.

The critical question for the privilege analysis is whether the ADA anti-retaliation provision overrides litigation privilege for privileged statements made in the exercise of ADA interference. Courts have generally held that litigation privilege does not protect conduct that constitutes an independent statutory violation, because the privilege cannot shield conduct that the statute has specifically designated as impermissible. The Noerr-Pennington doctrine's sham-litigation exception — which denies First Amendment petition protection to litigation that is objectively baseless and motivated by improper purpose — provides an analogous framework: conduct that is ostensibly litigation but is actually an abuse of the litigation process to achieve illegitimate ends loses petition protection. Applied to disability accommodation obstruction: attorney conduct that constitutes ADA § 12203 interference cannot shelter behind litigation privilege for the same reason that sham litigation cannot shelter behind Noerr-Pennington.

15.3.2 The Crime-Fraud Exception

Both the common law and California's Civil Code § 47(b) recognize that the litigation privilege does not protect conduct that constitutes a crime. In Flatley v. Mauro (2006), the California Supreme Court held that § 47(b) does not protect communications that are criminal as a matter of law. Federal courts have similarly recognized that communications made in furtherance of crime or fraud are outside the privilege.

Applied to disability discrimination in the accommodation context: attorney conduct that constitutes criminal obstruction of justice under 18 U.S.C. § 1503, criminal perjury under 18 U.S.C. § 1621, or ADA interference under 42 U.S.C. § 12203 — to the extent these are criminal prohibitions — is not protected by litigation privilege. The practical challenge is proving the criminal element. But the crime-fraud exception establishes an important principle: the litigation privilege is not available as a shield for conduct that is independently criminalized, regardless of whether it occurs in the context of litigation.

15.3.3 Section 1983 and Official-Capacity Liability

Private attorneys who conspire with state actors — including judges, court administrators, and state court officials — to deprive persons of constitutional rights may be liable under 42 U.S.C. § 1983, which provides a cause of action against persons acting 'under color of state law.' In Dennis v. Sparks, 449 U.S. 24 (1980), the Supreme Court held that private parties who conspire with a judge to deprive a person of constitutional rights act under color of state law and are subject to § 1983 liability, without any immunity protection. The Dennis principle is directly applicable to attorneys who coordinate with discriminating judges to obstruct disability accommodation: if the coordination constitutes a conspiracy to deprive the disabled litigant of their ADA rights, equal protection rights, or access-to-courts rights, the attorneys may be liable under § 1983 regardless of litigation privilege.

The Dennis holding is particularly significant because it denies the conspiring private party the judicial immunity available to the judge. The attorney does not share in the judge's absolute judicial immunity; they are liable as a private party acting under color of state law. The litigation

privilege provides civil defamation immunity; § 1983 liability is not defamation liability. The privilege does not protect conduct that constitutes a § 1983 conspiracy with a state actor, because the § 1983 claim does not rest on the privileged statement's publication; it rests on the illegal agreement and the acts taken in furtherance of it.

Dennis v. Sparks, 449 U.S. 24 (1980)

"Private parties who corruptly conspire with a judge in connection with such a case are acting under color of state law within the meaning of § 1983." [...] The private party does not share the judge's absolute immunity from § 1983 liability. "An otherwise private person acts under color of state law when engaged in a conspiracy with state officials to deprive another of federal rights." Applied to disability discrimination: attorneys who coordinate with discriminating judges to obstruct disability accommodation, knowing the accommodation is legally required, act under color of state law and are subject to § 1983 liability without immunity protection.

§ 15.4 The Treaty Framework: Why Litigation Privilege Must Yield

15.4.1 CRPD Article 15 and the Enabling of CIDT by Private Actors

CRPD Article 15 requires states to take 'all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.' The obligation is preventive: it requires states to take measures that prevent CIDT, not merely to refrain from actively inflicting it. When a state's litigation privilege doctrine enables private actors to obstruct disability accommodation in ways that cause or contribute to CIDT — by providing false evidence that courts adopt to justify accommodation denial, which causes physical or psychological deterioration that rises to the CIDT threshold — the state's maintenance of that privilege doctrine without the limitations necessary to prevent this use is itself a failure to take the preventive measures Article 15 requires.

The VCLT Article 18 obligation — not to defeat the CRPD's object and purpose — applies to the state's entire legal framework, including its common law doctrines such as litigation privilege. A state that maintains an absolute litigation privilege that, in practice, enables private actors to obstruct disability accommodation with impunity, and that thereby contributes to CIDT of disabled litigants, is maintaining a legal doctrine that defeats the CRPD's object and purpose — which is to ensure that persons with disabilities enjoy full human rights, including freedom from CIDT. The Article 18 obligation requires the state to limit the privilege where it functions as an enabler of CIDT-level disability discrimination.

15.4.2 UNCAT Article 16 and the 'Acquiescence' Element

UNCAT Article 16 prohibits CIDT committed 'by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.' The 'acquiescence' element is critical for the litigation privilege analysis. When a court adopts a privileged attorney's false characterization of a disability as evidence supporting accommodation denial — when the court's judicial finding is built on the attorney's privileged misrepresentation — the court has 'acquiesced' in the attorney's contribution to the CIDT. The attorney's conduct is not independent of state action; it is incorporated into state action through the court's adoption of it as the evidentiary basis for its discriminatory decision.

Under UNCAT Article 16, the state's acquiescence in attorney conduct that enables CIDT engages state responsibility. The absolute litigation privilege, by immunizing the attorney's conduct from civil accountability, functions as a structural mechanism of state acquiescence: the state, through its privilege doctrine, authorizes and protects exactly the private conduct that contributes to the state's own CIDT. The state cannot simultaneously acquiesce in private conduct that enables CIDT (by maintaining absolute privilege for that conduct) and claim that it has fulfilled its UNCAT Article 16 obligation to prevent CIDT.

15.4.3 The Istanbul Protocol: Obstruction of Documentation and Evidence Fabrication

The Istanbul Protocol (2022) addresses the specific problem of obstruction of torture and CIDT documentation. It states that states must ensure that investigations into CIDT are not obstructed by any party, including through the manipulation or fabrication of evidence about the victim's condition. Applied to the disability accommodation context: attorneys who submit false or misleading declarations about a disabled litigant's disability capacity — characterizing the disability as fabricated, the accommodation need as pretextual, and the litigant as a 'serial abuser of disability law' — are obstructing the documentation and assessment of the litigant's CIDT-qualifying disability harm. The Istanbul Protocol's instruction that perpetrators of CIDT 'enjoy no immunity from accountability regardless of their official status or the domestic laws of their country' applies with equal force to private actors who actively obstruct CIDT documentation and accountability: the 'domestic laws of their country' — including litigation privilege — cannot shield the conduct.

15.4.4 Jus Cogens and Private Actor Enabling Conduct

The jus cogens character of the CIDT prohibition generates obligations erga omnes — owed to the international community as a whole — from which no derogation is permitted by any domestic legal doctrine. As Part VII established, the Pinochet principle extends this prohibition to all domestic immunity doctrines that would shield conduct constituting CIDT. The Pinochet analysis was applied primarily to state actors and official immunity; but the principle that no domestic legal doctrine can shield CIDT-enabling conduct extends to private actors whose privileged statements are the enabling mechanism through which state actors inflict CIDT.

The specific application to litigation privilege is this: a domestic doctrine — absolute litigation privilege — that shields private actor conduct enabling state-inflicted CIDT constitutes a derogation from the jus cogens prohibition on CIDT. Under VCLT Article 53, such derogation is impermissible. The domestic doctrine must be limited to the extent necessary to prevent it from functioning as a shield for CIDT-enabling conduct. This limitation is not a policy recommendation; it is a legal requirement flowing from the peremptory character of the norm.

§ 15.5 The Proper Conclusion: Strict Limitation of Litigation Privilege

15.5.1 The Standard for Limitation

The proper conclusion is that litigation privilege must be strictly limited in three specific circumstances, each grounded in the treaty obligations, the jus cogens analysis, and the existing domestic law frameworks identified in § 15.3:

Circumstance 1 — ADA interference. Litigation privilege does not protect attorney conduct that constitutes interference with disability accommodation rights under 42 U.S.C. § 12203, including the submission of declarations characterized by courts as establishing disability

incapacity where those declarations rest on the discredited 'filing activity equals capacity' standard that Tudor v. Whitehall and A.J.T. v. Osseo Area Schools have identified as an impermissible legal standard. The ADA anti-retaliation provision, as a specific congressional prohibition on interference with disability rights, overrides the general common law privilege for statements that constitute the prohibited interference.

Circumstance 2 — UNCAT/CRPD CIDT contribution. Litigation privilege does not protect attorney conduct that constitutes acquiescence in or enablement of state-inflicted CIDT under UNCAT Article 16 and CRPD Article 15. Where an attorney's privileged statements provide the evidentiary foundation for a court's accommodation denial that causes documented physical or psychological harm at the CIDT threshold, the privilege is displaced by the treaty obligation, which the Supremacy Clause makes supreme law of the land. Courts interpreting litigation privilege through the Charming Betsy canon must read the privilege in a manner that does not conflict with the treaty obligation, which requires reading the privilege to exclude statements that enable UNCAT Article 16 violations.

Circumstance 3 — Dennis v. Sparks conspiracy. Litigation privilege does not protect attorney conduct that constitutes a conspiracy with state actors (judges, court administrators) to deprive disabled litigants of constitutional rights under 42 U.S.C. § 1983, because § 1983 liability for conspiracy with state actors is not defamation liability and is not immunized by litigation privilege. Where the evidentiary record demonstrates coordinated accommodation-obstruction strategy between attorneys and discriminating judicial actors, the Dennis v. Sparks exception eliminates the privilege defense for the conspiracy conduct.

15.5.2 Toward a Modified Privilege Framework

The three-circumstance limitation does not require abolition of litigation privilege. The privilege serves important functions — protecting genuine advocacy, enabling frank statements in legal proceedings, preventing the chilling of legitimate legal argument — that this thesis does not challenge. What it requires is that the privilege not operate as absolute in circumstances where its exercise constitutes an independent legal violation, enables CIDT of a disabled litigant, or constitutes conspiracy with state actors to deprive a person of constitutional rights. The modified framework is:

- Absolute privilege for statements that are bona fide advocacy positions on disputed legal and factual questions, even if false, unless they constitute ADA § 12203 interference, CIDT contribution, or § 1983 conspiracy.
- Qualified privilege — subject to a showing of actual malice or knowing falsity — for statements about a disabled litigant's disability status, medical history, or accommodation capacity that are not grounded in medical evidence and that contradict contemporaneous medical record evidence in the court's possession.
- No privilege for statements that constitute a knowing misrepresentation of medical evidence about disability capacity, where the misrepresentation is the evidentiary foundation for an accommodation denial that causes documented physical or psychological harm at the CIDT threshold.
- No privilege for coordinated multi-forum accommodation-obstruction strategies that satisfy the Dennis v. Sparks conspiracy standard.
- No privilege, under the Istanbul Protocol framework, for statements that obstruct the documentation of CIDT-qualifying disability harm.

15.5.3 The Treaty Compulsion

The conclusion that litigation privilege must be strictly limited in these circumstances is not merely a doctrinal preference. It is, under the analysis this thesis has developed, legally compelled. The Charming Betsy canon requires that domestic statutes and common law doctrines be interpreted consistently with international obligations. UNCAT Article 16, as a ratified treaty that is supreme law of the land, requires that the state not acquiesce in private conduct that enables CIDT. CRPD Article 15, through the Article 18 VCLT obligation, requires that the state not maintain legal doctrines that defeat the CRPD's object and purpose. A litigation privilege that enables CIDT of disabled litigants by shielding the false evidence that courts use to justify the CIDT is a doctrine that defeats both obligations simultaneously. The Charming Betsy canon, applied to litigation privilege doctrine in the disability accommodation context, compels the limitation this Part identifies.

The 61-senator majority's endorsement of the CRPD adds the congressional dimension: a majority of the Senate voted to accept a treaty that specifically requires effective access to justice and freedom from CIDT for disabled persons. The litigation privilege, in its current absolute form, is incompatible with both requirements in the disability accommodation context. The Senate's expression of intent to ratify — through the 61-vote majority on a treaty that 61 senators found consistent with existing U.S. law — provides the legislative history basis for interpreting litigation privilege doctrine in a manner consistent with the CRPD's requirements, even without ratification.

§ 15.6 The Hazari Record as Proof of Concept

The Hazari record, read against the five mechanisms and three-circumstance limitation framework this Part has developed, provides a compelling proof of concept for the thesis's conclusions on litigation privilege.

The Rossi Declaration's characterization of the disability as 'ostensible' and of participation in other litigation as evidence that 'health condition does not appear to affect his ability to participate' is, under the modified privilege framework: (a) potentially a § 12203 ADA interference (opposition to accommodation rights, invoking an impermissible legal standard); (b) a UNCAT Article 16 contribution (providing the evidentiary foundation for accommodation denial that caused documented CIDT-level physical or psychological harm); and (c) potentially a Dennis v. Sparks conspiracy if coordinated with the court's institutional accommodation-denial policy (Marker 7 of the systemic discrimination analysis).

The Hughmanick Declaration's 'serial abuser of disability law' characterization is, under the modified framework: (a) an identity attack on a person's disability status that constitutes § 12203 interference; (b) a false characterization of accommodation-seeking — a legally protected activity — as 'abuse' that, if knowingly false, falls outside the bona fide advocacy protection of the modified privilege; and (c) a statement that obstructs the Istanbul Protocol's documentation framework by mischaracterizing CIDT-qualifying disability harm as voluntary litigation conduct.

The attorney fee awards — $291,882 and $294,545 — are the financial realization of the unjust enrichment that Mechanism 5 identified: fees generated through accommodation-obstructing litigation that would not have continued if the accommodation had been provided and the underlying claims had been resolved. Under the modified privilege framework, the statements that generated the obstruction are not absolutely privileged; they are subject to qualified privilege at best, and to no privilege where they constitute ADA interference, CIDT contribution, or conspiracy with state actors. The unjust enrichment is therefore potentially recoverable — not

through defamation, which the privilege would still defeat, but through the § 1983 conspiracy claim (Dennis v. Sparks) and the ADA § 12203 anti-retaliation claim (Tudor v. Whitehall).

§ 15.7 Synthesis: The Complete Accountability Architecture for Attorney Misconduct in Disability Cases

Attorney Conduct	Current Privilege Status	Proposed Limitation	Legal Basis for Limitation
False declarations about disability capacity	Absolutely privileged (civil defamation, fraud)	Qualified privilege; no privilege where contributing to CIDT	CRPD Art. 15 / UNCAT Art. 16 acquiescence; Charming Betsy canon; § 12203 ADA interference
'Serial abuser of disability law' identity attacks	Absolutely privileged	Qualified privilege; no privilege if knowingly false and ADA interference	ADA § 12203; CRPD Art. 15 CIDT documentation obstruction; Istanbul Protocol
Coordinated multi-forum accommodation obstruction	Absolutely privileged at each individual step	No privilege for conspiracy with state actors	Dennis v. Sparks § 1983; Noerr-Pennington sham exception
Invoking discredited 'filing=capacity' standard	Absolutely privileged	No privilege for knowing application of illegally impermissible standard	ADA § 12203 (Tudor v. Whitehall, A.J.T. v. Osseo); Charming Betsy
Vexatious designation deployment as capacity evidence	Absolutely privileged	No privilege where vexatious designation is itself product of disability discrimination	CRPD Art. 15 CIDT contribution; ADAAA episodic impairment framework
Strategic exhaustion/fee extraction through accommodation obstruction	Absolutely privileged (statements); fees awarded by court	Dennis v. Sparks recovery for § 1983 conspiracy; ADA § 12203 damages	Dennis v. Sparks; ADA § 12203(c) (damages for interference); Unjust enrichment

The accountability architecture that emerges from this analysis does not rely on abolishing litigation privilege or on creating a novel tort claim for disability discrimination by attorneys. It relies on: (1) applying existing exceptions and limitations — the crime-fraud exception, the ADA § 12203 anti-retaliation provision, the Dennis v. Sparks conspiracy doctrine — to the disability accommodation obstruction context in which they have been inadequately applied; (2) interpreting the litigation privilege through the Charming Betsy canon in light of UNCAT Article 16 and CRPD Article 15 obligations, to exclude from the privilege's protection conduct that constitutes acquiescence in or enablement of CIDT; and (3) recognizing that the jus cogens character of the CIDT prohibition prevents any domestic immunity doctrine — including litigation privilege — from shielding conduct that rises to the CIDT-enabling threshold.

The Hazari record provides the evidentiary proof of concept. The legal framework provides the doctrinal basis. The treaty obligations provide the compulsion. The conclusion is the one with which this Part began: litigation privilege, when deployed as an instrument of disability accommodation obstruction that enables state-inflicted CIDT, must yield to the absolute

international prohibition. This is not a discretionary policy choice. It is the legal consequence of the Supremacy Clause's incorporation of treaty obligations as the supreme law of the land.

The Documented Instance: Brady v. Hazari and the Cross-Case Contamination Mechanism

The Documented Instance: Brady v. Hazari and the Cross-Case Contamination Mechanism

The thesis's theoretical analysis of litigation privilege as an enabler of adversarial disability discrimination is documented in a specific, verified sequence in appeal 24-6312. On March 7, 2025, defense counsel Julian Pardo de Zela (Messner Reeves LLP, representing defendant Mandy Brady in 21-cv-04262-JSW) sent an ex parte letter to Appellate Commissioner Lisa B. Fitzgerald asking whether the administrative closure of 24-6312 (ACMS-37, March 3, 2025) constituted sufficient 'resolution' to allow Judge White to rule on Brady's pending vexatious litigant motion. This letter was sent on the same day that co-counsel Michael Rossi filed ECF-84 in 19-cv-04392-BLF opposing accommodation in Freeman's court. The letter was never filed on the official docket.

On March 14, 2025 — four days after Freeman's ECF-87 accommodation denial — Zela wrote directly to Judge White asking him to immediately rule on the vexatious litigant motion. The letter cited ECF-87 directly: 'on March 10, 2025, in another matter (Northern District Case No. 19-cv-04392-BLF), the District Court concluded that Mr. Hazari should not be granted any further stay or accommodation in that matter because he has demonstrated the ability to fully litigate the cases he chooses to file.' The letter then invoked the All Writs Act and federal courts' inherent power as authority for proceeding with the vexatious litigant motion.

Litigation Privilege Immunizes the Cross-Case Contamination

Under the absolute litigation privilege as formulated in Silberg v. Anderson (California) and its federal analogues: (1) The ex parte letter to Commissioner Fitzgerald is a 'communication made in connection with a judicial proceeding' and is absolutely privileged regardless of its content, the fact that it was not filed on the official record, or the fact that it constituted an adversarial intervention in an accommodation proceeding the sender was formally excluded from. (2) The letter to Judge White is a communication to a judicial officer in connection with a pending judicial proceeding and is absolutely privileged regardless of whether it accurately characterizes ECF-87, regardless of whether its use of one court's accommodation denial to argue against accommodation in a different court is improper, and regardless of its adversarial purpose. (3) Both communications are therefore immune from any civil liability: no ADA § 12203 anti-retaliation claim, no § 1985 conspiracy claim, no intentional infliction of emotional distress, no malicious prosecution. The litigation privilege forecloses all of these regardless of the specific intent behind the communications. The result is that the mechanism by which one court's accommodation denial is cross-pollinated into another court's vexatious litigant proceeding through adversarial communications is structurally immunized from accountability by the same doctrine that immunizes all litigation communications.

The structural significance is that the litigation privilege does not merely protect adversarial conduct within a proceeding — it facilitates a specific form of systemic harm that is invisible to the doctrinal categories that would otherwise provide a remedy. The Zela letters demonstrate: (a) a party dismissed from one federal case communicating ex parte with the appellate court in a related appeal about whether the appeal's resolution permits the trial court to proceed with a disability-targeting motion; (b) using one judge's accommodation denial to argue for denial of accommodation in a proceeding before a different judge; and (c) doing both under complete privilege protection. This is the litigation privilege operating as a structural enabler of the coordination between adversarial conduct and judicial discrimination that Part X identifies as a component of the systemic pattern.

The Brady 24-3353 Ex Parte: The Founding Instance of the Pattern (2024)

The Zela ex parte letters of March 2025 — the most precisely documented instance of adversarial exploitation of judicial disability accommodation — were not the first deployment of this mechanism in the Hazari litigation record. Appeal 24-3353 establishes a prior instance in which Brady's counsel communicated ex parte with the Ninth Circuit panel in the case arising from 21-cv-04262-JSW, obtaining a dismissal accompanied by a specific warning that Hazari would face vexatious litigant designation if he pursued further action against Brady. The three primary sources for this event are ECF-141-2 (paragraph 5), ECF-147 (paragraphs 51 and 178), and ECF-89/91 (footnote 50).

The 24-3353 Ex Parte: Three Primary Source Statements

ECF-141-2, PARA 5 (December 2025 — Motion to Set Aside Dismissal): '[Freeman's conduct] assists the disqualified Ms. Freeman, acting outside legitimate authority, to further the conspiracy against the plaintiff's rights promoted both by the 9th Circuit court of Appeals in 24-3353 (punitive dismissal when Brady intervened ex parte as she did here in ECF 140, 141) and by judge White, to characterize the plaintiff as a fraud and vexatious to ensure his complete silence and deprivation of all rights to relief and redress in perpetuity.' ECF-147, PARA 178 (January 2026 — Declaration in Reply): 'We note that Ms. Brady has so far communicated ex parte with the Ninth Circuit Appeal court dismissing a meritorious appeal 24-3353, and also with this court under judge White in ECF-xxx, and with this court, for the solicitation and promotion of CIDT, torture and discrimination. These co-conspirators demonstrate openly that their aim is to eliminate the plaintiff's speech, rights, bodily integrity and life.' ECF-89/91, FOOTNOTE 50 (March 2025 — Motion to Set Aside ECF-87): 'Note also the dismissal and mandate in 24-3353 where the court, en banc with 3 judges interceding on behalf of all of the judges of that court, invented and asserted facts that contradict the truth and prove invidious discrimination and violation of human rights.' ECF-130-2 (October 2025 — Clarification of Operative Complaint): 'Appeal Court 24-3353 Warning: Federal appellate court warned plaintiff he would be declared vexatious if he dared take any action against Brady — BRADY filed vexation and White contradicted his own stay order in 21-cv-04262-JSW and prosecuted to intimidate the plaintiff.'

Pattern Predates ECF-87 by Approximately One Year

Appeal 24-3353 was filed before the closure of 24-3353 in 2024, placing it approximately one year before the March 2025 Zela letter sequence. This chronological relationship is analytically significant for the litigation privilege analysis in two respects. First, it establishes that the adversarial ex parte mechanism was not improvised in response to ECF-87 — it was a practiced technique with a demonstrated prior deployment. Second, it establishes that the warning about vexatious designation in 24-3353 served as a specific threat that shaped Hazari's subsequent conduct in 24-6312 and 19-cv-04392-BLF, documented as an ongoing psychological harm in the DQMS evidence.

The ECF-130-2 description is particularly precise: 'Federal appellate court warned plaintiff he would be declared vexatious if he dared take any action against Brady.' This is not merely dismissal — it is a judicial warning that future legal action against a specific private party will be penalized by the courts. The warning transforms the vexatious litigant designation from a procedural case management tool into an instrument of specific deterrence against assertion of rights against one named private litigant. The litigation privilege immunizes the communication that produced the warning; the warning itself is a judicial act.

The Escalating Sequence: 24-3353 → Zela Letters → ECF-140/141

INSTANCE 1 — 24-3353 (approximately 2024): Brady ex parte communication to Ninth Circuit appellate panel. Result: dismissal with warning that Hazari will face vexatious designation if he pursues action against Brady. Source: ECF-141-2 (para 5), ECF-147 (para 178), ECF-130-2. INSTANCE 2 — MARCH 7, 2025 (Zela → Fitzgerald/24-6312): Zela ex parte letter to Commissioner

Fitzgerald. ACMS-37 (administrative closure) issued same day — March 3. Source: V-H-14 record. INSTANCE 3 — MARCH 14, 2025 (Zela → White/JSW): Zela letter citing ECF-87 to Judge White. White resumes proceedings in April 2025. Source: Part XV analysis. INSTANCE 4 — DECEMBER 3, 2025 (Brady/Hughmanick → Freeman): ECF-140 places Brady's documents before Freeman in the BLF reconsideration proceeding. ECF-141-2 characterizes this as 'Brady intervened ex parte as she did here in ECF 140, 141 ... as she did in 24-3353.' Source: ECF-141-2 para 5. FULL ARC: The 24-3353 ex parte (2024) → March 2025 Zela letters → December 2025 BLF ex parte documents a multi-year, multi-forum adversarial pattern using ex parte communications to judicial officers to shape accommodation outcomes across all pending Hazari proceedings simultaneously. Each deployment is immunized by litigation privilege.

V-H-16 Primary Source Correction: Brady's Letter Was Routed Through Bumatay's Personal Chambers

The 24-3353 primary source documents — now fully read — provide two corrections and significant enrichments to the V-H-16 and Part XV analysis. First, Brady's ex parte submission (Docket Entry 10, August 26, 2024) was not filed through the court's electronic filing system. DE-10 opens with a cover note from Judge Bumatay's chambers staff: 'We received this envelope in our mail box at the U.S. District Court for the Southern District of California. It appears to have been sent by a litigant. We haven't looked at any of the materials. Please handle in the regular course.' Brady sent her letter to Judge Bumatay's personal chambers in the Southern District of California. Bumatay's chambers staff forwarded it to the Ninth Circuit. The letter was not filed as a motion, not served on Hazari, and not submitted through ECF — it was a physical mailing to a judge's private chambers in a different federal district.

Second, the exact warning language in the October 30, 2024 order (DE-11, Silverman/Bumatay/Sanchez) differs materially from the characterization in ECF-130-2. The order states: 'appellant Hazari is advised that continued filings of appeals in this action without a reasonable basis for this court's jurisdiction may result in imposition of sanctions or a prefiling review order.' Brady's request was to declare Hazari a vexatious litigant. The court explicitly declined that request ('this court declines to enter a vexatious litigant order at this time') and instead issued a narrower warning about sanctions or prefiling review. ECF-130-2's characterization ('warned plaintiff he would be declared vexatious') overstates what the order actually said.

The Brady 24-3353 Submission: Primary Source Facts Now Established

DATE: August 26, 2024 (Docket Entry 10) FILED AS: 'Miscellaneous Pro Se Filings Filed' ROUTING: Physical letter sent by Brady to Judge Bumatay's personal chambers, U.S. District Court for the Southern District of California (Bumatay's home district). Forwarded to 9th Circuit Clerk by Bumatay's staff. ADDRESSED TO: Judge Patrick Bumatay, Judge Gabriel P. Sanchez, Judge Barry G. Silverman BRADY'S REQUEST: 'I sincerely reach out to you for urgent attention to my request to shut Hazari down. Either by refusing to entertain any more submittals or by declaring him a Vexatious Litigant.' 11 ATTACHMENTS: 1. White's Rule 54(b) judgment Oct 18, 2022 dismissing Brady with prejudice + May 29/July 9, 2024 orders 2. 24-3353 docket report 3. White's reconsideration denial (rationale for denying stays as accommodation) 4. 23-15221 docket (821 pages by Hazari, dismissed as frivolous by Schroeder/Berzon/Owens) 5. Manoukian vexatious litigant orders 6. Koh docket entries and 9th Circuit dismissal 7. Sixth District list of Hazari appeals 8. 3 oppositions filed in 21-04262 9. Sixth District Presiding Justice Greenwood order: Hazari 'has demonstrated an ability to actively initiate and participate in litigation' (THIS IS THE SAME DOCUMENT later submitted by Rossi as ECF-83 Exhibit A in March 2025) 10. Horvath debtors examination excerpt (Horvath funded litigation, was willing to hire a lawyer) 11. Aug 6, 2024 Santa Clara Superior Court judgment in favor of Brady COURT RESPONSE (DE-11, Oct 30, 2024): Brady's vexatious request DECLINED. Accommodation motion (DE-8) DENIED AS MOOT. Prefiling

warning issued: 'continued filings of appeals in this action without a reasonable basis for this court's jurisdiction may result in imposition of sanctions or a prefiling review order.' Brady removed from docket as non-party.

The Greenwood Order Recycled: From Brady's 24-3353 Letter (August 2024) to Rossi's ECF-83 Exhibit A (March 2025)

Attachment 9 to Brady's August 26, 2024 letter to the 24-3353 panel is identified in DE-10 as 'Order by Presiding Justice of California 6th district Appellate Court, finding that Hazari has demonstrated the ability to actively initiate and participate in litigation.' This is the Greenwood order from the California Sixth District Court of Appeal. Brady submitted it to the 24-3353 panel in August 2024 as part of her argument that Hazari should be declared vexatious. Six months and twelve days later, on March 7, 2025, Rossi submitted the same document as Exhibit A to ECF-83 in 19-cv-04392-BLF — the request for judicial notice that provided the evidentiary basis for ECF-87's accommodation denial.

The document was thus used twice: once to support a vexatious litigant request before a Ninth Circuit appellate panel (August 2024), and once to support an accommodation denial before a federal district judge (March 2025). In neither proceeding was the document adjudicating Hazari's disability or the medical basis for accommodation. In both proceedings, it was used to establish a proposition about ability to litigate drawn from a state court proceeding where the disability evidence that Freeman had accepted for six years was not before the court. The recycling of the Greenwood order across two proceedings — both originating from the Brady adversarial strategy — is the most precise single document linking the 24-3353 Brady intervention to the March 2025 ECF-83/ECF-87 sequence.

The Greenwood October 2019 In Camera Examination: Initial Disability Finding Reversed

The 23-15221 documents add a primary source dimension to the Greenwood order that the thesis documents as Attachment 9 to Brady's 24-3353 letter and as ECF-83 Exhibit A. DE-11 in 23-15221 (Hazari's Response to Opposition, March 31, 2023) provides the sequence that preceded the Greenwood order and that has not previously appeared in any analyzed document. In October 2019, Presiding Justice Greenwood conducted an in camera examination of Hazari in the California Sixth District Court of Appeal. At that examination, Greenwood ruled that Hazari was disabled and must be accommodated by means of stays in 120-day increments, and that he would not need to appear before the court again in order to receive further extensions. A recording of this proceeding exists and was offered for the record.

Following the in camera examination, Greenwood then issued the order that reversed her own finding — the order that was subsequently submitted to the 24-3353 panel in 2024 and to Freeman as ECF-83 in March 2025. DE-11 characterizes this reversal as a deliberate act: Greenwood 'back-dated her date of findings to span 2 years, one year longer than Greenwood knew of Hazari' and 'reversed in camera findings on the record' after engaging in what Hazari characterized as an ex parte communication with the defendants. The ADA Coordinator of the Superior Court then resigned from employment shortly after the sequence of events described in the writ proceedings.

The Greenwood Document Provenance Chain: From In Camera Reversal to ECF-87

OCT 2019: Greenwood conducts in camera examination of Hazari. Initial finding: Hazari is disabled; stays in 120-day increments; no need to appear again. Source: 23-15221 DE-11. OCT-NOV 2019: Greenwood issues written order reversing her own in camera finding. Order states Hazari has 'demonstrated ability to actively initiate and participate in litigation.' Order characterized in DE-11 as backdated and based on reversed in camera findings. AUG 2022: Zela submits Greenwood order to JSW in 21-cv-04262 (C-21-04262 JSW) as part of Brady's opposition to Hazari's accommodation motion (the document that DE-13 attaches as exhibits). APR 2023: Zela resubmits same Greenwood order to 23-15221 panel via his DE-10 preliminary opposition (attached as exhibit). Panel includes Friedland and Sung. AUG 26, 2024: Brady submits same Greenwood order as Attachment 9 to her physical letter to Judge Bumatay's chambers in 24-3353. MAR 7, 2025 (ECF-83): Rossi submits same Greenwood order as Exhibit A to the request for judicial notice that supports ECF-87's accommodation denial. MAR 10, 2025 (ECF-87): Freeman denies accommodation citing 'rapid, prolix filings' standard supported by record including ECF-83. SIX-YEAR CHAIN: The order that Greenwood issued after reversing her own in camera disability finding traveled from California Sixth District (2019) → JSW court (2022) → Ninth Circuit 23-15221 panel (2023) → Bumatay's chambers in 24-3353 (2024) → Freeman's ECF-87 order (2025). The same document anchored every major accommodation denial in the record.

24-3353 Updated: ECF-133 and the Retaliatory Dismissal Mechanism

The 'Moot' Technique in 24-3353: Accommodation Denied as Moot After Dismissal

The October 30, 2024 order in 24-3353 (DE-11) adds a second documented instance of the 'moot' technique that Part XVIII identifies as a mechanism in the BLF record. The order states that the accommodation motion (Docket Entry 8) is 'denied as moot.' The motion was filed July 29, 2024 — before the rehearing petition had been decided. The accommodation was for the purpose of enabling the rehearing briefing. When the rehearing was denied without any briefing, the accommodation for briefing became moot by definition. The technique is self-sealing: deny rehearing summarily → accommodation motion becomes moot because there is nothing left to accommodate → no ruling on accommodation merits → no precedent on whether courts of appeals must provide disability accommodation for rehearing briefing.

The October 30 order also terminates the case with 'No further filings will be entertained in this closed case' — the same language used in 25-3879 and in 23-15221 (Schroeder/Berzon/Owens). The pattern of closure language across multiple dismissal orders — 'no further filings' — is documented in 24-3353 (Silverman/Bumatay/Sanchez, October 2024), 23-15221 (Schroeder/Berzon/Owens, 2023), and 25-3879 (S.R. Thomas/Silverman/Bennett, September 2025). In each case the language appeared after a summary dismissal in which accommodation was either ignored or denied as moot.

Appeal 23-15221: Complete Timeline and SCOTUS Cert Denial

Appeal 23-15221 Complete Timeline: February to September 2023

FEB 21, 2023 (DE-1): Case opened from JSW's November 2022 dismissal. Panel assigned: eventually Schroeder, Berzon, Owens. Original briefing schedule: opening brief April 24, 2023. MAR 9, 2023 (DE-2, DE-3): Urgent TRO/PI and sealed fee waiver filed. BLF ECF-64 (March 9 stay order) attached as Exhibit A. MAR 11, 2023 (DE-4): Designation of record filed, listing 20+ Sixth District appeals, 13+ California Supreme Court filings, all state court records. MAR 12, 2023 (DE-5): Addendum to TRO with exhibits (partly illegible scanned state court documents). MAR 20, 2023 (DE-6): Motion to stay appeal. Exhibits include BLF ECF-64 (March 9 stay order). MAR 20, 2023 (DE-7): OSC issued for docket fee due. MAR 25, 2023 (DE-8): Brady/Zela preliminary opposition to stay and TRO. MAR 27, 2023 (DE-9): Emergency 2nd motion for relief and IFP (Form 4 filed publicly after

sealing issue). MAR 29, 2023 (DE-10): Zela supplemental preliminary opposition. MAR 31, 2023 (DE-11): Hazari reply to opposition. Documents Greenwood in camera reversal and Manoukian/wife conflict. APR 26, 2023 (DE-12, 13): Brady supplemental opposition + request for judicial notice (Greenwood order, Zela declarations, Brady declarations from JSW court). MAY 12, 2023 (DE-14): Zela letter to clerk requesting immediate dismissal as frivolous. JUN 1, 2023 (DE-17, Friedland/Sung): All injunction and stay motions DENIED. Brady's judicial notice GRANTED. Fee waiver sealing DENIED; DE-3 unsealed. OSC issued: within 35 days, dismiss or show non-frivolous. JUL 7, 2023 (DE-18): Response to show cause order filed. JUL 20, 2023 (DE-19): Brady/Zela correspondence noting Hazari filed for bankruptcy protection. AUG 18, 2023 (DE-20, Schroeder/Berzon/Owens): DISMISSED as frivolous. 'No further filings will be entertained.' SEP 11, 2023 (DE-21): Mandate issued. NOV 16, 2023: SCOTUS writ of certiorari 23-7017 filed. MAY 20, 2024: SCOTUS cert denied.

The 23-15221 dismissal is the earliest instance in the Ninth Circuit appellate record of the two-stage processing pattern that later recurs in 24-3353, 25-3879, and 25-5649: a first order denying all pending relief while issuing an OSC (Friedland/Sung, June 1), followed by a second order dismissing as frivolous (Schroeder/Berzon/Owens, August 18). The SCOTUS cert denial on May 20, 2024 is the final domestic appellate disposition of the ISW case's 23-15221 chapter, occurring three days before Hazari filed 24-3353.

The thesis at V-H-16 and Part XV documents the Brady 24-3353 ex parte as the founding instance of the adversarial exploitation pattern. DE-17 in 25-5649 adds the specific legal content that makes the dismissal of 24-3353 analytically precise: 'Appeal 24-3353 was retaliatorily dismissed despite a judicially-obstructed updated complaint in ECF-133 of CAND 4:21-cv-04262-JSW which required the appeal to be heard on its merits. The true purpose of the dismissal by this court was to benefit an unlawful enterprise and conspiracy in collusion with a defendant, Mandy Brady, and her attorneys and cohorts, and to further injure and incapacitate the Appellant, thus ensuring the success of the enterprise and conspiracy. This court knew, en banc, of the content of the updated complaint in ECF-133 CAND 4:21-cv-04262-JSW and nevertheless dismissed the appeal protecting the enterprise and conspiracy.'

ECF-133 in CAND 4:21-cv-04262-JSW (White's court) was the updated complaint that the 24-3353 appeal sought to vindicate. The dismissal of 24-3353 — on the alleged basis of Brady's ex parte communication warning of vexatious designation — had the legal effect of preventing the updated complaint from reaching a panel that might have returned it to the district court for adjudication. The dismissal thus protected the same parties in White's court that the updated complaint would have named. This is the specific causal linkage between the Brady ex parte and the content of the litigation it prevented.

PART XVI

Constitutional Torts and the Extended Legal Landscape: Converging Doctrines That Clarify and Strengthen the Thesis

The preceding Parts have built an architecture that integrates international human rights law, federal disability statutes, constitutional doctrine, European comparative law, systemic discrimination theory, and the specific mechanics of judicial disability discrimination. This Part asks whether that architecture is complete or whether significant bodies of domestic law have been underutilized — and finds that at least twelve additional areas of law converge on the thesis's central conclusions, in several cases adding dimensions of accountability and remedy that the prior analysis did not fully develop. The most important of these is constitutional tort law, specifically the Bivens doctrine and 42 U.S.C. § 1983, whose interaction with judicial immunity is more nuanced than the prior analysis has captured. But the analysis extends to federal criminal civil rights statutes, civil conspiracy law, professional responsibility, the False Claims Act, evidence law, bankruptcy law, the administrative law framework post-Loper Bright, and the emerging law of algorithmic and systemic impact discrimination. Each area illuminates a dimension of the thesis's claims that warrants explicit development.

§ 16.1 Constitutional Tort Law: Bivens, § 1983, and the Color-of-Law Architecture

16.1.1 Bivens and Its Post-Egbert Landscape

In Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), the Supreme Court recognized an implied cause of action for damages against federal officers who violate constitutional rights, directly under the Constitution without statutory authorization. Bivens remained the primary vehicle for constitutional tort claims against federal officers for three decades. But the Court has progressively curtailed its availability: in Ziglar v. Abbasi, 582 U.S. 120 (2017), it declined to extend Bivens to new contexts unless a case is not 'meaningfully different' from the three recognized Bivens contexts (Fourth Amendment unreasonable search; Fifth Amendment gender discrimination; Eighth Amendment deliberate indifference to medical needs). And in Egbert v. Boule, 596 U.S. 482 (2022), the Court curtailed Bivens further, holding that if there is any alternative remedial structure — however inadequate — courts should decline to recognize a Bivens remedy.

Egbert creates a significant problem for the thesis's federal court disability discrimination analysis. A Bivens claim against a federal judge for disability-based CIDT — the most direct constitutional tort theory — would face the argument that alternative remedial structures exist (the Rehabilitation Act, the Judicial Conduct Act, judicial conduct complaints), even if those alternatives are inadequate in practice. Courts following Egbert would likely decline the Bivens extension. This reinforces the thesis's conclusion in Part XIV that individual constitutional tort claims against federal judicial officers are among the least viable remedies — and that the institutional liability channel (Rehabilitation Act § 504) and external accountability mechanisms (DOJ, congressional action, treaty bodies) are the primary viable alternatives.

The three recognized Bivens contexts are, however, significant for the thesis in ways not previously analyzed. The Eighth Amendment deliberate indifference context — established in Carlson v. Green, 446 U.S. 14 (1980), for federal prisoners' medical needs — is the closest constitutional tort analogue to court-caused disability harm. The Youngberg v. Romeo analysis (substantive due process rights of institutionalized disabled persons) generates a similar duty: when the state exercises coercive authority over a person, it assumes heightened obligations toward their physical and psychological wellbeing. The argument that a federal court's compulsory jurisdiction over a disabled litigant — compelling participation under threat of case-dispositive sanction — generates a Carlson/Youngberg-type obligation to refrain from imposing medically harmful procedures is a Bivens theory that, while difficult post-Egbert, has not been definitively foreclosed in this specific context. The deliberate indifference standard from Farmer v. Brennan, 511 U.S. 825 (1994), provides the mental state requirement: a judicial actor who knows of and disregards the documented risk that their procedures will cause disease exacerbation has acted with deliberate indifference to a substantial risk of serious harm, satisfying the Farmer standard.

Egbert v. Boule, 596 U.S. 482 (2022) and Its Disability Context

The post-Egbert landscape makes new Bivens extensions extremely difficult but does not foreclose them where no alternative remedy is truly available. In the disability CIDT context, the argument is that Rehabilitation Act § 504 does not provide the same remedial structure as a Bivens claim against the individual officer: § 504 runs against the institution, not the individual; it does not provide the personal accountability that constitutional deterrence requires; and — as Part XIV established — it must be adjudicated in the same court system whose conduct it challenges. The inadequacy of alternatives argument for Bivens survives Egbert where alternatives are not merely present but genuinely ineffective, as the impossibility analysis establishes.

16.1.2 42 U.S.C. § 1983: The State Court Constitutional Tort Architecture

For state court disability discrimination, 42 U.S.C. § 1983 is the primary constitutional tort vehicle. Section 1983 provides that any person who, under color of state law, subjects another to the deprivation of rights secured by the Constitution and federal laws is liable to the injured party. The analysis of § 1983 in the disability accommodation context is richer than the thesis has previously developed, because § 1983 encompasses not only constitutional violations but violations of rights 'secured by… laws' — which includes the ADA and the Rehabilitation Act.

The critical recent development is the Supreme Court's decision in Health and Hospital Corporation of Marion County v. Talevski, 599 U.S. 166 (2023), which reaffirmed that Spending Clause statutes — including those that create rights for individuals as a condition of federal funding — can create enforceable rights under § 1983 where the statute unambiguously confers individual rights and is not displaced by a comprehensive remedial scheme. Talevski's framework is significant for the thesis's Rehabilitation Act analysis, though whether it fully resolves the § 504 / § 1983 intersection remains contested: the Rehabilitation Act may create individually enforceable § 1983 rights against state court officials who deny disability accommodation if (1) § 504 unambiguously confers individual rights, and (2) § 504's remedial scheme does not foreclose the § 1983 vehicle — both of which are arguable but not yet clearly resolved in the judicial accommodation context. Where this theory succeeds, it provides a cause of action reaching individual state judicial officers without requiring the congruence-and-proportionality analysis that limits Section 5 abrogation. This section frames this as a leading argument under Talevski's framework, not a settled holding.

Health and Hospital Corp. of Marion County v. Talevski, 599 U.S. 166 (2023)

Reaffirmed that Spending Clause statutes create individually enforceable § 1983 rights where they unambiguously confer rights on identifiable beneficiaries, provide a standard for what conduct is required, and are not foreclosed from § 1983 enforcement by a comprehensive remedial scheme. The Rehabilitation Act's accommodation requirement satisfies each criterion: it unambiguously confers rights on persons with disabilities, provides standards (reasonable modification, individualized assessment), and its remedial scheme is not comprehensive enough to foreclose § 1983 enforcement. Applied: state court judicial officers who deny disability accommodation in violation of § 504 may be personally liable under § 1983, subject to qualified immunity analysis.

16.1.3 42 U.S.C. § 1985(3): Conspiracy to Deny Equal Protection

42 U.S.C. § 1985(3) provides a cause of action against two or more persons who conspire to deprive any person of equal protection of the laws or of equal privileges and immunities. In Griffin v. Breckenridge, 403 U.S. 88 (1971), the Supreme Court held that § 1985(3) requires (1) a conspiracy; (2) for the purpose of depriving equal protection or equal privileges; (3) an act in furtherance of the conspiracy; and (4) injury to person or property or deprivation of a constitutional right. Critically, unlike § 1983, § 1985(3) can reach purely private conspiracies — no state action is required.

For the disability discrimination analysis, § 1985(3) provides a vehicle for reaching the attorney-defendant coordination documented in the Hazari record that § 1983 requires state action to reach. Where attorneys coordinate across multiple proceedings to deny disability accommodations — the cross-forum obstruction strategy analyzed in Part XV — the coordination may constitute a § 1985(3) conspiracy to deny the disabled litigant equal protection. The 'class-based animus' requirement — established in United Brotherhood of Carpenters v. Scott, 463 U.S. 825 (1983), requiring that the conspiracy be motivated by invidious class-based discrimination — is satisfied where the coordination is specifically directed at obstruction of disability accommodation rights, because disability, while not yet definitively settled as a cognizable class for § 1985(3) purposes in all circuits, satisfies the class-based animus requirement under the anti-discrimination principles of Griffin v. Breckenridge where the coordination is specifically directed at obstruction of a class of persons defined by their disability. This is a proposed doctrinal extension that the Ninth Circuit's cautious § 1985(3) jurisprudence has not yet definitively resolved; the argument is strongest where constitutional and statutory disability discrimination are simultaneously documented and the conspiracy's discriminatory purpose is explicit in the record.

Section 1986 provides a complementary cause of action against persons who, having knowledge that a § 1985 conspiracy is about to be committed and having the power to prevent it, neglect or refuse to do so. In the disability context, § 1986 potentially reaches supervisory judges, court administrators, and even co-counsel who are aware of the accommodation-obstruction strategy and fail to prevent it — a novel application that has not been litigated in the disability accommodation context but that is textually supported.

§ 16.2 Federal Criminal Civil Rights Statutes: 18 U.S.C. §§ 241, 242, and 245

16.2.1 Section 242: Deprivation of Rights Under Color of Law

18 U.S.C. § 242 makes it a federal crime for any person 'under color of any law' to willfully deprive another person of any rights, privileges, or immunities secured or protected by the Constitution

or laws of the United States. The willfulness requirement — interpreted in Screws v. United States, 325 U.S. 91 (1945), as requiring proof that the defendant acted with the purpose to deprive the victim of constitutional rights — is demanding but potentially satisfiable in the disability CIDT context. A judicial officer who, having been provided documented medical evidence that their procedures cause physical or psychological harm to a disabled litigant, continues to impose those procedures and characterizes the CIDT claim as 'without merit' (as ECF-139 did) may have acted with the requisite willfulness.

Section 242 is particularly significant for the analysis of Part VII's jus cogens override. The Istanbul Protocol documents the international standard that perpetrators of CIDT 'enjoy no immunity from accountability regardless of their official status or the domestic laws of their country' — a principle rooted in jus cogens and the UN Basic Principles on Impunity. Section 242 provides the domestic criminal vehicle that best implements this accountability principle. A federal judge who willfully denies disability accommodation knowing it will cause CIDT-level physical or psychological harm is committing an offence under 18 U.S.C. § 242 — and judicial immunity does not bar criminal prosecution, because judicial immunity is a civil doctrine that has never been held to provide immunity from criminal accountability. The combination of § 242 criminal liability, the Istanbul Protocol's no-immunity principle, and Part VII's jus cogens analysis creates a criminal accountability framework that is conceptually more powerful than any civil remedy and that survives judicial immunity entirely.

16.2.2 Section 241: Conspiracy Against Rights

18 U.S.C. § 241 makes it a federal crime for two or more persons to conspire to injure, oppress, threaten, or intimidate any person in the exercise of any right or privilege secured to them by the Constitution or laws of the United States. Unlike § 242, § 241 requires no color-of-law element — it reaches purely private conspiracies. This means that attorney-defendant coordination to obstruct disability accommodation rights is potentially a federal crime under § 241, even where the attorneys are private actors. The conspiracy against disability accommodation rights — rights secured by the ADA and Rehabilitation Act, which are 'laws of the United States' — satisfies the substantive element. The coordination across multiple proceedings satisfies the conspiracy element.

The § 241/242 framework reinforces Part XV's analysis of the crime-fraud exception to litigation privilege. Where attorney conduct in opposing disability accommodation constitutes a criminal conspiracy under § 241 or a criminal deprivation under § 242, the crime-fraud exception removes the litigation privilege protection entirely. The practical non-prosecution of these statutes in the disability accommodation context does not reduce their doctrinal significance: they establish the criminal characterization of the conduct that the privilege analysis requires for the crime-fraud exception, and they provide the basis for the 'no immunity from criminal prosecution' principle that the Istanbul Protocol and jus cogens analysis assert.

16.2.3 Section 245: Federally Protected Activities

18 U.S.C. § 245 specifically protects the exercise of federally protected rights from interference by force or threat of force. The statute's protected activities include participation in any program or activity receiving federal financial assistance — which encompasses participation in federal court proceedings. The 'force or threat of force' requirement is more demanding than the will-ful standard of § 242, but in the context of disability accommodation denial that causes documented physical or psychological harm, the imposition of medically harmful procedures under threat of case-dispositive sanction may satisfy this element: the threat of dismissal for non-compliance is a compulsive force, and where compliance is medically harmful, the compulsion is coercive in the precise sense § 245 addresses.

§ 16.3 RICO and the Enterprise Theory of Coordinated Disability Discrimination

16.3.1 The RICO Architecture

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, provides civil and criminal liability for participating in a 'pattern of racketeering activity' conducted through an 'enterprise.' The civil RICO provision, 18 U.S.C. § 1964(c), provides treble damages and attorney fees to persons injured 'in their business or property' by reason of RICO violations. The Hazari record's references to RICO, while framed in terms that courts have found difficult to adjudicate in a pro se context, point toward a genuine RICO theory that warrants systematic development.

The predicate acts relevant to coordinated disability discrimination include: mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), where the scheme to defraud involves obtaining attorney fees through accommodation obstruction based on material misrepresentations; obstruction of justice (18 U.S.C. § 1503), where the accommodation-obstruction strategy corrupts judicial proceedings; and extortion under color of official right (18 U.S.C. § 1951, the Hobbs Act), where judicial officers use their official authority to coerce accommodation-denying outcomes that financially benefit defendants and their attorneys. The 'enterprise' element — an association-in-fact of persons coordinating the racketeering activity — is satisfied by the documented coordination across defendants, their attorneys, and complicit judicial actors.

The RICO theory has specific advantages for the disability discrimination context that the thesis's prior remedial analysis did not capture. First, civil RICO provides treble damages — not merely actual damages — which in the disability context would treble the attorney fee unjust enrichment that Part XV identified as the financial product of accommodation obstruction. Second, civil RICO provides attorney fees, which disabled pro se litigants particularly need. Third, RICO liability can reach 'enterprises' that span multiple proceedings and multiple actors, providing a single-proceeding vehicle for addressing the cross-forum coordination that Part XIII documented as the cascading effect of vexatious litigant designation. Fourth, RICO's statute of limitations — four years from discovery under Agency Holding Corp. v. Malley-Duff & Associates, 483 U.S. 143 (1987) — is more generous than some state tort claims, though less protective than the no-statute-of-limitations principle that the Istanbul Protocol applies to CIDT.

RICO in the Disability Discrimination Context: The Critical Limitation

The Supreme Court's decision in Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985), confirms that civil RICO requires proof of (1) a pattern of (2) racketeering activity through (3) an enterprise affecting (4) interstate commerce, resulting in injury to (5) business or property. The 'business or property' requirement is the key limitation in disability discrimination cases: courts have generally held that personal injuries — including physical health deterioration — do not constitute RICO injury to 'business or property.' The recoverable harm under civil RICO would be limited to the financial dimensions of the discrimination: attorney fees paid, property rights extinguished, economic opportunities lost. The physical CIDT harm would require the constitutional tort and treaty channels previously developed. But the financial dimensions — the unjust enrichment by attorneys, the fee awards, the extinguished property claims — are squarely within RICO's property-injury requirement.

§ 16.4 Administrative Law: The APA, Chevron/Loper Bright, and Disability Rights

16.4.1 The Post-Loper Bright Landscape

The Supreme Court's decision in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), overruled Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984), eliminating judicial deference to agency interpretations of ambiguous statutes. Under Loper Bright, courts must independently determine the correct interpretation of statutes, giving agency views 'respect' based on their persuasive power but not binding deference. For the disability rights context, Loper Bright has both positive and negative implications.

The negative implication: DOJ implementing regulations for the ADA and Rehabilitation Act — which have historically been given Chevron deference — are now subject to independent judicial interpretation. Courts that are institutionally disposed to deny disability accommodation might, post-Loper Bright, be more willing to reject DOJ's expansive interpretation of 'reasonable modification' in the judicial accommodation context, substituting a narrower court-generated interpretation. This concern is real and reinforces the thesis's conclusion that external accountability mechanisms — not judicial interpretation — are the primary avenue for reliable enforcement.

The positive implication: the thesis's argument that courts must independently interpret the ADA and Rehabilitation Act to give full effect to the rights they create is strengthened by Loper Bright. Courts can no longer defer to agency views that might have previously provided cover for narrowing interpretations. The courts must themselves engage with the statutory text and congressional intent — and as the thesis has established through the Senate record analysis in Part IX, congressional intent is clear: existing law already meets the CRPD's standards, and accommodation in judicial proceedings is legally required. Post-Loper Bright, courts that deny accommodation are not deferring to agencies that got the law wrong; they are independently misreading statutes whose meaning Congress has specifically addressed.

16.4.2 The APA and Judicial Disability Accommodation Policy as Agency Action

The Administrative Procedure Act, 5 U.S.C. §§ 551-706, provides for judicial review of federal agency action that is arbitrary, capricious, or contrary to law. The thesis has primarily analyzed disability accommodation as a question of case-specific judicial discretion. But where federal courts adopt systematic policies of accommodation denial — the 'not required to provide any accommodations' policy identified in ECF-139, the absence of written accommodation protocols, the failure to train — those policies may constitute reviewable agency action under the APA.

Federal courts, as federal entities, establish their Local Rules, Standing Orders, and administrative policies through rulemaking processes that share characteristics with APA informal rulemaking. The Judicial Conference of the United States promulgates rules for federal court administration. A Judicial Conference policy — or a Circuit's Local Rule — that is systematically inconsistent with the Rehabilitation Act's accommodation requirement may be reviewable under the APA as agency action contrary to law. The APA review vehicle provides a mechanism for challenging systemic accommodation-denial policies — not individual case decisions — without triggering the judicial immunity analysis that blocks individual case tort claims.

§ 16.5 Professional Responsibility and Bar Discipline: The Missing Accountability Layer

The state bars that license attorneys, and the federal court bars that admit attorneys to practice, maintain codes of professional conduct that directly apply to the attorney conduct analyzed in

Part XV. The Model Rules of Professional Conduct, and their state equivalents, impose specific obligations relevant to disability accommodation obstruction:

Rule 3.1 (Meritorious Claims): prohibits assertions of frivolous legal positions. An attorney who opposes a disability accommodation request by invoking the legally impermissible 'filing=capacity' standard that Tudor v. Whitehall and A.J.T. v. Osseo Area Schools have identified as contrary to law is potentially violating Rule 3.1 by asserting a position without a basis in law.

Rule 3.3 (Candor to the Tribunal): requires attorneys not to make false statements of fact to a tribunal and requires disclosure of material facts necessary to prevent fraud. An attorney who submits a declaration characterizing disability as 'ostensible' without any medical basis, when the attorney has reviewed the sealed medical record showing documented disability, may violate Rule 3.3's prohibition on false statements of fact.

Rule 4.4 (Respect for Rights of Third Persons): prohibits attorneys from using means that have 'no substantial purpose other than to embarrass, delay, or burden a third person.' The 'serial abuser of disability law' characterization, if made solely for the purpose of attacking the disabled litigant's disability identity rather than addressing the merits of the accommodation request, may violate Rule 4.4.

Rule 8.4 (Misconduct): defines as misconduct any conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct 'prejudicial to the administration of justice.' Systematic coordination to obstruct disability accommodation across multiple proceedings, when motivated by the purpose of obtaining financial benefit through sustained litigation, satisfies the Rule 8.4(c) dishonesty element and the Rule 8.4(d) prejudice-to-administration element.

Bar discipline, unlike civil litigation, is not subject to litigation privilege in the same way. Bar complaints against attorneys are not civil actions in which litigation privilege provides immunity; they are regulatory proceedings in which the attorney's professional obligations — separate from civil liability — are at issue. An attorney who is absolutely privileged from civil defamation liability for a false declaration about disability capacity is not insulated from bar discipline for the same conduct, because the bar's professional responsibility framework applies independently of civil immunity. The disabled litigant who cannot obtain civil damages for an attorney's false disability characterization may nonetheless file a bar complaint that triggers professional accountability for the same conduct.

This accountability layer has been systematically underutilized in the disability discrimination context. The thesis's reform agenda should include the explicit recommendation that bar associations adopt specific guidance on professional responsibility obligations in disability accommodation proceedings, including the prohibition on invoking legally impermissible legal standards (as identified in Tudor v. Whitehall), the obligation of candor regarding medical evidence, and the prohibition on identity attacks on protected disability status.

§ 16.6 The False Claims Act: A Potential Vehicle for Systematic Accommodation Failure

The False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, prohibits knowingly presenting false or fraudulent claims for payment from the federal government and allows private relators to bring qui tam actions on the government's behalf, collecting a portion of any recovery. The FCA's application to disability discrimination by federally funded courts has not been litigated, but it presents a potentially powerful vehicle for addressing systematic accommodation failures that the thesis has documented.

The theory: federal courts, as recipients of federal financial assistance, implicitly certify in their vouchers and fund requests that they are in compliance with all applicable federal laws and conditions — including Section 504 of the Rehabilitation Act and ADA Title II. A court system that systematically denies disability accommodations while representing to the federal government that it is in compliance with its disability law obligations may be presenting materially false claims for federal funds under the FCA. The FCA's implied false certification theory, recognized in Universal Health Services, Inc. v. United States ex rel. Escobar, 579 U.S. 176 (2016), applies where: (1) the claim for payment omits material information; (2) the omitted information would have been material to the government's decision to pay; and (3) the defendant knew the information was material.

The materiality element may be satisfied because the federal government's decision to fund federal courts is conditioned on Section 504 compliance, and systematic non-compliance — particularly where memorialized in judicial orders stating the court is 'not required to provide any accommodations' — would presumably be material to the funding decision. The knowledge element is satisfied by the documented nature of the non-compliance and the court's own explicit statements. The qui tam relator mechanism is particularly significant: it allows a private litigant — a disabled person whose accommodation was denied — to bring an FCA action on behalf of the government, sharing in any recovery, without the structural impossibility problems that plague direct disability discrimination claims against courts in those same courts.

§ 16.7 Evidence Law: Federal Rule of Evidence 706 and the Medical Expert Imperative

Federal Rule of Evidence 706 authorizes courts to appoint independent expert witnesses on their own motion or the motion of any party. In the disability accommodation context, FRE 706 is the single most powerful procedural tool for addressing the evidentiary distortion that Part XV identified as the primary mechanism through which litigation privilege enables disability discrimination. When attorneys submit declarations mischaracterizing disability capacity without medical basis, and when courts adopt those mischaracterizations as evidentiary findings without independent review, the corrective is not more advocacy from the disabled litigant — who, by definition, cannot match the resources and credibility of the opposing attorney's declarations. The corrective is an independent court-appointed medical expert who assesses the disability evidence without advocacy bias.

The thesis's reform agenda has referenced FRE 706 in passing but has not developed it as a mandatory procedural requirement in disability accommodation proceedings. The case for mandatory FRE 706 appointment in certain disability contexts is compelling. Where a court has received conflicting claims about a disabled litigant's medical capacity — medical evidence from the litigant's physicians on one side and attorney declarations characterizing the disability as fabricated on the other — the court cannot resolve the conflict without medical expertise that neither party provides with objectivity. An FRE 706 appointment resolves the conflict objectively, eliminates the evidentiary distortion, and produces a medical record that, if the court ignores it in denying accommodation, constitutes the 'clear and indisputable' evidence of arbitrary action that mandamus and appellate standards require.

Rule 706 appointments should be required, not merely permitted, where: (a) the litigant has submitted physician documentation of disability; (b) the opposing party has submitted declarations characterizing that documentation as inconsistent with observed litigation behavior; and (c) the accommodation decision will be case-dispositive if denied. In this posture, the conflict between medical evidence and attorney characterization is precisely the conflict that an independent expert can resolve and that no other procedural tool can adequately address.

§ 16.8 Bankruptcy Law: Disability-Caused Financial Destruction and the Fresh Start

The connection between disability discrimination by courts and bankruptcy may appear tangential until the Hazari record's CANB 23-50690 and BAP NC-24-1204 proceedings are recalled: the case series includes bankruptcy court proceedings, suggesting that the financial consequences of disability discrimination — the $586,427 fee judgment, the extinguished property rights, the disability-caused inability to generate income — produced financial insolvency. The bankruptcy system's relationship to disability discrimination by courts is structural: courts that deny disability accommodation and impose large fee judgments on disabled litigants who cannot defend themselves are manufacturing insolvency.

The Bankruptcy Code's fresh start principle — the discharge of debts that the debtor cannot pay — provides some relief from disability-discrimination-generated financial destruction. But it does not address the non-dischargeable nature of certain judgment debts, including those arising from 'willful and malicious injury' under 11 U.S.C. § 523(a)(6). Where the attorney fee judgment was itself the product of willful disability discrimination, the debtor/disabled litigant may have a defense to the non-dischargeable characterization of that debt. The intersection of disability discrimination law, fee judgment enforcement, and bankruptcy discharge standards is an underdeveloped area of law that the thesis's analysis illuminates.

More importantly, the automatic stay provisions of 11 U.S.C. § 362 — which halt all collection actions against the debtor upon bankruptcy filing — provide a temporary but powerful tool for disability-discrimination victims facing collection of discriminatorily-imposed fee judgments. The automatic stay cannot address the underlying discrimination, but it provides breathing space that disability accommodation requests, once denied, do not.

§ 16.9 Impact Discrimination and Disparate Impact Theory: Section 504 and the ADA

The thesis has primarily analyzed disability accommodation denial as intentional discrimination — conduct motivated by irrational prejudice about disability (Cleburne) or by institutional policy of non-accommodation (Part X). But the federal disability statutes also prohibit policies and practices that have a discriminatory impact on persons with disabilities, even where intent to discriminate is absent. The disparate impact theory — established in Griggs v. Duke Power Co., 401 U.S. 424 (1971), for racial discrimination and extended to disability in Alexander v. Choate, 469 U.S. 287 (1985) — is significant for the disability accommodation analysis and is developed here.

The failure-to-prosecute standard, the Henderson five-factor test, and the standard briefing and scheduling rules of federal courts are facially neutral policies that have a documented disparate impact on persons with disabilities. A disabled litigant is substantially more likely than a non-disabled litigant to fail to prosecute, to miss briefing deadlines, and to fail to comply with standard scheduling orders — not because of any characteristic intrinsic to disability but because the court's

policies provide no accommodation for the conditions that disability creates. The disparate impact of these neutral policies on persons with disabilities is precisely what the ADA's 'reasonable modification' requirement was designed to address.

Under Section 504 and ADA Title II, the disparate impact theory does not require proof of intent or individualized prejudice. It requires proof that a neutral policy produces significantly adverse effects on a protected group and that those effects are not justified by legitimate necessity. The application of this theory to court policies — the failure-to-prosecute standard, the Henderson test, the briefing schedules, the oral argument procedures — would require courts to justify the aggregate discriminatory impact of those policies on disabled litigants. The absence of any data collection on disability-related case outcomes in federal courts — itself evidence of Marker 2 (structural absence) in the systemic discrimination analysis — would be the first target of a disparate impact challenge.

§ 16.10 Substantive Due Process: The Liberty Tier and the Disability Nexus

The thesis's Part V analysis of substantive due process developed the Youngberg-Lawrence-Obergefell framework for establishing a liberty interest in access to courts and freedom from state-imposed physical or psychological harm. This analysis was primarily applied in the constitutional validation context. But substantive due process has a specific application in the disability context that has been underexplored: the fundamental liberty interest in making healthcare and medical decisions, established in Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990), and Washington v. Glucksberg, 521 U.S. 702 (1997).

A disabled litigant who is compelled to participate in litigation activities that their medical providers have determined will cause disease exacerbation faces a state-imposed interference with their fundamental right to make healthcare decisions in accordance with their medical providers' recommendations. The court's denial of accommodation — requiring litigation activity against medical advice — is a state imposition that overrides the litigant's healthcare decision-making in precisely the domain that Cruzan and Glucksberg identify as constitutionally protected. This healthcare decision-making liberty theory has not been litigated in the disability accommodation context but finds strong support in the substantive due process framework.

Furthermore, the right to refuse unwanted medical procedures — established in Cruzan and extended in the forced-medication context in Washington v. Harper, 494 U.S. 210 (1990) — has an analogue in the right to refuse litigation activities that medical evidence establishes will cause physical or psychological harm. A court that denies accommodation and compels litigation activity that medical providers have identified as medically harmful is functionally imposing a procedure — sustained litigation stress exposure — that the litigant's physicians have contraindicated. The constitutional right to refuse medical procedures should extend to refusing court-compelled activities that produce medical harm, at least where the disability is documented and the medical evidence of harm is specific.

§ 16.11 The Complete Extended Legal Landscape: Synthesis Table

Area of Law	Key Authority	Application to Thesis	Strengthens Which Part
Constitutional Tort (Bivens)	Egbert v. Boule (2022); Carlson v. Green (1980)	Eighth Amendment deliberate indifference	Parts VI, XIV

Area of Law	Key Authority	Application to Thesis	Strengthens Which Part
		analogue for court-compelled medically harmful procedures; post-Egbert limitations reinforce external remedy necessity	
§ 1983 / Talevski	Health & Hosp. Corp. v. Talevski (2023)	Rehab Act § 504 creates individually enforceable § 1983 rights against state court officers who deny accommodation; personal liability subject to qualified immunity	Parts VI, XV
§ 1985(3) Conspiracy	Griffin v. Breckenridge (1971); United Brotherhood v. Scott (1983)	Pure private actor conspiracy to deny disability accommodation is § 1985(3) actionable without state action; class-based animus satisfied by disability discrimination purpose	Parts X, XV
18 U.S.C. § 242	Screws v. United States (1945)	Criminal prosecution of willful judicial CIDT; judicial immunity does not bar criminal prosecution; provides domestic vehicle for Istanbul Protocol's no-immunity principle	Part VII
18 U.S.C. § 241	Civil rights conspiracy statute	Reaches purely private accommodation-obstruction conspiracies; criminal predicate for crime-fraud exception to litigation privilege	Parts VII, XV
RICO	Sedima v. Imrex (1985); Escobar (2016)	Enterprise theory of cross-forum coordination; treble damages for financial injury; FCA implied false certification for federal funding while non-compliant	Parts X, XIII, XV
APA post-Loper Bright	Loper Bright v. Raimondo (2024)	Courts must independently interpret ADA/Rehab Act; congressional intent (Senate record) is primary interpretive	Parts II, IX, XII

Area of Law	Key Authority	Application to Thesis	Strengthens Which Part
		guide; systematic accommodation policies reviewable as agency action	
FRE 706	Fed. R. Evid. 706	Court-appointed independent medical expert eliminates evidentiary distortion from privileged false declarations; mandatory in contested disability capacity cases	Parts VI, XV
Professional Responsibility	ABA Model Rules 3.1, 3.3, 4.4, 8.4	Bar discipline independent of litigation privilege; specific obligations regarding disability accommodation proceedings; 'serial abuser' attacks potentially violate Rule 4.4	Part XV
False Claims Act	31 U.S.C. §§ 3729-3733; Escobar (2016)	Federal court systems making false implied certifications of § 504 compliance while systematically denying accommodation; qui tam relator avoids impossibility problem	Parts X, XIV
Disparate Impact	Griggs v. Duke Power (1971); Alexander v. Choate (1985)	Neutral court policies (Henderson test, briefing schedules, failure-to-prosecute) have documented disparate impact on disabled litigants; no intent required	Parts X, XI
Healthcare Liberty	Cruzan v. Director (1990); Washington v. Harper (1990)	Court-compelled medically contraindicated litigation activities implicate fundamental liberty interest in healthcare decision-making; extension of Youngberg analysis	Parts V, VI

§ 16.12 The Cross-Doctrinal Synthesis: How the Extended Legal Landscape Completes the Thesis

The twelve areas of law analyzed in this Part do not merely add remedies to those already established. They restructure the accountability architecture in four ways that significantly strengthen the thesis's overall argument.

First, criminal accountability closes the individual immunity gap. 18 U.S.C. § 242 and § 241 provide criminal prosecution as an accountability mechanism that judicial immunity does not bar, that the Istanbul Protocol's no-immunity principle supports, and that the jus cogens analysis in Part VII provides the international law predicate for. Criminal accountability is the mechanism that international law requires for CIDT perpetrators; domestic law provides it through §§ 241-242; the gap between the international requirement and the practical non-prosecution is a political accountability failure rather than a legal impossibility.

Second, RICO and civil conspiracy close the private-actor coordination gap. § 1985(3) and civil RICO provide causes of action that reach attorney-defendant coordination without requiring state action, and that provide treble damages and attorney fees as incentives for disabled litigants (or qui tam relators on their behalf) to bring actions. These provisions transform the financial incentive structure: where litigation privilege currently makes accommodation obstruction risk-free for attorneys, civil conspiracy liability makes it potentially treble-damaged.

Third, the False Claims Act and APA provide systemic challenges outside the court system. The False Claims Act qui tam mechanism and APA review of systematic accommodation policies provide vehicles for systemic challenge that do not require a disabled litigant to navigate the court system whose policies they are challenging. These external mechanisms address the impossibility problem of Part XIV from a different angle than the DOJ enforcement and treaty body channels: they use existing domestic legal machinery that is not administered by the judicial branch.

Fourth, FRE 706, professional responsibility, and disparate impact complete the evidentiary and professional accountability framework. FRE 706 court-appointed experts may assist in some contested disability-capacity disputes. However, as Part XVII establishes, their utility is sharply limited where the appointing court is itself the alleged source of the disability-causing harm: court-controlled expert selection cannot satisfy the Istanbul Protocol's independence requirement when the court is the alleged violator. FRE 706 is therefore most appropriately invoked in proceedings before a neutral forum or where a genuinely independent expert can be selected without court-controlled appointment mechanisms. Professional responsibility creates accountability for attorney conduct that litigation privilege shields from civil liability. Disparate impact theory challenges neutral policies whose aggregate effect on disabled litigants is discriminatory, without requiring proof of intent.

The Thesis's Complete Legal Architecture: Eighteen Converging Frameworks

International: CRPD Art. 15 (Art. 18 obligation), UNCAT Art. 16 (ratified; Supremacy Clause), ICCPR Arts. 2/7/14/26 (ratified), CERD Art. 5(a) (ratified), American Declaration (OAS), Istanbul Protocol (authoritative standard), Jus cogens CIDT prohibition. Constitutional: 5th/14th Amend. equal protection (Cleburne), 5th/14th Amend. substantive due process (Youngberg, Obergefell), Article III

access to courts (Griffin-Lane), Article VI Supremacy Clause (treaty obligations), Article VI oath obligations, 9th Amend. retained rights, Article I § 8 Cl. 10 (Define and Punish). Statutory: ADA Title II, Rehabilitation Act § 504, ADAAA, 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), 42 U.S.C. § 12203, 18 U.S.C. § 242, 18 U.S.C. § 241, RICO/FCA, APA. Procedural/Professional: FRE 706, ABA Model Rules 3.1/3.3/4.4/8.4, Disparate impact doctrine, Healthcare liberty (Cruzan/Harper). Every framework points toward the same conclusion: disability accommodation in judicial proceedings is a non-derogable right whose violation generates accountability at every level of the legal order, through every available mechanism, against every category of actor — judicial, administrative, private — who participates in its denial.

PART XVII

The Independence Requirement: Why Court-Controlled Investigation Cannot Satisfy the Istanbul Protocol, and the IAJ as the Model for Genuine Independent Inquiry

Part XVI proposed mandatory Federal Rule of Evidence 706 appointments in contested disability capacity cases as a corrective to the evidentiary distortion that litigation privilege enables. This Part confronts a fundamental flaw in that proposal: the FRE 706 appointment is controlled by the court. The court appoints the expert. The court defines the scope of inquiry. The court adjudicates the expert's findings. In a case where the court is the alleged violator of the disabled litigant's rights — where the claim is that the court itself has inflicted cruel, inhuman or degrading treatment through accommodation denial — the court's control over the expert appointment process is not a mechanism of independent investigation. It is a structural extension of the court's authority over the very matter in which its own conduct is at issue. The Istanbul Protocol's independence requirement, the CAT Committee's standards for investigations into CIDT by state actors, and the foundational principle that no actor may investigate its own conduct without structural independence — all converge on the same conclusion: FRE 706, in the specific context of alleged court-caused CIDT, cannot satisfy the requirements of international law.

This Part then turns to the IAJ — the Institute for the Advancement of Justice & Human Rights — and the investigation it conducted and documented in the Hazari case record. The IAJ analysis, prepared independently of the court system, applying the Istanbul Protocol's methodology to the full evidentiary record, and reaching findings on treaty violation that the court has declined to engage, represents exactly what the Istanbul Protocol requires: investigation by a body that is genuinely external to the state actor whose conduct is being assessed. This Part analyzes the IAJ investigation's methodology, its conformity with Istanbul Protocol standards, its legal significance as evidence in international accountability proceedings, and the institutional model it provides for formalizing independent investigation of court-caused disability CIDT as a structural reform.

The Core Problem

FRE 706 gives the court appointment power over the expert who will investigate the court's own conduct. This is not independence. It is the structural equivalent of asking the suspected torturer to select the investigator who will determine whether torture occurred. The Istanbul Protocol's independence requirement exists precisely because states and state actors cannot be trusted to investigate their own CIDT impartially. An FRE 706 appointment in a case where the court is the alleged CIDT actor satisfies neither the letter nor the spirit of the Protocol's investigation standards. It provides the form of expert review while preserving the substance of institutional control.

§ 17.1 The Istanbul Protocol's Independence Requirements: Text and Standard

17.1.1 The Core Independence Mandate

The Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022 edition) establishes in its opening chapters the foundational requirements for investigations that conform to its standards. The independence requirement is not an aspiration; it is the first and most structurally essential criterion:

> **Istanbul Protocol (2022), Chapter III — Principles of Effective Investigation and Documentation**
>
> *"All alleged cases of torture and ill-treatment shall be investigated promptly and impartially. The investigation must be conducted by a competent, impartial and independent body. Persons potentially implicated in torture or ill-treatment must not be in a position of control or influence over the investigation. The investigators must be independent of the suspected perpetrators and the institutions they belong to." [...] "Where State officials are implicated, the investigation must be conducted by a body that is independent from those officials and their institutions. Internal investigations by the same institution whose conduct is being examined do not satisfy the independence requirement."*

The Protocol's independence requirement has three specific components, each of which FRE 706 fails in the court-as-CIDT-actor context:

Component 1: Investigator independence from suspected perpetrators. The investigators must have no institutional relationship with or subordination to the person or body whose conduct is under investigation. Under FRE 706, the court-appointed expert is appointed, directed, compensated, and evaluated by the court. The expert's continued relationship with the court system — their professional reputation, their future appointment prospects, their standing in the legal-medical community that depends on court relationships — creates structural dependencies that compromise independence, even without any conscious bias.

Component 2: Independence from the institution, not merely the individual. Where state officials are implicated, the Protocol requires independence from the institution, not merely the individual official. In the court-CIDT context, the institutional independence requirement means that the investigator must be independent of the court system as a whole — not merely of the specific judge whose conduct is being assessed. An FRE 706 expert appointed by the court, operating under court supervision, and submitting findings to the court for adjudication is embedded in the court system as an institution, regardless of their personal impartiality with respect to the specific judge.

Component 3: Freedom from institutional control over the investigation's scope, methodology, and findings. The Protocol requires that the investigating body have authority to define the scope of the investigation, access all relevant evidence, and publish findings without approval from the institution under investigation. Under FRE 706, the court defines the expert's mandate, controls the expert's access to evidence, can limit the expert's inquiry, and adjudicates the weight and admissibility of the expert's findings. None of these powers is consistent with the independence the Protocol requires.

17.1.2 The CAT Committee's Standards for Investigation of State Actor CIDT

The Committee Against Torture, in its General Comment No. 3 (2012) on UNCAT Article 14, and in its practice under UNCAT Article 20 (confidential inquiry procedure for systematic CIDT), has elaborated the investigation independence requirement in terms that directly apply to judicial CIDT claims. The Committee has established:

- Investigations into CIDT by state actors must be conducted by bodies genuinely external to the state institution whose conduct is under review. Internal review mechanisms of the same institution do not satisfy Article 14's effective remedy requirement.
- Where the investigation concerns a judicial institution, the investigating body must be independent of the judiciary — not merely of the specific judge or court whose conduct is at issue. This is because the judicial institution as a whole has an institutional interest in the outcome that compromises any judiciary-controlled investigation.
- The investigation must have power to compel evidence, interview witnesses without judicial supervision, and publish findings that are binding for remedy purposes — or at least authoritative for international accountability purposes — without requiring adjudication by the institution under investigation.
- The independence requirement extends to medical and psychological investigations: medical experts assessing whether judicial conduct has caused CIDT-level harm must be selected, directed, and compensated by an authority independent of the court system, not by the court whose conduct they are assessing.

The CAT Committee's 2014 Concluding Observations on the United States (CAT/C/USA/CO/3-5) specifically found that the U.S. had not implemented effective, independent investigation mechanisms for CIDT in institutional settings. The Committee called for "the establishment of independent monitoring bodies with authority to conduct unannounced inspections and investigate complaints of ill-treatment" — a standard that FRE 706, as a court-controlled mechanism, cannot satisfy.

CAT Committee, 2014 Concluding Observations on the United States (CAT/C/USA/CO/3-5)

"The Committee is concerned about the lack of independent oversight mechanisms for investigating allegations of ill-treatment in various institutional settings. The Committee recommends that the State party establish independent bodies... with authority to conduct investigations, receive complaints, and ensure accountability for ill-treatment, without interference from the institutions under investigation." [...] The IAJ Human Rights Analysis in the Hazari case (ECF-116 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)) explicitly invokes these Concluding Observations, establishing that the absence of effective independent investigation mechanisms in the U.S. judicial context has been specifically identified by the CAT Committee as a treaty compliance failure.

§ 17.2 Why FRE 706 Fails the Independence Test in the Court-CIDT Context

17.2.1 The Appointment Power as the Structural Disqualification

The FRE 706 appointment power is the structural disqualification that prevents the mechanism from satisfying the Istanbul Protocol's independence requirement in the court-CIDT context. Rule 706(a) provides that "the court may appoint any expert that the parties agree on and any of its own choosing." The rule makes the court the appointing authority, the party with authority to

specify the scope of the expert's inquiry, and the adjudicator of the expert's compensation (Rule 706(c)). This trifecta of court control — appointment, scope definition, compensation — is incompatible with the Protocol's requirement that the investigating body be 'independent from those officials and their institutions.'

The structural disqualification is not resolved by the good faith of the individual judge who makes the appointment. A judge who genuinely wishes to appoint a truly independent expert to investigate the court system's accommodation failures faces an inescapable circularity: the judge's honest exercise of the appointment power does not make the mechanism independent, because the appointment power itself is the source of institutional control. The expert owes their appointment — and therefore their access to the court system, their professional opportunity, and their compensation — to the institution they are investigating. Independence is a structural property, not a personal virtue. FRE 706 creates a structurally dependent relationship between the expert and the appointing court that personal impartiality cannot overcome.

17.2.2 Five Specific Independence Failures of FRE 706 in the CIDT Context

Independence Criterion	Istanbul Protocol Requirement	FRE 706 Performance
Appointment authority	Appointing body must be independent of the state institution under investigation	Court appoints. Court IS the institution under investigation. Fails: appointer is the alleged perpetrator.
Scope of investigation	Investigator must define scope independently; institution under investigation cannot limit inquiry	Court defines expert's mandate and may limit scope of inquiry. Fails: alleged perpetrator controls what is investigated.
Evidence access	Investigator must have authority to access all relevant evidence without institutional gatekeeping	Expert's access to evidence depends on court orders. The court controls what evidence the expert may review. Fails: perpetrator controls the evidence base.
Findings authority	Investigator must be able to publish findings without approval from institution under investigation	Expert submits findings to the court, which adjudicates their weight, admissibility, and legal consequence. Fails: perpetrator adjudicates the investigation's conclusions.
Compensation independence	Investigator's compensation must not create dependency on the institution under investigation	Court determines expert compensation under Rule 706(c). Fails: perpetrator controls the investigator's financial relationship with the proceeding.

Every element of the Istanbul Protocol's independence framework is violated by FRE 706 in the court-CIDT context. This is not a flaw in FRE 706 as a general evidentiary mechanism; it is an inherent structural limitation that emerges specifically when the court is the alleged CIDT actor. FRE 706 was designed to resolve disputes between parties about technical matters; it was not designed as an investigation mechanism for allegations that the appointing court itself has committed CIDT.

§ 17.3 The IAJ Investigation: Methodology, Conformity with Istanbul Protocol Standards, and Legal Significance

17.3.1 What the IAJ Is and What It Did

The IAJ — the Institute for the Advancement of Justice & Human Rights — is the independent investigative body that prepared the human rights treaty violation analysis documented in the Hazari case record as the "IAJ Human Rights Analysis" (February 2025, with supplemental findings incorporating newly extracted documents). The IAJ investigation was conducted externally to and independently of the court system whose conduct it assessed. It was not appointed by the court. It was not funded by the court. Its scope was not defined by the court. Its findings were not adjudicated by the court. It submitted its analysis to the international public record through the case record, and to international accountability bodies through the documentation framework the Istanbul Protocol establishes.

The IAJ Human Rights Analysis constitutes, in the most direct sense available, exactly the kind of independent investigation that the Istanbul Protocol requires and that FRE 706 cannot provide. Its structure, methodology, and findings warrant detailed examination because they model the institutional design that any legitimate independent investigation of court-caused CIDT must replicate.

17.3.2 The IAJ Methodology and Its Istanbul Protocol Compliance

The IAJ analysis follows the Istanbul Protocol's investigative framework with precision. ECF-134 — the Istanbul Protocol medical investigation filed as part of the case record in November 2025 — documents that the investigation explicitly follows 2022 Istanbul Protocol standards for: medical assessment by qualified experts; chronological documentation of the 8.5-year harm period; causation analysis linking specific judicial acts to specific medical findings; expert opinion meeting international standards; and pattern recognition distinguishing systematic from isolated violations. The IAJ's covering analysis synthesizes this medical documentation with the treaty violation framework, applying the standards of UNCAT Article 16, ICCPR Articles 7 and 14, and CRPD Articles 13 and 15 to the documented evidence.

IAJ Human Rights Analysis (February 2025) — Istanbul Protocol Compliance Assessment

The IAJ analysis documents compliance with the following Istanbul Protocol criteria: (1) Qualified medical examiners — multiple treating physicians (Dr. Horvath, Dr. Le, Dr. Hsiao, Dr. Mausolf, Dr. Pleman and UCSF specialists Dr. Guo, Dr. Buchanan, Dr. Jenkins, Dr. Bainto, Dr. Braslow, Dr. Mayer) and a licensed psychotherapist (Eden Raitman, AMFT); (2) Causation analysis — peer-reviewed research (ECF-74, 'The Multiple Sclerosis Stress Equation') establishing scientific causation between psychological stress and MS disease progression; (3) Quantified biological markers — CD4 T-cells at 431 cells/μL (below normal minimum of 490), CD8 T-cells at 54 cells/μL (severely below normal minimum of 180, flatlined for 28 months), CD4/CD8 ratio inverted at approximately 8.0 (normal approximately 1.5-2.5); (4) Pattern recognition — 8.5-year documented pattern across 10 courts and 56+ judges, satisfying the Protocol's systemic-vs-isolated distinction; (5) Expert medical opinion explicitly applying UNCAT criteria — Dr. Pleman's November 5, 2025 letter stating that the judicial conduct 'meets the clinical criteria of torture and cruel, inhuman, and degrading treatment as defined in the UN Convention Against Torture.'

The IAJ analysis also satisfies the Istanbul Protocol's requirement that the investigation establish the 'four elements of torture and CIDT' identified in UNCAT Article 1: (1) severe pain or suffering — documented by the CD4/CD8 T-cell collapse, the MS disease progression, the PTSD, the neuropsychological impairment at the 0.1 percentile of processing speed, and the immunosuppressed state requiring suspension of disease-modifying therapy; (2) intentional infliction — documented by the court's knowledge of the medical evidence and its continuation of

harmful procedures after that knowledge was established; (3) official purpose — the judicial act of case management, representing an official purpose even if not the classic UNCAT coercive purposes; and (4) state actor involvement — federal and state judicial officers acting in official capacity. The IAJ's assessment that each element is met constitutes a prima facie UNCAT violation finding by an independent investigative body applying the Protocol's methodology.

17.3.3 The Medical Evidence as Istanbul Protocol-Compliant Documentation

The specific medical evidence documented in the IAJ analysis and in ECF-134 represents a level of quantified, expert-validated harm documentation that the Istanbul Protocol identifies as the gold standard for CIDT investigation. Blood work values — CD8 T-cells flatlined at 54 cells/μL for 28 months, with a normal minimum of 180; CD4/CD8 ratio inverted at approximately 8.0 against a normal of 1.5-2.5; white blood cell count elevated at 14.4 × 10^9/L indicating active infection while immunocompromised — are not subjective complaints. They are objective biological measurements, taken by clinical laboratories, that document the state of the human body at specific points in the litigation timeline. The chronological correlation between litigation stress events (accommodation denials, ECF-87 on March 10, 2025; dismissal orders, ECF-139 on December 1, 2025) and medical deterioration events (CD8 decline, immunocompromise, infection, suspension of disease-modifying therapy in August 2024) satisfies the Protocol's causation documentation requirement with a specificity that is rarely available in CIDT cases.

Dr. Pleman's November 5, 2025 letter — stating that continued litigation without accommodation creates a foreseeable risk of 'severe infection, hospitalization, or death' — and that sustained litigation stress 'is a substantial factor in precipitating further immune suppression and infections' — satisfies the Istanbul Protocol's requirement of expert medical opinion establishing the causal nexus between state conduct and physical or psychological harm. The psychotherapist's documentation that the plaintiff's 'nervous system is in a sustained state of hyperactivation' resulting from 'prolonged exposure to uncontrollable stress' satisfies the Protocol's psychological assessment criteria. Together, these materials constitute an Istanbul Protocol-compliant CIDT documentation that any international accountability body — the CAT Committee, the CRPD Committee, the UN Special Rapporteur on Torture — would recognize as meeting its evidentiary standards.

17.3.4 The Legal Significance of the IAJ Analysis for International Proceedings

The IAJ Human Rights Analysis carries a specific legal significance that domestic court findings do not: it constitutes independent third-party documentation of treaty violations by a state actor, prepared by a body external to the state and applying the investigative methodology that the relevant treaty bodies recognize as authoritative. For the CAT Committee's Article 20 confidential inquiry procedure — which can be triggered by reliable information suggesting systematic torture or CIDT in a state party's territory — the IAJ analysis provides precisely the 'reliable information' that UNCAT Article 20 requires to initiate an inquiry.

For the exhaustion of domestic remedies requirement that precedes individual petition to the Inter-American Commission on Human Rights, the IAJ analysis documents both the treaty violations and the exhaustion of domestic remedies: the 8.5-year pattern across 10 courts and 56+ judges, the nine Ninth Circuit appeals, the disqualification motions, the venue change motions, the reconsideration motions, and the final judgment all document that domestic remedies have been pursued to their limits without adequate relief. The IAJ's characterization of this pattern as establishing exhaustion is itself an Istanbul Protocol-compliant finding that international bodies will treat as authoritative.

Most significantly, the IAJ analysis satisfies the 'preliminary investigation' threshold that CRPD Committee General Comment No. 6 identifies as triggering the CRPD's enhanced remedial obligations for systemic access-to-justice violations. When an independent investigative body applying recognized international methodology has found prima facie evidence of systemic CIDT in the context of access to justice for disabled persons, the state's obligation under CRPD Articles 13 and 15 to take effective preventive and remedial measures is activated without requiring further domestic adjudication of the underlying findings.

§ 17.4 What Genuine Independence Requires: The Architecture of a Legitimate Investigation

17.4.1 The Istanbul Protocol's Model Applied to Judicial CIDT

The Istanbul Protocol's model for independent investigation of state actor CIDT, applied specifically to judicial disability CIDT, requires the following structural elements that FRE 706 cannot provide and that only an external investigative body — such as the IAJ — can deliver:

11. **Element 1:** Appointment by an authority independent of the judicial system. The investigating body must be constituted by — or report to — a body external to the court system: Congress, the DOJ Civil Rights Division, an international treaty body, or a specialized independent human rights commission. The Judicial Conduct and Disability Act process, which runs through the Judicial Council of the circuit, is not fully independent because it remains within the judicial branch; it can serve as a supplementary mechanism but cannot be the primary independent investigation.
12. **Element 2:** Medical and psychological expertise external to the court system. Medical and psychological investigators must be selected by the independent appointing authority, not by the court. They must have no professional relationship with the court system that would compromise their independence. Their compensation must be drawn from an independent funding source.
13. **Element 3:** Unrestricted access to all evidence. The independent body must have authority to access all relevant evidence — including sealed medical records, judicial conduct records, prior accommodation decisions, and the court's own internal communications about the disability accommodation request — without being subject to evidentiary rulings by the court whose conduct is under investigation.
14. **Element 4:** Authority to publish findings without institutional pre-approval. The investigating body must be able to publish its findings — including findings of CIDT and treaty violations by judicial actors — without requiring the approval or adjudication of the court system. The findings must have independent authority as evidence in international proceedings regardless of whether any domestic court has endorsed them.
15. **Element 5:** Structural immunity from retaliation. Members of the investigating body must be protected from professional retaliation by the court system for their findings. This requires formal institutional protection — not merely aspirational independence — that is enforceable independent of the court system's cooperation.
16. **Element 6:** Timeline adequate for thorough investigation. The Protocol requires that investigations be 'prompt' but also thorough. In a case with an 8.5-year documented record, promptness means responding to the full chronological pattern without artificial deadline pressure imposed by the court system's case management schedules.

17.4.2 The IAJ as the Template for a Formal Independent Investigation Mechanism

The IAJ investigation in the Hazari case demonstrates that independent, Istanbul Protocol-compliant investigation of judicial disability CIDT is feasible without formal governmental authority: the analysis was conducted externally, applied recognized international methodology, produced findings that international bodies can act on, and documented the evidentiary record in a manner that is durable regardless of any domestic court's treatment of it. What the IAJ investigation demonstrates above all is that the Istanbul Protocol's independence requirement does not await formal institutional recognition; it can be satisfied by any body that meets the structural criteria of genuine independence from the state actor under investigation.

But the IAJ's current status as a private investigative body also reveals the limitation: its findings, while internationally authoritative in form, lack the formal legal standing that a congressional mandate, a DOJ investigation, or a treaty body inquiry would provide. The thesis's reform agenda must therefore include not merely recognition of the IAJ-type investigation as conforming to international standards, but formal institutional mechanisms that replicate the IAJ's independence while providing the legal authority necessary to make its findings binding in domestic proceedings.

The IAJ Investigation's Structural Significance

The IAJ Human Rights Analysis demonstrates: (1) That independent CIDT investigation of judicial conduct is possible without court appointment or control; (2) That Istanbul Protocol-compliant methodology can be applied to the full evidentiary record of a domestic judicial proceeding to produce findings that international treaty bodies recognize as authoritative; (3) That the independence the Protocol requires — from the institution whose conduct is under review — is achievable outside the court system; (4) That the medical evidence already documented in the case record (ECF-37, ECF-74, ECF-134, ECF-136) satisfies the Protocol's evidentiary standards for CIDT documentation without any FRE 706 appointment; and (5) That the IAJ's investigative model, formalized and given institutional authority, is the architecture for the independent investigation mechanism that the thesis's reform agenda requires.

§ 17.5 The Reform Agenda: From FRE 706 to Genuine Independence

17.5.1 What Must Replace FRE 706 in the CIDT Context

The thesis's Part XVI proposal for mandatory FRE 706 appointments must be substantially revised in light of this Part's analysis. The revision is not mere modification of the FRE 706 mechanism; it is replacement of that mechanism with a genuinely independent investigation framework for the specific context of alleged court-caused CIDT. The revised proposal is:

17. **Reform 1:** Separate the disability capacity question from the CIDT question. FRE 706 may retain a role in resolving the narrower evidentiary dispute about a litigant's disability capacity in the proceeding where that capacity is in dispute — as long as the appointing court is not itself the alleged CIDT actor. For the disability capacity question in a case where the claim is against a non-judicial defendant, court-appointed medical expertise may be appropriate. But where the disability capacity question is embedded in a claim of court-caused CIDT — where the expert will assess whether the court's procedures caused harm — FRE 706 is structurally disqualified.

18. **Reform 2:** Establish a Congressional Human Rights Investigation Office (CHRIO) with authority over judicial CIDT claims. Congress should establish, under Article I, an independent office within the legislative branch with authority to investigate claims of CIDT by federal judicial actors. The CHRIO would have the same relationship to federal court disability CIDT that the Inspector General offices have to executive branch misconduct — an independent investigative authority, reporting to Congress rather than to the institution under investigation, with authority to access judicial records, appoint independent medical experts, and publish findings.
19. **Reform 3:** Mandate DOJ Human Rights Section investigation of all prima facie judicial CIDT claims meeting Istanbul Protocol threshold. The DOJ's Human Rights and Special Prosecutions Section should be required to initiate an independent investigation whenever an independent body — such as the IAJ — produces findings that meet the Istanbul Protocol's prima facie CIDT threshold for judicial actors. The investigation would be independent of the court system, staffed by DOJ investigators rather than court-appointed experts, and funded from the DOJ's civil rights enforcement appropriation.
20. **Reform 4:** Formally recognize IAJ-type independent investigation findings as admissible evidence in federal court disability discrimination proceedings. Federal Rules of Evidence 702 and 803(8) (public records exception for factual findings in civil proceedings) provide the evidentiary basis for treating IAJ-type independent investigation findings as admissible in disability discrimination proceedings, without requiring that the findings have been produced through a court-controlled process. The formal recognition of IAJ-type findings as authoritative evidence transforms independent investigation from an informal process into a legally operative mechanism.
21. **Reform 5:** Recognize IAJ-type investigations as constituting the 'investigation and inquiry' required by UNCAT Article 14 for purposes of the domestic legal proceedings. UNCAT Article 14's right to redress requires, among other things, that the state conduct investigations adequate to establish the facts. The IAJ investigation's conformity with Istanbul Protocol methodology satisfies this requirement independently of any court-controlled process. Domestic courts hearing disability CIDT claims should treat IAJ-compliant independent investigation findings as satisfying the Article 14 investigation requirement, with the legal consequence that the state must rebut those findings or demonstrate that alternative investigations have been conducted that meet the same independence standard.
22. **Reform 6:** Leverage the CRPD Optional Protocol's individual petition mechanism as the authoritative independent investigation channel. Upon CRPD ratification with the Optional Protocol — the most powerful structural reform identified throughout this thesis — the CRPD Committee would have jurisdiction to receive individual petitions documenting court-caused disability CIDT, conduct its own independent investigation applying the Protocol's methodology, and publish Concluding Observations that are authoritative international accountability instruments. The IAJ investigation provides exactly the 'reliable information' that the CRPD Committee's Article 20-equivalent inquiry process would require to initiate this investigation.

§ 17.6 The Impossibility Problem Revisited: Independence as the Answer to Capture

Part XIV established that the impossibility of internal remedy for judicial disability CIDT is the thesis's central organizing principle. This Part adds a critical dimension to that analysis: the impossibility extends to investigation, not merely adjudication. A court system that controls its

own CIDT investigation through the appointment of experts (FRE 706) is as structurally captured as a court system that adjudicates its own CIDT liability through the appointment of reviewing judges. The Istanbul Protocol's independence requirement is the investigation-level expression of the same structural principle that Part XIV's Ward v. Monroeville analysis expressed at the adjudication level: no actor can independently investigate or adjudicate claims against itself when it has institutional stake in the outcome.

The Istanbul Protocol's independence requirement and the Ward v. Monroeville due process impartial-tribunal requirement are convergent expressions of the same fundamental legal principle: institutional self-interest is structural bias, and structural bias is incompatible with both independent investigation and impartial adjudication. The IAJ investigation exists because this convergence was understood by those who designed it: when the forum is the violator and the court controls the investigation, independence must be built outside the system that has captured both functions.

This insight has a specific implication for the thesis's overall argument that the prior analysis did not fully develop: the IAJ investigation is not merely one piece of evidence among many in the accountability architecture. It is the structural answer to the impossibility problem at the evidentiary level. Where the court controls the production of evidence about its own conduct (through FRE 706, through its evidentiary rulings, through its control over the record), the IAJ-type investigation provides the only mechanism for producing evidence that is both independent of the court's institutional control and compliant with the international standards that treaty bodies require to act. The IAJ is, in other words, not supplementary to the thesis's legal architecture. It is the investigative foundation on which that architecture's entire international accountability dimension rests.

The Investigation Independence Synthesis

The Istanbul Protocol requires investigation by bodies independent from the alleged perpetrators and their institutions. FRE 706 fails this requirement completely in the court-CIDT context: the appointing court controls appointment, scope, evidence access, and adjudication of findings. The CAT Committee's 2014 Concluding Observations on the U.S. specifically identify the absence of independent oversight mechanisms as a treaty compliance failure. The IAJ investigation in the Hazari case satisfies every Istanbul Protocol independence criterion: externally constituted, independently scoped, expert-validated with quantified biological markers, chronologically documented across 8.5 years, and published without court approval. The legal significance of the IAJ findings: they constitute the 'reliable information' triggering UNCAT Article 20 inquiry, the exhaustion-of-domestic-remedies documentation for Inter-American Commission petition, and the prima facie CIDT finding that activates CRPD Articles 13 and 15 enhanced remedial obligations. Reform requires: CHRIO for congressional investigation of judicial CIDT; DOJ mandatory investigation upon IAJ-threshold findings; formal recognition of IAJ-type findings as FRE 802/803 admissible evidence; and CRPD Optional Protocol ratification as the authoritative external investigation channel. The IAJ is not evidence in the thesis. It is the investigative architecture the thesis's international accountability dimension requires.

PART XVIII

The Accommodation Paradox: Systemic Stalemate Logic and the Mandate for Non-Discretionary Accommodation

This Part states a structural and logical argument with normative legal implications and proposes the doctrinal extension that follows from it. The paradox's logical force is deductive: it derives from the structure of the accommodation claim itself, not from contested empirical or doctrinal premises. The proposed doctrinal consequence — that internal challenge is structurally impossible and external accountability mechanisms are therefore constitutionally necessary — is the thesis's normative conclusion from those premises, extending Caperton's institutional-conflict principle to the systemic judicial accommodation context. This Part addresses what may be the most logically compressed and legally significant argument in the thesis — one that does not require international law, constitutional doctrine, or case records to establish its force. It requires only elementary logic applied to the structure of the disability accommodation claim itself. The argument is this: in any proceeding where a disabled litigant challenges a court's denial of disability accommodation, the second court's handling of the same litigant's accommodation request in that very proceeding is necessarily a substantive ruling on the merits of the claim against the first court. The grant of accommodation by the second court is an implicit finding that accommodation is legally required — which is a ruling for the disabled litigant. The denial of accommodation by the second court destroys the disabled litigant's ability to prosecute the challenge — which is a ruling against them. There is no third option. The paradox is structurally complete.

When this paradox is extended from the individual case to the systemic context — when the disability accommodation denial is not the conduct of a single court but the uniform policy of all courts in a judicial system — the stalemate becomes absolute and permanent. Every court that might hear the challenge replicates the same denial that is being challenged. The system defends itself against accountability by being uniformly in violation: it is impossible to challenge uniform systemic discrimination through a system that is uniformly discriminating. This Part demonstrates that this logical conclusion is correct; that it is confirmed by the institutional structure analyzed throughout the thesis; and that the only resolution consistent with the rule of law, the ADA, the Constitution, and the CRPD's effective access guarantee is the removal of discretion from disability accommodation entirely — its mandatory imposition as a non-derogable legal obligation, not a judicial favor that any court may grant or withhold.

The Paradox in Its Simplest Form

Court A denies disability accommodation. The disabled litigant challenges that denial in Court B. Court B must handle the litigant's accommodation request for the Court B proceeding. IF Court B grants accommodation: Court B has necessarily found that disability accommodation is legally required — a ruling for the litigant on the central issue of the claim against Court A. IF Court B denies accommodation: the litigant cannot litigate the claim. Either way, the challenge cannot proceed to a neutral merits determination that is independent of the accommodation question. The accommodation question IS the merits question. The forum's response to the preliminary accommodation request IS the substantive ruling. The paradox is closed and complete.

§ 18.1 The Logic of the Appellate Writ Scenario

18.1.1 The Two Paths and Their Necessary Conclusions

Consider the precise logical structure of the appellate writ scenario. The disabled litigant has been denied disability accommodation by Court A. They seek a writ of mandate directing Court A to provide accommodation. To file and prosecute the writ petition in the appellate court, he needs disability accommodation from the appellate court — because the same disability that prevented his full participation in Court A prevents his full participation in any court. The appellate court faces a binary choice with no neutral third option:

Path A: The Appellate Court Grants Accommodation

If the appellate court grants disability accommodation to the litigant for the writ proceeding, it has necessarily made the following determinations: (1) that the litigant has a qualifying disability that substantially limits their litigation capacity; (2) that the standard litigation procedures of the appellate court, without modification, fail to provide him equal access; (3) that a reasonable modification exists that would provide equal access without fundamentally altering the proceeding; and (4) that the accommodation is legally required as a matter of ADA Title II, Rehabilitation Act § 504, and the court's own legal obligations. These are precisely the four determinations that would need to be made on the merits of the litigant's challenge to Court A's denial. The appellate court's procedural act of granting accommodation is therefore simultaneously a substantive ruling that each element of Court A's denial was legally deficient. The grant of accommodation is a finding for the litigant on the merits. The appellate court has decided the case before briefing it.

Path B: The Appellate Court Denies Accommodation

If the appellate court denies disability accommodation, applying the same 'demonstrated ability' or 'docket management' reasoning that Court A applied, then the litigant cannot file or prosecute the writ petition — because the disability that prevents full participation in Court A prevents full participation in the appellate court under the same unaccommodated standard procedures. The writ petition is dismissed for failure to prosecute, or the litigant's submissions are rejected as deficient, or the case proceeds on a record so inadequate (because the litigant could not prepare it) that denial on the merits is foreordained. The denial of accommodation by the appellate court forecloses the merits review of Court A's accommodation denial. The appellate court's procedural act of denying accommodation is simultaneously a substantive ruling that the litigant has no effective appellate remedy.

The logical structure is closed: there are exactly two possible responses and each constitutes a substantive ruling on the merits of the challenge before any merits briefing occurs. Path A rules for the litigant by granting accommodation. Path B rules against the litigant by destroying their ability to obtain merits review. The appellate court cannot grant or deny accommodation without simultaneously adjudicating the claim that accommodation should have been granted by Court A. The preliminary procedural question and the ultimate merits question are logically identical.

18.1.2 Why the Identity of Questions Makes Independent Merits Review Impossible

The reason Path A constitutes a substantive ruling in the litigant's favor is not merely that the outcomes are consistent; it is that the legal determinations underlying them are logically identical. Court A denied accommodation on the premise that the litigant does not need it — that his

disability does not substantially limit his litigation capacity in a way that standard procedures cannot accommodate. If the appellate court grants accommodation, it has necessarily rejected this premise: it has determined that the litigant's disability does substantially limit his litigation capacity in a way that standard procedures cannot accommodate without modification. This determination is the core factual and legal finding of the challenge to Court A's denial. The appellate court cannot make this determination procedurally without making it substantively. The accommodation question is not preliminary to the merits; it is the merits.

This logical identity is confirmed by the very legal standard that governs accommodation denials: the 'individualized assessment' that the ADA and ADAAA require. An individualized assessment of the litigant's accommodation needs for the writ proceeding is legally and factually identical to an individualized assessment of the litigant's accommodation needs in Court A. The same disability, the same functional limitations, the same medical documentation, the same standard procedures — the only variables are the caption of the proceeding and the identity of the court. An individualized assessment that finds accommodation required for the writ proceeding necessarily finds that accommodation was required in Court A (where the same disability, limitations, documentation, and standard procedures applied). The two assessments are the same assessment.

§ 18.2 The Logic of the Collateral Lawsuit Scenario

18.2.1 The Same Paradox in the Direct Suit Context

The collateral lawsuit scenario — where the disabled litigant sues Court A in Court B for failing to provide disability accommodation — presents the identical logical structure with one additional dimension of complexity: the claim now explicitly names Court A as the defendant, making the identity between the preliminary accommodation question and the merits question even more transparent.

Path A: Court B Grants Accommodation for the Litigation in Court B

If Court B grants the litigant disability accommodation for the proceedings in Court B — the proceedings in which he is litigating against Court A — it has made the following determinations: (1) the litigant has a qualifying disability; (2) the litigant cannot effectively participate in standard court proceedings without accommodation; (3) accommodation is legally required. The first two of these determinations are the precise findings of fact that Court A refused to make when it denied accommodation. The third is the precise legal conclusion that the litigant is asking Court B to reach on the merits of his claim against Court A. Court B's grant of preliminary accommodation is therefore an anticipatory ruling on the substantive question: Court A was wrong to deny accommodation to this specific litigant with this specific disability who cannot effectively participate without modification. The merits have been decided before briefing.

Path B: Court B Denies Accommodation for the Litigation in Court B

If Court B denies accommodation, applying the same reasoning Court A applied, then the litigant cannot effectively prosecute the litigation in Court B against Court A. His submissions are deficient, his deadlines are missed, his case is dismissed for the same reasons Court A dismissed it — his disability-caused inability to meet standard procedures without accommodation. Court B has not adjudicated the merits of his claim against Court A; it has replicated the precise violation that is the subject of the claim. Court A's liability is never determined; the harm continues and compounds; and

> Court B has itself committed the same violation it was asked to address. The only result is the multiplication of violations and the permanent foreclosure of merits review.

The additional complexity in the collateral lawsuit scenario is this: when Court B replicates Court A's accommodation denial, Court B has not merely foreclosed review — it has created a second instance of the same violation that is the subject of the claim. The litigant now has claims against both Court A and Court B. To sue Court B, they must go to Court C. Court C presents the same binary. If Court C grants accommodation, it rules for the litigant on the merits of the claims against both Court A and Court B. If Court C denies accommodation, the violation multiplies again. The paradox does not resolve with each iteration; it deepens and expands. Each court added to the chain of denials adds another violation, another claim, and another level of the same paradox that makes every claim unchallengeable through ordinary litigation processes.

§ 18.3 The Systemic Dimension: Why Uniform Discrimination Is Absolutely Self-Immunizing

18.3.1 From Individual Paradox to Systemic Stalemate

The paradox is striking when it appears in two-court scenarios. It becomes an absolute stalemate when it is generalized to systemic discrimination — when the accommodation denial is not the conduct of one court but the uniform policy of all courts in a judicial system. The Hazari record, analyzed in Part X, documents this systemic dimension precisely: the 'demonstrated ability to participate' formula, the 'rapid, prolix filings' reasoning, the 'not required to provide any accommodations' policy statement — these are not idiosyncrasies of Court A. They are replicated across the California Sixth District Court of Appeal, the Santa Clara Superior Court, the Northern District of California before multiple judges (Freeman, Koh, White), and across nine Ninth Circuit appeals. The discrimination is uniform. And uniform discrimination produces absolute stalemate through the paradox's mechanism.

The inter-circuit dimension of this stalemate has now been empirically documented. When the litigant sought to break the paradox by filing in the Tenth Circuit — a circuit with no involvement in the prior proceedings, no institutional loyalty to the Ninth Circuit's accommodation-denial consensus, and no jurisdictional stake in maintaining it — the Tenth Circuit declined to recognize the Forum Nullus doctrine and dismissed without providing accommodation for the proceeding in which it was asked to adjudicate accommodation denial. The paradox therefore operates not merely within a single circuit but across the federal appellate system as a whole. The systemic denial is not geographically bounded by the Ninth Circuit. It is a condition of the federal judicial architecture. The stalemate is absolute not because every judge in one circuit agrees, but because no court in any circuit has been willing to grant accommodation for the proceeding in which accommodation denial is the merits question — and no court has recognized the structural doctrine that would require it to do so. This is the strongest possible empirical confirmation of the deductive argument: the paradox holds even when the litigant successfully accesses a completely different judicial system. Uniformity of discrimination achieves perfect immunity from internal challenge — and that immunity has now been proven to extend beyond circuit boundaries to the federal appellate system as a whole.

The logic of absolute stalemate is this: if every court in the system denies disability accommodation using the same formula, then there is no court in the system that can grant accommodation without simultaneously ruling against the systemic policy of which that court is

itself a part. A grant of accommodation by any court in a system of uniform denial is necessarily a finding that the system's uniform denial is wrong. A court that acknowledges the systemic wrong must either correct its own part in it (by granting accommodation) and thereby rule against the system — or maintain its part in it (by denying accommodation) and thereby perpetuate the stalemate. The system defends itself through uniformity: as long as every court denies accommodation, no court can grant it without defecting from the institutional consensus that makes the systemic denial appear legitimate.

The Self-Immunizing Logic of Systemic Discrimination

Individual discrimination can be corrected by an institution that does not discriminate. Systemic discrimination that is uniform across all institutions within a system cannot be corrected by any institution within that system, because correction by any one institution is necessarily a ruling against all others. The more complete the systemic discrimination, the more absolute the immunity. A judicial system that denies disability accommodation uniformly is more effectively immunized from accountability than one that discriminates inconsistently, because the uniform denial means that no internal corrective mechanism can operate without simultaneously repudiating the entire institutional consensus. Uniformity is not evidence of correctness; it is the mechanism of systemic discrimination's self-protection.

18.3.2 The Institutional Taboo Generated by the Paradox

The paradox generates, over time, a powerful institutional taboo against any court in the system granting disability accommodation in a case where the litigant is challenging another court's accommodation denial. The taboo is not consciously articulated; it operates through the institutional incentives and loyalties analyzed in Part XIV. A judge who grants accommodation to a litigant challenging another court's accommodation denial knows — because the logical identity demonstrated in § 18.1 and § 18.2 is not subtle — that the grant will be read as a ruling against the other court. The institutional loyalty that Part XIV identified as a dimension of structural bias operates precisely here: no judge in the system will voluntarily make a ruling that repudiates their institutional colleagues' conduct without being compelled to do so by a legal standard that is so clear and so mandatory that individual accommodation is simply compliance with law rather than institutional defection.

This is the institutional mechanism through which the paradox operates in practice. It is not that individual judges consciously decide to deny accommodation in order to protect the system. It is that the accommodation question becomes, through the paradox's logic, a question about institutional loyalty — a question no judge wants to answer by ruling against their colleagues — and is therefore systematically resolved by denying accommodation, which maintains institutional solidarity while foreclosing the merits of the challenge. The paradox transforms the accommodation question from a legal question (is accommodation legally required?) into an institutional question (do I side with the disabled litigant against my fellow judges?), and the institutional answer to that question is overwhelmingly predictable.

18.3.3 The Paradox Confirmed by the Hazari Record

The Hazari record provides the most direct possible empirical confirmation of the paradox's operation. Nine Ninth Circuit appeals in the primary case record — in each of which the litigant sought both the underlying relief and accommodation to pursue the appeal. Zero rights-protective rulings on the accommodation question across nine proceedings. The nine-zero record is not random variation; it is the predictable output of the paradox's mechanism operating over more than eight years. No Ninth Circuit panel granted accommodation for the appeal of an accommodation denial, because to do so would have been to rule against the district court's

accommodation denial in the same act. The institutional taboo held across every panel, every proceeding, every year.

The ECF-139 statement that the court is 'not required to provide any accommodations' acquires new significance in light of the paradox. It is not merely a misstatement of the law; it is the articulation of the institutional consensus that makes the paradox operate. If no court considers itself required to provide accommodation, then the grant of accommodation by any court is necessarily discretionary — a grace extended by judicial choice, not a legal obligation imposed by law. And discretionary accommodation can always be withheld in the case of a litigant challenging accommodation denial, because the withholding is not unlawful — it is just the court declining to exercise its discretion in that direction. The paradox collapses the challenge into a discretionary exercise precisely because accommodation is treated as discretionary, not mandatory.

§ 18.4 Is Suit Against a Court for Accommodation Failure Truly Impossible When Discrimination Is Systemic?

18.4.1 The Answer: Yes, Through Ordinary Litigation Channels

The logical analysis compels the conclusion that suit against a court system for systemic failure of disability accommodation is effectively impossible through ordinary litigation channels when the accommodation denial is uniform across the court system. This conclusion does not rest on empirical observation alone — though the Hazari record's eight-zero appellate record provides empirical confirmation. It rests on the logical structure of the paradox: the preliminary accommodation question IS the merits question; every court that denies accommodation for the challenge proceeding destroys the challenge itself; and in a system of uniform denial, every court that hears the challenge will deny accommodation, ensuring the challenge is always destroyed before reaching a merits determination. The impossibility is logical, not merely practical.

This conclusion is stronger than the Part XIV impossibility analysis, which rested on structural bias, cognitive capture, and institutional loyalty. Those are institutional features that might, in principle, be overcome by individual judicial courage or judicial reform. The paradox analyzed in this Part is not an institutional feature that can be overcome by courage or reform within the system. It is a logical structure that makes the challenge self-defeating regardless of the personal qualities of the judges who hear it. Even a judge who fully intends to decide the accommodation challenge impartially cannot do so without resolving the preliminary accommodation question — and resolving the preliminary accommodation question IS deciding the merits. The paradox binds even the most courageous and impartial judge within a system of uniform denial.

18.4.2 The Partial Exception: Non-Systemic Discrimination

The paradox does not operate with equal force when the discrimination is not systemic. If Court A denies accommodation but Court B routinely grants it to other litigants in similar circumstances, then Court B can grant accommodation to the litigant for the challenge proceeding without that grant necessarily constituting a ruling against Court A's institutional policy — because Court B's own institutional policy is to grant accommodation in such circumstances. The grant of accommodation by Court B is consistent with Court B's own established practice, not a departure from institutional consensus. In this non-systemic context, the paradox is attenuated: Court B's grant of accommodation reveals that Court A's denial was an outlier, not that the entire system is wrong.

This partial exception illuminates the most important feature of systemic discrimination: its power as a shield is directly proportional to its uniformity. Partial systemic discrimination —

where some courts in the system deny accommodation and others do not — can be challenged through the courts that do grant accommodation. Complete systemic discrimination — where all courts deny accommodation uniformly — cannot be challenged through any court in the system. The degree of immunity from challenge is directly proportional to the degree of uniformity. A system that achieves perfect uniformity of discrimination achieves perfect immunity from internal challenge. The Hazari record's eight-zero appellate record across multiple courts and multiple years approaches this limiting case.

The Two Dimensions of Impossibility: Structural and Logical

Part XIV established STRUCTURAL IMPOSSIBILITY: the forum-as-violator problem, cognitive capture, institutional loyalty, procedural replication — all institutional features that systematically prevent internal correction of judicial disability discrimination. This Part establishes LOGICAL IMPOSSIBILITY: the accommodation paradox generates a logically closed structure in which no court within a system of uniform denial can grant accommodation without simultaneously deciding the merits in the challenging litigant's favor — creating an institutional taboo against any internal grant that is enforced not by bad faith but by the logic of the paradox itself. STRUCTURAL IMPOSSIBILITY might be overcome by institutional courage and reform. LOGICAL IMPOSSIBILITY cannot. It can only be dissolved by removing the condition that generates the paradox: discretionary accommodation. When accommodation is mandatory, the paradox disappears.

§ 18.5 The Only Logical Resolution: Non-Discretionary Mandatory Accommodation

18.5.1 How Mandatory Accommodation Dissolves the Paradox

The paradox is generated by one specific feature of the current legal framework: accommodation is treated as discretionary — as a judicial favor that the court may grant or withhold based on its assessment of the litigant's needs, the proceeding's requirements, and the court's own management interests. When accommodation is discretionary, the court's grant of accommodation in Case B is necessarily a substantive judgment — a decision to exercise discretion in favor of accommodation — that is logically equivalent to a ruling that accommodation was required in Case A. The discretionary character of the grant is what makes it a ruling rather than a ministerial compliance.

The paradox dissolves entirely when accommodation is mandatory — when it is a non-discretionary legal obligation imposed on every court by law, not a grace that any court may choose to extend. If accommodation is mandatory, then the appellate court's grant of accommodation for the writ proceeding is not a substantive judgment; it is simple compliance with the law that applies to the appellate court independently of what the lower court did. The appellate court is not 'ruling against' Court A by granting accommodation; it is following the law that Court A was also obligated to follow. The grant of accommodation by any court in the system is not institutional defection from a consensus of denial; it is compliance with a legal obligation that admits no exception. And when accommodation is compliance rather than judgment, the paradox dissolves: the preliminary accommodation question is no longer logically identical to the merits question, because granting accommodation says nothing about whether any other court was wrong to deny it — it says only that the current court is complying with a universal mandatory obligation.

The Paradox Dissolution Through Mandatory Accommodation

UNDER DISCRETIONARY ACCOMMODATION: "Court B grants accommodation" = "Court B has decided to exercise its discretion in favor of accommodation" = "Court B has determined that accommodation is warranted for this litigant" = "Court B has found that Court A's determination that accommodation was not warranted was wrong." Paradox operates. UNDER MANDATORY ACCOMMODATION: "Court B grants accommodation" = "Court B is complying with a legal obligation that admits no exception" = "Court B's grant says nothing about Court A, because both courts are subject to identical non-discretionary obligations, and Court A's failure to comply does not affect Court B's obligation to comply." Paradox dissolved. The preliminary accommodation question (Is Court B complying with its mandatory obligation?) and the merits question (Did Court A fail to comply with its mandatory obligation?) are now different questions with different answers. Granting accommodation in Court B is not a ruling about what happened in Court A.

18.5.2 Non-Discretionary Accommodation as a Legal Requirement Already Established

The ADA and the Rehabilitation Act, properly interpreted, already establish accommodation as a non-discretionary legal obligation, not a judicial favor. Section 504's prohibition on disability discrimination in programs receiving federal financial assistance admits no discretionary exception for judicial preference. ADA Title II's reasonable modification requirement is not 'if the court finds it appropriate'; it is 'unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.' The burden of the fundamental alteration defense is on the entity, and must be established through individualized analysis — not assumed from a history of standard procedures. Accommodation is the default; denial is the exception that requires justification. The current practice — in which denial is the default and accommodation is the exception extended by judicial grace — inverts the statute's structure.

The ECF-139 statement that the court is 'not required to provide any accommodations' is not merely legally wrong; it is the precise inversion of the statutory framework. The ADA establishes accommodation as the requirement; the court's statement establishes denial as the baseline. The paradox operates because courts have adopted the inverted framework: when denial is the default, any grant is a judgment, and the paradox holds. When accommodation is the default requirement — as the statute demands — any denial requires justification, and the grant of accommodation is not a judgment but compliance. The paradox is an artifact of the inverted framework, not an inherent feature of accommodation law.

CRPD Article 13's effective access guarantee and the Senate's 'no new legislation' finding both confirm that accommodation is a legal obligation, not a discretionary benefit. The Senate told the Senate that existing law already meets the CRPD's requirements — requirements that include mandatory procedural accommodation for effective access. If existing law meets these requirements, then accommodation is already mandatory under existing law. Courts that treat it as discretionary are misapplying existing law — and the paradox is an artifact of that misapplication, not an inherent feature of the law correctly applied.

§ 18.6 The Mandatory Accommodation Standard: What It Requires

18.6.1 A Constitutional Presumption Against Denial

The structural logic of this constitutional presumption has a precise precedent in François Crépeau's most consequential normative contribution to international human rights law: the

presumption of liberty in immigration detention. In his landmark thematic report, Crépeau stated that "any detention of migrants must be prescribed by law and must be necessary, reasonable and proportional to the objectives to be achieved," that detention "should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available," and that governments must "establish a presumption in favour of liberty in domestic law." The structure of the argument is identical in both contexts. In both, a state actor exercises coercive power over a person — the immigration authority over the migrant, the court over the litigant. In both, the default practice is coercion without individualized justification — detention as the administrative norm, accommodation denial as the judicial norm. In both, the correct legal structure inverts the default: liberty is the presumption, detention the exception requiring specific justification; accommodation is the presumption, denial the exception requiring specific written findings. And in both, Crépeau found, the empirical evidence confirms that the coercive default "fails even on its own terms" — detention does not deter irregular migration, and accommodation denial does not advance docket management when the consequence is a disabled litigant who cannot participate at all. The presumption of accommodation is to disability rights what the presumption of liberty is to immigration detention: the correct legal default required by the treaty framework, the constitutional text, and the empirical evidence, against an institutional practice that inverts it for reasons of institutional convenience rather than legal authority. See François Crépeau, Special Rapporteur on the Human Rights of Migrants, "Detention of Migrants" (2012) UN Doc A/HRC/20/24, paras 13, 68–72.

The logical analysis in this Part generates a specific constitutional doctrine that the thesis's prior analysis did not fully develop: a constitutional presumption against denial of disability accommodation in judicial proceedings. The presumption operates as follows: when a disabled litigant with documented disability requests accommodation in a judicial proceeding, the accommodation must be granted unless the court makes specific written findings, based on individualized assessment of the medical evidence, that the specific requested accommodation would impose an undue burden or fundamental alteration. The burden is on the court to justify denial; the default is accommodation. Without this presumption, the paradox operates to immunize systemic discrimination from challenge. With this presumption, the paradox dissolves: every court is obligated to provide accommodation as a default, and the question of whether any other court correctly denied it is a separate question with a separate answer.

The constitutional basis for this presumption is the convergence of authorities established throughout the thesis: the ADA's reasonable modification obligation (non-discretionary); the Rehabilitation Act's non-discrimination mandate (non-discretionary); the Fourteenth Amendment's equal protection guarantee (which the Senate represented already prohibits irrational-prejudice-based denial); the CRPD Article 13 effective access obligation (through the Article 18 VCLT duty); and the logical necessity that the law mean what it says — that accommodation is required, that denial must be justified, and that systemic denial without documented justification is ipso facto a systemic legal violation. The presumption gives this convergence its operational form.

18.6.2 Four Mandatory Elements of the Non-Discretionary Standard

- **Element 1:** Individualized medical assessment is mandatory, not optional. Before denying any disability accommodation request supported by physician documentation, a court must conduct — and document in writing — an individualized assessment of the specific litigant's specific medical conditions in light of the specific accommodation requested and the specific requirements of the specific proceeding. The 'rapid, prolix filings' formula — which is the opposite of individualized assessment — is categorically prohibited. A denial without individualized assessment is a legal nullity.

- **Element 2:** The fundamental alteration defense must be specifically established, not assumed. A court that denies accommodation on fundamental alteration grounds must make specific written findings identifying: (a) the specific aspect of the proceeding that would be fundamentally altered; (b) why the accommodation would produce that alteration; and (c) why less-restrictive alternatives would not serve the proceeding's legitimate interests without alteration. The formulaic 'fundamentally alter the nature of the service' language replicated across California appellate orders (March 3, 2025; November 19, 2025; December 17, 2025) fails this requirement categorically.
- **Element 3:** Automatic stay pending appeal of accommodation denials. When a court denies disability accommodation and the litigant seeks appellate review of that denial, the underlying proceedings must be automatically stayed pending the accommodation appeal. Without this stay, the paradox operates in its most destructive form: the litigant's underlying claims are destroyed by the same disability that the accommodation appeal addresses, while the accommodation appeal is pending. The automatic stay ensures that the accommodation question is resolved before the underlying claim is forfeited to the disability it addresses.
- **Element 4:** Harmless error standard reversed for accommodation denials. Under current practice, the appellant must prove that the accommodation denial was not harmless error — a nearly impossible burden when the denial's harm is the litigant's inability to participate effectively in the proceeding. The burden should be reversed: once a denial is established, the court must demonstrate that the denial was harmless — that the litigant's participation was not materially impaired by the absence of accommodation. This burden reversal is required by the ADA's structure: the accommodation is the legal default, and the litigant's impairment in its absence is the presumed consequence of non-compliance.

§ 18.7 External Mechanisms as the Essential Supplement

Even with mandatory accommodation properly implemented, the paradox's complete dissolution requires the external accountability mechanisms that the thesis has developed throughout its prior Parts. The paradox operates within the court system; external mechanisms are external to the paradox itself. They do not require any court within the system to rule against any other court's conduct. They operate through separate institutional authority.

DOJ pattern-or-practice enforcement does not require any court to grant accommodation for a proceeding in which the court's own conduct is being challenged. The DOJ investigates independently, litigates in federal court on its own standing, and obtains structural injunctions that mandate accommodation systemically — without requiring the disabled litigant to navigate the paradox.

Congressional action does not require any court to adjudicate its own accommodation obligations. Legislation mandating accommodation protocols, training, and independent oversight imposes the mandatory standard through the legislative process that is above and beyond judicial interpretation. When Congress mandates accommodation as a condition of federal judicial funding, the mandatory character is established without any court's concurrence.

Treaty bodies provide forums that are entirely external to the domestic court system and therefore entirely external to the paradox. The CRPD Committee, the CAT Committee, and the Inter-American Commission on Human Rights can receive the disabled litigant's petition, conduct their own independent investigation (satisfying the Istanbul Protocol's independence

requirement from Part XVII), and issue findings that are authoritative internationally regardless of whether any domestic court has engaged with the accommodation question.

The IAJ investigation as analyzed in Part XVII, provides an evidence base that does not require any court to grant accommodation to the disabled litigant in order to establish the facts. The IAJ's independent investigation, conducted externally, produces an Istanbul Protocol-compliant documentation of the CIDT that is available to international accountability bodies without requiring the litigant to litigate in an accommodationless domestic court.

The paradox therefore does not make accountability impossible in the absolute sense; it makes accountability through ordinary litigation channels impossible when discrimination is systemic. The external mechanisms are the answer to the paradox at the systemic level — the same external mechanisms that the Part XIV impossibility analysis identified as the answer to the structural impossibility at the institutional level. The paradox and the structural impossibility are, at the deepest level, the same problem seen from two different angles: the court system cannot correct itself for reasons that are simultaneously structural (institutional bias) and logical (the accommodation paradox). External mechanisms are the solution to both. A specific weaponization of this analysis must be identified and rejected. Courts and adversarial parties may argue that because the accommodation paradox makes internal challenge structurally impossible, and because the thesis identifies external mechanisms as the correct accountability channels, the appropriate response to a live domestic proceeding is dismissal, directing the disabled litigant to those external mechanisms. This argument misreads both the paradox and its resolution. External mechanisms are supplements to domestic proceedings — not replacements for them. Treaty bodies can receive documentation and issue findings, but they cannot compel specific accommodation in an active domestic case on the timeline that case requires. DOJ pattern-or-practice enforcement operates through the DOJ's own standing and litigation timeline. Congressional action is prospective and structural, not case-specific. The IACHR can issue precautionary measures for grave ongoing harm, but it cannot substitute for domestic adjudication of the specific legal claims at issue. None of these mechanisms provides what only the live domestic proceeding provides: adjudication of the disabled litigant's specific claims in the forum with jurisdiction over the specific legal matter. Dismissing the live proceeding in favor of external mechanisms does not resolve the accommodation paradox — it exploits the paradox to eliminate the only available domestic remedy while pointing to mechanisms that cannot provide equivalent relief. The paradox is the proof that systemic external accountability is necessary. It is not authority for dismissal of the proceeding in which the paradox operates.

§ 18.8 The Substantial Incapacity Distinction: Why the ADA Requires Accommodation, Not a Guardian

The accommodation paradox of this Part rests on a legal distinction that the courts — and most disability law scholarship — have failed to make with precision: the distinction between substantial incapacity and full legal incapacity. The distinction is not semantic. It determines which legal framework governs, which remedy is available, and whether the court has an accommodation obligation or an appointment obligation. Confusing the two is not merely an error of degree; it is a category error that systematically misdirects both the analysis and the remedy.

A disabled litigant who is substantially incapacitated by court-imposed stress, unaccommodated litigation demands, and the physiological consequences of compelled participation without accommodation is not a person who lacks legal capacity within the meaning of Federal Rule of

Civil Procedure 17(c). Rule 17(c) authorizes courts to appoint a guardian ad litem for an "incompetent person" — defined under state law as a person who has been adjudicated legally incompetent, typically through a formal incapacity proceeding establishing that the person cannot manage their own affairs or understand the nature of legal proceedings. Substantial incapacity — the inability to participate in litigation safely and effectively without accommodation, documented through physician letters, neuropsychological evaluation, and physiological measurement — is a categorically different condition. It establishes ADA accommodation entitlement. It does not establish legal incompetency.

The distinction has a critical structural consequence for the accommodation paradox. A court that conflates substantial incapacity with legal incompetency can attempt to resolve the accommodation claim by appointing a guardian ad litem — substituting a third party's legal capacity for the litigant's own, and treating the appointment as a substitute for the accommodation that the law actually requires. This resolution is legally wrong for three independent reasons. First, the ADA's accommodation obligation runs to the litigant, not to a substitute. CRPD Article 12 — which requires supported decision-making rather than substituted decision-making — expressly prohibits the use of legal incapacity proceedings as a mechanism to override the disabled person's own exercise of their legal capacity. Appointment of a guardian ad litem over the objection of a substantially incapacitated but legally competent person is a CRPD Article 12 violation, not an accommodation. Second, the guardian ad litem does not receive the accommodation; the litigant does. A guardian who can appear in court does not restore the litigant's ability to safely participate in proceedings that the guardian is now managing. The harm to the litigant continues regardless of who is appointed to represent them. Third, the appointment removes the litigant from the proceeding rather than enabling their participation — which is precisely the outcome that the ADA's access-to-justice guarantee prohibits.

The accommodation record in the primary case documentation establishes this distinction explicitly. The pleadings document that courts and judges rendered Hazari substantially incapacitated — not legally incompetent. Substantially incapacitated means: unable to participate in litigation safely and effectively without accommodation, as documented by eleven treating physicians at UCSF, Stanford, Santa Clara Valley Medical Center, Medens Health, and Roots Community Health; confirmed by the Social Security Administration's independent disability determination (onset July 1, 2018); and measured in real time by FDA-certified physiological monitoring (Freestyle Libre II, CD8 T-cells at 54 cells/μL against a normal minimum of 180, WBC elevation to 21 in the wake of litigation demands). It does not mean: unable to understand the nature of the proceedings, unable to make decisions about litigation strategy, or subject to adjudicated legal incompetency. The court could not appoint a guardian ad litem under Rule 17(c) because the threshold condition for that appointment — formal adjudication of legal incompetency — was not met and could not be met from the record. What the record established — and what the courts were therefore obligated to address — was the accommodation claim under the ADA and the Rehabilitation Act.

The Substantial Incapacity / Legal Incompetency Distinction

SUBSTANTIALLY INCAPACITATED (ADA framework): The disabled litigant cannot safely and effectively participate in litigation without accommodation. The cause is the interaction between the disability and the unaccommodated litigation demands. The remedy is accommodation — modification of the court's procedures to enable the litigant's own participation. The litigant retains full legal capacity, full decision-making authority, and full standing to direct their own case. CRPD Article 12 requires supported decision-making. The ADA requires reasonable modification. The court has an accommodation obligation.

LEGALLY INCOMPETENT (Rule 17(c) / state incompetency law framework): The person has been formally adjudicated unable to manage their own affairs or understand the nature of legal proceedings through a state incompetency proceeding with specific procedural safeguards. The remedy is appointment of a guardian ad litem or next friend who exercises legal capacity on the person's behalf. The court has an appointment authority — not an accommodation obligation.

THE CATEGORY ERROR: A court that responds to documented substantial incapacity by appointing a guardian ad litem has (a) misidentified the legal framework, (b) applied the wrong remedy, (c) violated CRPD Article 12's prohibition on substituted decision-making over a legally competent person's objection, and (d) failed to discharge its actual ADA accommodation obligation. The appointment does not resolve the accommodation claim. It removes the litigant from the proceeding and extinguishes their access to justice entirely — the opposite of what the ADA requires.

The substantial incapacity / legal incompetency distinction also bears directly on Recipe 14 of Part XX-B (the terminal procedural default) and the exhaustion framework of Part XXVII. A court that dismisses for failure to prosecute when the record documents substantial incapacity — and has failed to provide the accommodation that would have enabled prosecution — has committed ADA Title II discrimination. A court that dismisses and simultaneously characterizes the litigant's failure to prosecute as evidence of incapacity rather than accommodation denial has committed an additional error: it has treated the consequence of its own ADA violation as an independent ground for terminating the very claim that the violation produced. The guardian ad litem option, if proposed at that stage, would compound the error by converting a failure of accommodation into a formal stripping of legal capacity from a person who retains it — and who would, if accommodated, be fully capable of directing their own case.

The sharpest application of the substantial incapacity / legal incompetency distinction arises in the specific case where the court itself is the cause of the incapacity — and where the litigant demonstrates both that the incapacity is substantially reversible and that the pathway to restoration depends entirely on the court ceasing the incapacity-causing conduct. In that configuration, the Rule 17(c) analysis changes fundamentally. Rule 17(c) exists to protect an unrepresented "incompetent person." Where the alleged incapacity is situational, court-induced, and medically documented as potentially reversible through accommodation or cessation of the harmful judicial demands, the Rule 17(c) threshold — formal legal incompetency — is not met in the first place. There is nothing to appoint a guardian for. The ADA requires accommodation; Rule 17(c) requires legal incompetency; the two frameworks address different conditions. A court that invokes Rule 17(c) without first testing whether accommodation could restore capacity has not merely applied the wrong remedy — it has permitted itself to use its own alleged ADA violation as the predicate for stripping the litigant of legal agency. That sequence constitutes a due process violation independently: the court cannot manufacture the basis for its own authority to substitute by first denying the accommodation that would have made substitution unnecessary. The CRPD Committee's General Comment No. 1 (2014) reinforces this conclusion: it is explicitly skeptical of substituted decision-making regimes and insists on support in the exercise of legal capacity rather than replacement of the person's decision-making authority. Where a litigant presents credible medical evidence of court-caused incapacity and a plausible pathway to capacity restoration through cessation of the harmful conduct and appropriate accommodation, Rule 17(c) should not be invoked as a substitute for testing that pathway first. Premature resort to substitution in that circumstance converts court-caused incapacity into the basis for further deprivation of agency, equal access, and legal capacity — precisely the cycle the ADA, CRPD Article 12, and the Equal Protection Clause combine to prohibit.

§ 18.9 The Paradox as the Thesis's Ultimate Proof

The accommodation paradox, demonstrated in this Part, is the thesis's ultimate proof that the reform agenda developed across the prior Parts is not merely preferable but logically necessary. The paradox establishes, as a matter of deductive logic rather than empirical observation or policy preference, that the current system — in which accommodation is discretionary, uniform denial is the institutional consensus, and the challenge to any court's denial must be brought in another court of the same system — cannot produce the merits determination that the rule of law requires. The system is not merely inadequate; it is structurally self-defeating. The challenge to accommodation denial destroys itself through the accommodation question it requires to proceed.

The thesis's response to this logical necessity is the architecture it has built across seventeen Parts: mandatory accommodation (dissolving the paradox); external accountability (circumventing the impossible internal process); independent investigation (producing evidence without requiring the litigant to litigate in the paradoxical system); treaty-based international accountability (providing forums that operate outside the domestic paradox entirely); and structural reform of the selection criteria and institutional design of the court system (addressing the root causes that make systemic denial the institutional consensus from which the paradox generates). Each element of the thesis's architecture is a necessary response to a specific dimension of the impossibility that the paradox makes logically precise.

The Senate was told that existing law already requires what the CRPD demands. If that is true — and the thesis has established that it is — then existing law already requires mandatory accommodation, and every discretionary denial is already a violation of existing law, not merely a failure to adopt a desirable policy. The paradox is the proof that discretionary accommodation cannot coexist with the rule of law in the disability context: as long as accommodation is discretionary, the system can deny it uniformly and immunize itself from all challenge through the paradox's mechanism. The rule of law — the principle that law governs, not institutional consensus — requires mandatory accommodation as its only alternative to the paradox's permanent stalemate.

The paradox, understood at this depth, is the definitive proof that the firewall doctrine François Crépeau developed for the migration context is constitutionally required in the disability rights context as well. Crépeau and Hastie argued that irregular migrants cannot access courts, healthcare, schools, or police protection because doing so exposes them to immigration enforcement — meaning the formal guarantee of access is rendered meaningless by the institutional structure that simultaneously governs access and enforces status. The disability analogue is exact: disabled litigants cannot challenge accommodation denial because the challenge itself requires accommodation that is denied by the system being challenged — meaning the formal guarantee of access to justice is rendered meaningless by the institutional structure that simultaneously provides adjudication and controls accommodation. In both contexts, Crépeau's diagnosis is the same: the absence of a firewall converts a formal rights guarantee into a structural impossibility. The legal prescription is the same: a firewall must be built into the institutional architecture. For the disability context, the firewall is the mandatory accommodation standard, the independent ADA Coordinator operating outside the judicial chain of command, and the IDAT operating entirely outside the court system. These are not merely reform proposals — they are the structural firewalls that the accommodation paradox proves, with logical necessity, are required to make the formal guarantee of access to justice real for disabled litigants. See François Crépeau and Bethany Hastie, "The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights" (2015) 17(2) European Journal of Migration and Law 157, 162–168.

The Complete Logic of the Paradox and Its Resolution

THE PARADOX: Challenging Court A's accommodation denial requires accommodation from Court B. Granting accommodation (Path A) = ruling for the litigant on the merits. Denying accommodation (Path B) = destroying the challenge. No neutral path exists. SYSTEMIC EXTENSION: When all courts deny uniformly, Path B is the universal institutional consensus. Every court facing a challenge replicates the denial, destroying every challenge before it reaches the merits. Uniformity of discrimination = absolute immunity from internal challenge. THE INSTITUTIONAL TABOO: The paradox transforms accommodation from a legal question into a loyalty question. Courts maintain solidarity with denying courts by denying accommodation themselves, avoiding the institutional defection that granting would represent. THE RESOLUTION: Mandatory accommodation dissolves the paradox by making the grant of accommodation compliance with law rather than exercise of judgment. When granting accommodation is compliance, it is not a ruling about any other court's conduct. The preliminary question (Is this court complying with its obligation?) and the merits question (Did that court fail to comply?) become distinct questions. WHAT MANDATORY ACCOMMODATION REQUIRES: Constitutional presumption against denial; individualized assessment as a prerequisite; fundamental alteration defense must be specifically established; automatic stay pending accommodation appeals; reversed harmless error burden. EXTERNAL NECESSITY: Even with mandatory accommodation, external mechanisms — DOJ enforcement, congressional action, treaty bodies, IAJ investigation — are necessary because the systemic impossibility operates at a level that mandatory accommodation alone, enforced within the system, cannot fully address. The external mechanisms are external to the paradox itself.

PART XIX

The Independent ADA Coordinator: Qualifications, Operation Manual, Independence Architecture, Adjudicatory Authority, Employment Structure, and International Reporting Obligations

The prior Parts have established, through several converging analyses, that the current disability accommodation function within federal courts is structurally captured: the ADA Coordinator role, where it exists, is embedded within the court system's administrative hierarchy, appointed by and answerable to the court system's chief judges, and without authority to challenge, impeach, or independently report on the conduct of judicial officers whose decisions it is nominally designed to review. The Hazari record's December 2019 referral to the Court's Disability Access and Accommodation Coordinator — followed by five years of accommodation decisions with zero documented Coordinator involvement — is the empirical expression of this structural capture. The Coordinator existed on paper; in practice the accommodation function was exercised by the judge, without the Coordinator's review, because the Coordinator's authority extended no further than the judge permitted.

This Part designs the Independent ADA Coordinator from first principles, treating the preceding Parts' legal analysis as the specification: what qualifications does the role require given the legal framework it must enforce? What operational procedures does it need to execute its mandate given the accommodation paradox, the systemic discrimination pattern, and the Istanbul Protocol's investigation standards? What structural independence does it need given the impossibility analysis? What adjudicatory authority does it need given the paradox's logic that accommodation grants are necessarily substantive findings? Who employs it, given that employment by the court system constitutes structural capture? And what obligations does it carry toward international treaty bodies given the CAT Committee's specific identification of the absence of independent monitoring as a U.S. treaty compliance failure?

The answers to these questions, taken together, describe not a modest administrative reform but a new constitutional officer: an independent judicial disability rights commissioner whose authority is legislative in origin, executive in enforcement, and whose reporting obligations are simultaneously domestic (to Congress and the DOJ) and international (to the CAT Committee, the CRPD Committee, and the UN Special Rapporteur on Torture). The scope of this role is proportionate to the severity of the problem it addresses: court-caused disability CIDT that is systemic, self-immunized through the accommodation paradox, and structurally impossible to challenge through ordinary litigation channels. Modest administrative reform cannot address this problem. Only an institution designed with structural independence commensurate with the structural impossibility it must overcome can function as the necessary corrective.

§ 19.1 Minimum Qualifications: What the Role Actually Requires

The current federal courts' disability access coordinators — where they exist at all in more than a nominal capacity — are typically administrative personnel without legal credentials, medical expertise, or independence from the court's administrative hierarchy. This configuration reflects

a fundamental misunderstanding of what the coordination function actually requires. The ADA Coordinator for federal judicial proceedings is not an administrative facilitator who schedules hearing rooms. The role requires the capacity to: evaluate medical evidence of disability and functional limitation; apply the ADA's individualized assessment standard to specific accommodation requests; identify when a court's denial violates that standard; make findings that impeach judicial process; resist institutional pressure to defer to judicial authority; and prepare reports for international treaty bodies that accurately document systemic treaty violations. Each of these functions has specific qualification requirements.

The Court's Own Pro Se Program Had No Knowledge of Disability Accommodation: ECF-10

The significance of the Snooki Puli designation in ECF-12 (December 17, 2019) is heightened by the document that immediately preceded it. ECF-10, Hazari's second ADA accommodation motion filed December 13, 2019, discloses a fact that is analytically decisive for understanding why the ADA coordinator mechanism failed: the court's own Pro Se Program had no knowledge of how to access disability accommodation. ECF-10 states that Hazari filed the lawsuit 'on the advice of the Pro Se Advocate of this Court to buy time to recover from my exacerbated illnesses before commencement of litigation, because this Court does not have any published or known (ADA) disability accommodation, or a disability administrative contact.'

Roman v. Jefferson at Hollywood LP: The False Precedent Cited to Deny ADA Application at the BAP

The BAP's March 10, 2025 order (Corbit, Gan, Brand) cited a specific Ninth Circuit case as its basis for refusing full ADA accommodation: Roman v. Jefferson at Hollywood LP, 495 F. App'x 804, 806 (9th Cir. 2012). The BAP stated it would 'endeavor to provide sufficient accommodations to appellant so that he may prosecute his appeal without undue hardship... even though the ADA does not apply to federal courts.' This citation is the BAP's operative position on ADA applicability, and it is legally incorrect.

Roman v. Jefferson is an unpublished memorandum disposition involving residential housing accommodation under the Fair Housing Act, not a federal court's obligation to accommodate its own disabled litigants. Its invocation as authority for the proposition that 'the ADA does not apply to federal courts' misrepresents the state of the law, which since Tennessee v. Lane (2004) has recognized courts as covered entities under ADA Title II. The BAP's use of Roman v. Jefferson as the operative authority for denying meaningful accommodation — while simultaneously claiming to 'endeavor to provide sufficient accommodations' — is the administrative law equivalent of the ECF-87 paradox: nominal compliance language used to foreclose substantive compliance. It places on the record a false statement of law that structures every subsequent accommodation denial in the proceeding.

The Pro Se Advocate — the court's own designated resource for unrepresented parties — could neither identify the ADA coordinator nor explain the accommodation process. The advice this person provided was not 'contact the ADA coordinator' but 'file the case to toll statutes of limitation.' This establishes that the ADA coordinator mechanism in this court, named formally in ECF-12 four days after ECF-10, was functionally inaccessible not merely to disabled litigants but to the court's own staff designated to assist them. The title existed; the mechanism did not. ECF-10 is the documentary proof of what the thesis terms nominal compliance without functional availability.

19.1.1 Legal Qualifications

The minimum legal qualifications for an Independent ADA Coordinator are:

- Juris Doctor from an ABA-accredited law school, with a minimum of five years of active legal practice.
- Demonstrated expertise in disability rights law, including the ADA Title I, II, and III; the Rehabilitation Act; the ADAAA; and the relevant regulatory framework (28 C.F.R. Part 35 for Title II).
- Familiarity with the relevant constitutional framework: Fourteenth Amendment equal protection (Cleburne and its progeny); Fifth Amendment due process (Bolling v. Sharpe); substantive due process in the disability context (Youngberg v. Romeo, Tennessee v. Lane).
- Familiarity with the international human rights framework: UNCAT and its ratification history; CRPD Articles 5, 12, 13, 15, and 19; ICCPR Articles 7, 14, and 26; the Istanbul Protocol (2022 edition).
- No current or prior employment by any federal or state court system, judicial council, or judicial administrative body within the five years preceding appointment. This conflict-of-interest exclusion is structural, not merely ethical: an individual whose professional formation occurred within the judicial system carries institutional loyalties that compromise the independence the role requires.
- Active bar membership in good standing in at least one U.S. jurisdiction.

19.1.2 Medical and Scientific Qualifications

Because the Coordinator's core function is evaluating medical evidence of disability in the context of accommodation requests — and because the systemic discrimination documented throughout this thesis is produced precisely by judicial actors' misreading of medical evidence through the 'filing activity equals capacity' lens — the Coordinator must have sufficient medical literacy to evaluate physician documentation independently, without delegating that evaluation to the judicial officer whose conduct is in question.

- Graduate-level training in medicine, clinical psychology, neuropsychology, or a closely related health science field; OR a minimum of five years of demonstrated professional practice applying medical evidence to legal standards in an adversarial or quasi-adversarial context (e.g., Social Security disability adjudication, workers' compensation, VA disability assessment).
- Specific familiarity with the medical and functional dimensions of conditions that commonly affect litigation capacity: progressive neurological disorders (including multiple sclerosis, ALS, and Parkinson's disease); psychiatric disorders (PTSD, major depressive disorder, bipolar disorder); cognitive impairments; chronic fatigue and immune deficiency disorders; and episodic conditions whose functional impact fluctuates over time.
- Understanding of neuropsychological testing and the significance of standardized testing scores (including processing speed assessments) for the evaluation of litigation capacity — specifically the ability to distinguish between the capacity to produce written output in some circumstances and the capacity to sustain the demands of active litigation.
- Familiarity with the Istanbul Protocol's medical documentation standards and the specific biological markers (including immunological markers) that the Protocol identifies as probative of stress-induced physical or psychological deterioration.

19.1.3 Disability Identity and Experiential Qualifications

The thesis has established, across Parts XIV and XVIII, that the absence of disability experience among judicial officers is a structural source of epistemic closure that produces accommodation failures that are invisible from the inside. The Coordinator's qualifications must address this epistemic gap:

- Preference in selection for candidates who have personal experience with disability, whether as persons with disabilities themselves or as primary caregivers for family members with significant disabilities. This is not a mandatory requirement (which would itself constitute discrimination) but a weighted qualification that addresses the epistemic limitation the thesis has identified as structurally significant.
- Mandatory pre-service training — of a minimum of forty hours — in disability experience, including direct interaction with persons with the types of disabilities that most commonly generate judicial accommodation requests (progressive neurological conditions, cognitive impairments, psychiatric disorders, episodic conditions).
- Demonstrated commitment to the disability rights movement and its social model framework, evidenced by professional work, advocacy, or publication. Candidates whose background reflects the medical model of disability (treating disability as a deficiency to be managed) rather than the social model (treating disability as a condition created by interaction between impairment and inaccessible environments) are disqualified by orientation even if otherwise technically qualified.

19.1.4 Investigation and Reporting Qualifications

Because the Coordinator's authority extends to findings that impeach judicial conduct and reports to international treaty bodies, the role requires qualifications specific to investigation and official reporting:

- Training in investigative methodology consistent with the Istanbul Protocol, including evidence documentation, witness interviewing, chronological analysis, and pattern recognition methodology.
- Training in the preparation of official reports for UN treaty bodies, including the documentation standards of the CAT Committee (CAT/C/USA/CO/3-5 standard), the CRPD Committee, and the Special Rapporteur on Torture (A/HRC/standard reporting format).
- Demonstrated capacity to produce written findings in a form that is both legally rigorous and comprehensible to non-specialist readers — specifically, findings that can be submitted to international bodies without translation or substantial reformulation.

§ 19.2 The Operation Manual: Procedures That Cannot Be Waived

The Coordinator's operation manual must be a legally binding document, enacted by Congress as a condition of judicial branch funding, not an administrative guidance document that any chief judge can waive or override. Every procedure described below is mandatory; none is discretionary; none may be modified by judicial order or administrative directive from the court system. The mandatory character of the procedures is the operational expression of the thesis's central conclusion: accommodation is a non-discretionary legal obligation, and the procedures that implement it inherit its non-discretionary character.

19.2.1 Intake and Triage: The 24-Hour Rule

Every disability accommodation request filed in any federal court proceeding must be transmitted to the Independent ADA Coordinator within twenty-four hours of filing. The transmission is automatic and administrative; it does not require any judicial action or authorization. The Coordinator acknowledges receipt within twenty-four hours and assigns the request a docket number that appears on the case record independently of the court's own docket. This independent docketing creates a parallel accountability record: the Coordinator's docket exists regardless of whether the court's record reflects the accommodation request accurately or completely.

The twenty-four-hour rule reflects the specific urgency of disability accommodation in the litigation context: unlike most administrative matters, the accommodation question is time-critical because the underlying litigation continues to advance against the disabled litigant's capacity to participate while the accommodation request is pending. Every day of delay without accommodation is a day of discriminatory harm. The twenty-four-hour intake rule ensures that delay is tracked from the first moment and attributed to specific actors at specific points in the process.

19.2.2 Medical Evidence Review Protocol

Within five business days of receiving any accommodation request accompanied by physician documentation, the Coordinator must conduct an independent review of the medical evidence using the following mandatory protocol:

23. Documentation inventory: catalog all medical evidence in the record, including treating physician letters, specialist reports, neuropsychological evaluations, laboratory results, and any other objective medical evidence. Create a dated inventory that is part of the official Coordinator record.
24. Functional limitation assessment: identify, from the medical evidence, the specific functional limitations that the documented conditions create for litigation-related activities. Distinguish explicitly between: the capacity to produce written output in low-stress conditions (which the ADAAA's episodic impairment provision and the Tudor v. Whitehall standard establish is legally insufficient to deny accommodation); and the capacity to sustain the demands of active litigation under standard procedural requirements.
25. Causation analysis: where the medical evidence documents deterioration over the litigation period, assess whether a causal relationship between litigation stress and the documented deterioration is supported by the medical evidence and consistent with peer-reviewed scientific literature on the relevant conditions.
26. Accommodation adequacy analysis: evaluate the specific accommodation requested against the documented functional limitations, and assess whether the requested accommodation (or a less-restrictive alternative) would enable the litigant to participate meaningfully in the proceeding without causing documented medical harm.
27. Comparison with prior accommodation history: where the same litigant has sought accommodation in the same or related proceedings, document the accommodation history and assess whether the current request reflects any material change in medical condition or litigation demands.

The Coordinator's written analysis under this protocol is transmitted to the court simultaneously with its transmission to the litigant. It is not advisory; it is a formal finding on the medical evidence that the court must address in any order denying accommodation. A denial that does not specifically engage with the Coordinator's medical analysis is procedurally deficient and subject to automatic stay pending cure.

19.2.3 Individualized Assessment Standard Enforcement

The Coordinator has authority to issue a Notice of Non-Compliance whenever a court's accommodation denial fails to conduct the individualized assessment that the ADA's reasonable modification standard requires. A Notice of Non-Compliance is not a recommendation; it is a formal finding of statutory non-compliance that:

- Stays the relevant proceeding automatically pending the court's response.
- Is transmitted simultaneously to: the judge who issued the deficient order; the circuit's chief judge; the ADA Coordinator's supervising authority (see § 19.4); the DOJ Civil Rights Division; and the Coordinator's international reporting registry (see § 19.7).
- Requires a written response from the court within ten business days addressing each element of the individualized assessment the Coordinator's notice identifies as absent.
- Becomes part of the Coordinator's permanent circuit record and is cited in the Coordinator's annual report as a documented instance of non-compliance.

The Notice of Non-Compliance is the operational instrument through which the Coordinator's independence is expressed in practice. Its issuance does not require the court's cooperation, concurrence, or approval. The Coordinator issues it on the basis of the legal standard and the medical evidence. The court must respond to it, but the Coordinator does not require the court's permission to issue it. This is the most important single feature of the operation manual: there must be at least one act the Coordinator can take unilaterally, without the court's permission, that creates legal consequences for the court's non-compliance. The Notice of Non-Compliance is that act.

19.2.4 Pattern Documentation and the Circuit Register

The Coordinator maintains a Circuit Register of all accommodation requests and their outcomes across all cases in the circuit. The Register records: the case number; the date of request; the nature of the disability and documentation provided; the accommodation requested; the court's decision; whether the Coordinator issued a Notice of Non-Compliance; the court's response; and the ultimate outcome of the underlying case. The Register is a public document, accessible to litigants, disability rights organizations, the DOJ, Congress, and international treaty bodies without any court order or judicial approval.

The Register is the operational foundation for the pattern-or-practice analysis that Part X identified as the evidentiary basis for DOJ enforcement. Its existence transforms what would otherwise be anecdotal accounts of accommodation failures into a systematic documented record that satisfies the evidentiary threshold for DOJ investigation, congressional inquiry, and treaty body petition. The Register is also the operational foundation for the Coordinator's international reporting obligation (see § 19.7): it provides the factual base from which the Coordinator's annual reports to treaty bodies are derived.

19.2.5 Emergency Procedures: Imminent Medical Harm

The operation manual must include an emergency procedure for situations where the continuation of litigation without accommodation poses imminent risk of serious physical or psychological harm to the disabled litigant — the specific situation documented in the Hazari record (Dr. Pleman's November 5, 2025 letter stating that foreseeable harm includes 'severe infection, hospitalization, or death'). When a qualified medical professional's documentation establishes an imminent risk of serious physical or psychological harm, the Coordinator has authority to issue an Emergency Accommodation Order that stays all litigation deadlines immediately, without awaiting the court's response, for a period not to exceed sixty days. The

Emergency Accommodation Order is not subject to judicial override; it is reviewed by the supervising authority (see § 19.4) within five business days and either confirmed or modified.

The Emergency Accommodation Order is the Coordinator's most powerful tool and the one that most directly addresses the CIDT concern at the heart of this thesis: it prevents the court from continuing to impose litigation requirements that qualified medical professionals have documented will cause serious physical or psychological harm, for at least the period necessary for independent review of the accommodation request. It is the operational implementation of the Istanbul Protocol's requirement that states take immediate preventive action when CIDT is documented and imminent.

§ 19.3 The Independence Architecture: What Structural Independence Requires

Independence is not an attitude or a personal virtue. It is a structural property that must be built into the Coordinator's institutional design with the same specificity that characterizes the independence requirements of other constitutional officers — the Inspector General, the Special Counsel, the Federal Reserve Board. The following structural elements are each necessary components of genuine independence; the absence of any one of them creates a vulnerability through which institutional capture can operate.

19.3.1 Protected Tenure

The Coordinator must have a fixed term of not less than seven years, removable only by a supermajority vote of a bicameral legislative oversight committee for cause demonstrated through formal proceedings. The cause standard must be defined to exclude performance disagreements, findings that are unfavorable to the court system, and the issuance of reports or notices that displease judicial officers. Acceptable cause is limited to: incapacity (established by independent medical evaluation); demonstrated bad faith or corruption; conviction of a felony; or persistent failure to comply with statutory duties.

The seven-year term and supermajority removal requirement are calibrated against the institutional pressures the role will face. A Coordinator who can be removed by chief judges for issuing unfavorable findings is not independent; they are accountable to the institution they are supposed to monitor. A Coordinator who can be removed only by a supermajority legislative vote for statutory cause has the tenure security necessary to resist institutional pressure without career consequence.

19.3.2 Budgetary Independence

The Coordinator's budget must be a direct line item in the congressional appropriation, not a sub-item within the judicial branch's administrative budget. The judicial branch cannot be permitted to defund the Coordinator as a mechanism of institutional retaliation for unfavorable findings. The budget is set by Congress through the normal appropriations process, with the Coordinator submitting budget justifications directly to the relevant appropriations subcommittee. The Coordinator has authority to hire, fire, and compensate staff without judicial branch approval.

19.3.3 Physical and Operational Independence

The Coordinator's offices must be physically located outside the federal courthouse. Physical location within the courthouse creates practical dependencies — on building access, on IT infrastructure controlled by the court system, on administrative relationships with court

personnel — that compromise operational independence even when formal independence is established. The Coordinator's offices are in a building where the federal judiciary does not have administrative authority over access, infrastructure, or personnel management.

19.3.4 Information Access Without Judicial Gatekeeping

The Coordinator has statutory authority to access all case records, sealed medical records filed in accommodation proceedings, correspondence relating to accommodation requests, and the court's internal communications about accommodation policy — without any court order, judicial authorization, or judicial review of the access request. This is the operational expression of Part XVII's Istanbul Protocol independence analysis: the investigating body cannot be subject to the institution's gatekeeping of the evidence that the investigation requires. The Coordinator's access authority is established by statute and is self-executing; it does not require the court's concurrence to be effective.

19.3.5 Anti-Retaliation Protection for Litigants Who Cooperate

The Coordinator's operation manual must include specific protection for disabled litigants who file complaints with or cooperate with the Coordinator's investigations. Any adverse judicial action taken against a litigant within ninety days of their filing a complaint with the Coordinator is presumptively retaliatory, and the court must demonstrate in a written filing to the Coordinator that the adverse action was based on grounds independent of the litigant's protected activity. This anti-retaliation presumption mirrors the ADA's § 12203 anti-retaliation provision and gives it operational teeth in the judicial context.

§ 19.4 Who Employs the Coordinator: The Employment Architecture for Genuine Independence

The question of who employs the Coordinator is the most structurally determinative question in the entire design. Every other feature of independence — tenure, budget, physical location, access authority — is undermined if the employing authority is the judicial system itself. The court system's employment of the Coordinator is structural capture by definition: an employee who owes their position to their employer cannot independently investigate their employer's conduct.

The thesis's prior Parts have identified the institutional hierarchy. Part XIV established that the judicial branch is structurally biased against self-correction. Part XVII established that the Istanbul Protocol requires investigation by bodies independent from the state institution under investigation. Part XVIII established that the accommodation paradox makes any court-dependent mechanism structurally self-defeating. Together, these analyses compel a single conclusion about the Coordinator's employment: the Coordinator cannot be employed by any institution within the judicial branch.

The institutional design principle that governs the Coordinator's employment architecture is François Crépeau's firewall doctrine, applied at the level of governmental institutional structure rather than individual rights access. Crépeau and Hastie argued that firewalls must be structural — not merely policy commitments or administrative guidelines, but hard institutional separations built into the design of the relevant functions. A firewall between immigration enforcement and service access is not effective if it depends on individual officials choosing not to share information; it requires that the functions be housed in separate institutions with separate legal authority and separate reporting chains. The identical requirement governs the ADA Coordinator's design. A Coordinator who is employed by the court system, reports to the Chief Judge, and can be overridden by the presiding judge is not a firewall — it is a speed bump. The

Coordinator as firewall requires employment outside the judicial branch, reporting authority independent of the court hierarchy, and legal authority to make binding accommodation determinations that judges cannot unilaterally reverse within the proceeding. Only this structural separation — the hard institutional firewall between the accommodation function and the adjudicative function — breaks the accommodation paradox by ensuring that the accommodation determination is made by an actor who is not party to the institutional consensus that the paradox operates to protect. See François Crépeau and Bethany Hastie, "The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights" (2015) 17(2) European Journal of Migration and Law 157, 170–178.

19.4.1 The Three Employment Models

Three employment models satisfy the independence requirement to varying degrees:

Model 1 — Congressional Employment (Article I): The Coordinator is employed by and reports to the relevant oversight committees of both chambers of Congress — specifically, the Senate Judiciary Committee and the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet. Appointment is by joint resolution of both chambers. Removal requires the supermajority described in § 19.3.1. This model provides the strongest independence because it places the Coordinator within the Article I branch, which has constitutional authority to oversee the Article III courts through its appropriations, confirmation, and impeachment powers. The weakness is that congressional oversight is politically variable and may itself be captured by interests unfriendly to disability rights.

Model 2 — Executive Employment within DOJ Civil Rights Division: The Coordinator is employed by and reports to the Assistant Attorney General for Civil Rights, with statutory protections preventing removal by political appointees for reasons relating to the Coordinator's findings. The DOJ's existing authority under ADA Title II to bring civil actions against court systems provides a natural institutional home; the Civil Rights Division's existing expertise in disability discrimination provides the professional context; and the executive branch's accountability to the President (who is elected and whose conduct in the disability rights domain is publicly scrutinized) provides a different but real form of democratic accountability. The weakness is that the DOJ is an executive branch agency whose priorities shift with administrations, and a political administration hostile to disability rights can reduce the Coordinator's effectiveness without formal removal.

Model 3 — Independent Commission Employment: The Coordinator is employed by and reports to a newly created Independent Judicial Disability Rights Commission, established by Congress as an independent agency with commissioners appointed by the President and confirmed by the Senate to staggered terms of sufficient length to ensure bipartisan continuity. This model is modeled on the Equal Employment Opportunity Commission (EEOC) and provides a dedicated institutional home whose sole mandate is judicial disability rights. The Commission would have subpoena authority, enforcement authority, and the power to refer cases to the DOJ for litigation. This is the preferred model because it provides the most specific and durable institutional structure for the Coordinator's function.

The Preferred Model: The Independent Judicial Disability Rights Commission

The Commission model is preferred for three reasons. First, it creates a dedicated institutional home whose identity is inseparable from its disability rights mandate — it cannot be administratively marginalized the way a DOJ suboffice can. Second, its staggered-term commissioners provide continuity across political administrations that prevents the political vulnerability of the DOJ model. Third, its subpoena authority provides the evidence access that Part XVII identified as necessary for Istanbul Protocol-compliant independent investigation. The ADA Coordinator within this Commission is the operational investigator; the Commission is the institutional authority that gives the Coordinator's findings binding domestic effect. The Coordinator's issuance of findings that impeach judicial conduct is not an individual's assertion; it is the Commission's official determination, backed by the enforcement authority that the Commission's statutory mandate provides.

§ 19.5 Adjudicatory Authority: Can the Coordinator Impeach Judicial Conduct and Find Fault with Specific Judges?

The question of whether the Coordinator can issue findings that impeach judicial conduct and find fault with specific judges is the most legally sensitive question in the design. It requires careful analysis because it touches on the separation of powers, judicial independence, and the constitutional protection of the judicial function. The answer, grounded in the preceding analysis, is: yes, but through carefully defined channels that are calibrated to the specific legal violation and the available remedy.

19.5.1 The Legal Basis for Findings Against Specific Judicial Conduct

The Coordinator's authority to issue findings about specific judicial conduct rests on three independent legal foundations:

First, the ADA Title II institutional liability framework. Under Tennessee v. Lane and United States v. Georgia, courts are covered entities under ADA Title II. The Coordinator, acting on behalf of the Independent Commission, has the same authority that the DOJ has to make findings of ADA Title II non-compliance by covered entities. Those findings are not judicial rulings; they are administrative determinations by an agency with statutory enforcement authority. Administrative agencies routinely make findings about the legality of conduct by other governmental entities, including judicial conduct in non-adjudicative capacities. The ADA Coordinator's finding that a specific accommodation denial violated ADA Title II is an administrative finding, not a judicial one — and is therefore not subject to the separation-of-powers limitations that would apply to a court's review of another court's conduct.

Second, the Rehabilitation Act § 504 compliance function. Federal courts receive federal financial assistance, and as a condition of that assistance are subject to Section 504's non-discrimination requirements. The standard mechanism for identifying § 504 non-compliance is investigation by an authorized federal agency — precisely what the Coordinator does. An authorized agency's determination that a specific court's specific accommodation denial violated § 504 is within the agency's statutory authority and does not intrude on the judicial function.

Third, the judicial conduct framework under 28 U.S.C. §§ 351-364. The Judicial Conduct and Disability Act provides a channel through which the Coordinator's findings can be transmitted to the circuit's chief judge and, in cases of more serious misconduct, to the Judicial Council and the Judicial Conference. The Coordinator's findings constitute the 'complaint' that the Act requires as the trigger for the judicial conduct process — and because the Coordinator is

not a party to the litigation, the complaint is not subject to the retaliation risks that deter disabled litigants from filing conduct complaints directly.

19.5.2 The Four Categories of Findings

Finding Category	Content	Legal Basis	Transmittal
Notice of Non-Compliance	Specific accommodation denial failed individualized assessment; specific legal deficiencies identified	ADA Title II; Rehab Act § 504	Court, Chief Judge, DOJ, International Registry
Finding of Systemic Pattern	Three or more Notices of Non-Compliance in the same court/circuit within 24 months constitute a systemic pattern; specific pattern described	ADA Title II institutional liability; Teamsters pattern-or-practice standard	DOJ Civil Rights Division (mandatory); Congress; International Registry
Finding of Probable ADA Violation by Named Judicial Officer	Specific judge's accommodation denial(s) violated ADA Title II and Rehab Act § 504; specific provisions identified; injury to specific litigant documented	Tennessee v. Lane; United States v. Georgia; ADA Title II; Rehab Act § 504	DOJ (mandatory referral for investigation); Judicial Conduct Office; Congressional oversight committees; Public registry
Istanbul Protocol-Threshold Finding	Accommodation denial(s) and resulting harm meet Istanbul Protocol criteria for CIDT: documented physical or psychological harm, knowledge, state actor, official context; specific medical evidence cited	UNCAT Art. 16 (ratified); CRPD Art. 15 (Art. 18 VCLT obligation); Istanbul Protocol	CAT Committee; CRPD Committee; UN Special Rapporteur on Torture; DOJ Human Rights and Special Prosecutions Section; Congress

The fourth category — the Istanbul Protocol-Threshold Finding — is the most consequential and the most novel. No existing domestic institution has authority to issue such a finding against federal judicial officers. The Coordinator, acting through the Independent Commission, would be the first domestic actor with both the legal authority (derived from ADA Title II and Rehabilitation Act § 504 enforcement) and the methodological framework (Istanbul Protocol-compliant investigation) to issue official domestic findings that a specific judicial actor's conduct meets the CIDT threshold. The significance of a domestic institution issuing such a finding cannot be overstated: it removes the claim from the realm of advocacy and places it in the realm of official governmental determination, carrying the evidentiary weight that international treaty bodies assign to authoritative domestic findings.

§ 19.6 The Non-Interference Principle and Its Limits

The Coordinator's authority to find fault with specific judicial conduct must be carefully distinguished from authority to direct judicial decision-making or override judicial rulings. The separation of powers does not prevent administrative agencies from making findings about the

legality of judicial conduct in non-adjudicative capacities; it does prevent agencies from directing courts on how to decide cases. The distinction is operationally important:

- The Coordinator may find that a specific accommodation denial violated ADA Title II and Rehab Act § 504. The Coordinator may NOT direct the court to grant the accommodation, because that would intrude on the judicial function.
- The Coordinator may issue a Notice of Non-Compliance that stays the proceeding automatically. The stay operates through statutory authority, not through judicial discretion; the court resumes the proceeding when it has addressed the specific deficiencies the notice identifies, not when it has reached the conclusion the Coordinator prefers.
- The Coordinator may refer a finding of ADA violation to the DOJ for litigation. The DOJ may then seek injunctive relief requiring the court system to implement accommodation protocols. Those injunctions are entered by a court and are therefore judicial orders, not Coordinator directives.
- The Coordinator may transmit Istanbul Protocol-Threshold Findings to international treaty bodies. Those bodies make their own findings and issue their own recommendations; the Coordinator does not substitute its findings for those of the treaty body.

These distinctions preserve the judicial function while creating real accountability for judicial non-compliance with disability law. The Coordinator does not tell courts how to decide cases; it tells courts that their accommodation decisions violated the law and triggers the consequences — automatic stays, DOJ referrals, international reporting — that follow from that finding. The courts respond to those consequences through their own judicial authority; the Coordinator does not direct the response. This structure respects the separation of powers while ensuring that the institutional immunity that judicial officers have historically claimed against disability law enforcement cannot be sustained in the face of a dedicated independent enforcement mechanism.

§ 19.7 International Reporting Obligations: The CAT Committee, the CRPD Committee, and the Special Rapporteur on Torture

19.7.1 The Legal Foundation for Mandatory International Reporting

The CAT Committee's 2014 Concluding Observations on the United States (CAT/C/USA/CO/3-5) specifically called for the establishment of 'independent bodies with authority to investigate complaints of ill-treatment.' The IAJ Human Rights Analysis in the Hazari record explicitly cites these Concluding Observations as identifying the absence of such bodies as a U.S. treaty compliance failure. The Coordinator's international reporting obligation is the direct response to the CAT Committee's identified deficiency: the Coordinator IS the independent body with investigation authority that the Committee found absent.

The Coordinator's mandatory international reporting obligations derive from three sources: UNCAT Article 19 (which requires State Parties to submit periodic reports to the CAT Committee on measures to implement their obligations); UNCAT Article 20 (which allows the Committee to initiate a confidential inquiry when it receives reliable information suggesting systematic torture or CIDT); and the UN Special Rapporteur on Torture's mandate to receive communications from individuals and organizations about torture and CIDT and to transmit those communications to the relevant government. The Coordinator functions as the domestic governmental actor who ensures that the U.S.'s reporting under these mechanisms accurately reflects the state of disability accommodation in federal courts — including findings that are unfavorable to the court system.

19.7.2 The Annual Report to the CAT Committee

The Coordinator must prepare and submit an annual report to the CAT Committee addressing the following specific items:

28. The aggregate statistics of disability accommodation requests in federal courts nationwide during the reporting period: total requests; percentage granted; percentage denied; percentage subject to Notices of Non-Compliance; percentage of denials appealed and outcome of appeals.
29. A description of the accommodation protocols currently in effect in each federal circuit and the degree of their compliance with ADA Title II, the Rehabilitation Act, and the Istanbul Protocol's preventive standards.
30. A summary of each Istanbul Protocol-Threshold Finding issued during the reporting period, with the specific medical evidence and judicial conduct that generated the finding, anonymized to protect litigant privacy unless the litigant has consented to identification.
31. An assessment of whether the U.S. government's representation to the CAT Committee that domestic constitutional protections provide the 'equivalent' of UNCAT Article 16 protection has been fulfilled in the federal court context, with specific analysis of where the equivalence has been achieved and where it has not.
32. A description of any systemic pattern findings issued during the reporting period, with the specific circuits and courts identified by name.
33. A description of DOJ referrals made during the reporting period and the status of any DOJ investigation or litigation resulting from those referrals.

The submission of this report to the CAT Committee is not conditioned on any domestic court's approval or review. The report is a U.S. government document — prepared by a Congressionally created independent officer — and its submission to the CAT Committee fulfills the U.S.'s UNCAT Article 19 periodic reporting obligation with respect to the judicial accommodation domain. The report may be unfavorable to the court system. The Coordinator's tenure protection and budgetary independence ensure that unfavorable reports do not result in institutional retaliation.

19.7.3 Reports to the CRPD Committee and CRPD Ratification

The Coordinator's reporting to the CRPD Committee is contingent on U.S. ratification of the CRPD — the single most important structural reform identified throughout this thesis. Upon ratification, the U.S. becomes obligated under CRPD Articles 35 and 36 to submit periodic reports to the CRPD Committee addressing implementation of all CRPD obligations, including Article 13 (access to justice) and Article 15 (freedom from CIDT). The Coordinator's Circuit Register and annual findings provide the factual foundation for the U.S. government's CRPD Article 35 reports — ensuring that the reports accurately reflect the state of judicial disability accommodation, including any systemic failures.

Pending ratification, the Coordinator should participate in the 'shadow reporting' process through which civil society organizations submit independent reports to the CRPD Committee even without ratification. The Coordinator's independent status — as a congressionally created domestic institution rather than an advocacy organization — gives its shadow reports a weight that civil society reports do not have: they represent the official findings of a domestic governmental body, prepared through Istanbul Protocol-compliant methodology, that the Committee can treat as authoritative independent documentation of the U.S.'s compliance with CRPD principles that the Senate voted 61-38 to endorse.

19.7.4 The Special Rapporteur on Torture: Individual Communications

The UN Special Rapporteur on Torture has a mandate to receive and transmit communications from individuals about torture and CIDT by state actors, including communications about judicial conduct. The Coordinator should establish a direct communication protocol with the Special Rapporteur's office, through which Istanbul Protocol-Threshold Findings are transmitted as official communications within thirty days of issuance. The transmission of an official domestic governmental body's Istanbul Protocol-Threshold Finding to the Special Rapporteur constitutes the highest-priority communication category in the Rapporteur's mandate — because it comes from a domestic governmental actor, is backed by medical evidence meeting the Protocol's documentation standards, and documents conduct by a state actor (judicial officers) in an official context.

The Special Rapporteur's country visit mechanism — under which the Rapporteur requests an official visit to a state to investigate specific torture or CIDT allegations — is triggered by exactly the kind of authoritative, documented, multi-case pattern that the Coordinator's Circuit Register and Istanbul Protocol-Threshold Findings would provide. The accumulation of Coordinator findings over multiple annual reporting cycles could provide the evidential predicate for a formal Special Rapporteur country visit specifically examining judicial disability accommodation in the United States — an international accountability mechanism that would have been unavailable without the Coordinator's institutionalized independent documentation function.

The International Reporting Architecture: A Summary

ANNUAL TO CAT COMMITTEE: Aggregate accommodation statistics; protocol compliance assessment by circuit; Istanbul Protocol-Threshold Findings summary; equivalence promise evaluation; systemic pattern findings; DOJ referral status. UPON CRPD RATIFICATION (mandatory): CRPD Article 35 periodic reports incorporating Circuit Register data and annual findings. PENDING RATIFICATION (shadow): Independent reports to CRPD Committee as official domestic governmental findings. TO SPECIAL RAPPORTEUR (within 30 days): Direct transmission of all Istanbul Protocol-Threshold Findings as official communications. TO CAT COMMITTEE CONFIDENTIAL INQUIRY (when triggered): When the Coordinator's accumulated findings provide the 'reliable information' of systematic CIDT in the judicial context, the Coordinator transmits the full evidentiary record to the CAT Committee for Article 20 confidential inquiry. This transmission is not advocacy; it is the fulfillment of a domestic governmental body's international accountability function.

§ 19.8 The Coordinator and the Accommodation Paradox's Resolution

Part XVIII established that the accommodation paradox makes suit against a court for systemic accommodation failure logically impossible through ordinary litigation channels. The Coordinator's design, as specified in this Part, is the operational resolution of the paradox at the institutional level.

The paradox operates because the challenge to Court A's accommodation denial must be brought in Court B, which faces the same binary that generates the paradox. The Coordinator breaks this circuit entirely: the Coordinator is not a court; it is not subject to the accommodation paradox because it does not make litigation decisions that are simultaneously substantive rulings on the merits of accommodation claims. The Coordinator makes administrative findings about accommodation compliance under ADA Title II and Rehabilitation Act § 504. Those findings do not require the Coordinator to 'grant' accommodation in a proceeding in which it is adjudicating a claim against Court A. The Coordinator simply determines whether Court A's denial met the legal standard — a determination that is made independently, administratively, without requiring any litigant to navigate any court system to obtain it.

When the Coordinator issues a Notice of Non-Compliance against Court A's accommodation denial, it is not 'granting accommodation' in the sense that implicates the paradox. It is making an administrative finding of statutory non-compliance. This finding does not require Court A to grant accommodation; it requires Court A to explain why the legal standard was satisfied. The merits of the compliance question are determined by the Coordinator's administrative finding and, if disputed, by the DOJ's civil action in a federal court — not by the disabled litigant trying to bring their own case in the same system that denied their accommodation. The Coordinator has extracted the accountability function from the court system and placed it in an institution that is both external to the system and immune to the paradox's mechanism.

This is the thesis's final structural answer to the paradox. The paradox is real and its conclusion is correct: it is impossible to sue a court for accommodation failure through ordinary litigation channels when the discrimination is systemic. The Coordinator is the institutional design that makes the impossibility irrelevant: it creates a channel of accountability that does not require ordinary litigation, that is external to the discriminating system, that is immune to the paradox, and that produces official findings with domestic and international legal authority. The Coordinator does not resolve the paradox; it circumvents it entirely by creating an institution that the paradox cannot reach.

The Independent ADA Coordinator: Design Summary

QUALIFICATIONS: JD + 5 years disability law expertise; graduate medical/scientific literacy; no prior court employment (5-year bar); disability experience preferred; Istanbul Protocol investigation training; treaty body reporting training. OPERATION MANUAL: 24-hour intake; 5-day medical evidence review protocol; Notice of Non-Compliance authority (unilateral, self-executing); Circuit Register (public, permanent); Emergency Accommodation Order (60-day unilateral stay for imminent harm). INDEPENDENCE: 7-year protected tenure; direct congressional budget; physically separate offices; statutory evidence access without judicial gatekeeping; anti-retaliation protection for cooperating litigants. FINDINGS AUTHORITY: Four categories (Notice of Non-Compliance; Systemic Pattern; Probable ADA Violation by Named Judicial Officer; Istanbul Protocol-Threshold Finding); all transmit to DOJ, Congress, and international registry; Istanbul Protocol-Threshold Findings transmit to CAT Committee, CRPD Committee, and Special Rapporteur. EMPLOYMENT: Independent Judicial Disability Rights Commission (preferred); alternatively DOJ Civil Rights Division or Congressional employment. PARADOX RESOLUTION: The Coordinator is external to the accommodation paradox because it makes administrative findings, not litigation decisions; it extracts the accountability function from the court system and places it in an institution immune to the paradox's mechanism.

PART XX

The Thesis Under Adversarial Scrutiny: Objections, Corrections, Missing Content, and Congressional Utility

A thesis of this scope and ambition invites serious adversarial scrutiny, and invites it at multiple levels simultaneously: the doctrinal (are the legal arguments correct?), the empirical (does the record support the claims?), the structural (is the architecture internally consistent?), and the political (can any of this actually be implemented?). This Part presents every credible challenge that a well-prepared opponent — a sophisticated federal judge, a State Department treaty lawyer, a Senate Judiciary Committee counsel hostile to the CRPD, or a constitutional law scholar committed to judicial autonomy — could mount against the thesis. Each objection is stated as forcefully as the opponent would state it. Each is then assessed: where the objection survives rebuttal, the needed correction is specified. The Part then catalogs substantive content gaps and concludes with an assessment of the thesis's congressional utility in a CRPD ratification campaign.

§ 20.1 The Strongest Adversarial Objections and Their Assessments

20.1.0 Threshold Objection: "56 Judges Cannot All Be Wrong"

The Objection

The thesis documents uniform accommodation denial across 56 judicial officers more than 70 cases spanning more than eight years, across ten independent court systems — California Superior Court, the California Sixth District Court of Appeals, the California Supreme Court, three federal district courts (Northern District of California, District of Colorado, and Bankruptcy Court), the Ninth Circuit and the Ninth Circuit Bankruptcy Appellate Panel, the Tenth Circuit, and the United States Supreme Court. The adversarial objection is that this uniformity disproves rather than proves discrimination: if 56 independent judges all reached the same conclusion, the parsimonious explanation is that the underlying claims lack merit. The alternative — that 56 judicial officers all committed the same error in the same direction in the same case — is statistically implausible.

Assessment: The Independence Assumption Is False

The objection's statistical argument rests on a false premise: that 56 judges deciding the same way constitutes 56 independent data points. Five specific reasons establish that they are not independent, but are instead one institutional policy expressed 56 times. First: shared protocol absence. Every judge operates under the same Judicial Conference policy (§ 255.10), which provides no framework for invisible progressive neurological disability. When 56 judges all applying the same absent framework reach the same conclusion, they are implementing one institutional vacuum, not exercising 56 independent judgments. Second: shared case history and docket awareness. Every judge in later proceedings was aware of prior judges' rulings. The accommodation paradox (Part XVIII) establishes why this shared awareness propagates uniform denial: granting accommodation appears to rule against the prior court, making denial the loyalty-preserving institutional choice. Third: shared national culture documented by Reuters, WSJ, and

GAO. The Reuters "Teflon Robe" investigation (5,122 disciplinary proceedings), the WSJ financial conflicts investigation (685 cases, 131 judges), and the GAO independence report together establish that judicial self-protection is a systemic national failure within which 56 uniform outcomes evidence institutional consistency, not individual correctness. Fourth: the collegial loyalty framework (§ 21.5) documents the structural mechanism by which accommodation denial functions as loyalty rather than law — converting the question from "what does the statute require?" to "will I defect from institutional consensus?" Fifth: independent replication across Hazari, Minkowski, and Danilak — three separately situated complainants, independently documented by the same Istanbul Protocol methodology, producing materially identical structural findings across overlapping but partly distinct judicial officers. If 56 uniform outcomes reflected one litigant's meritless claims, the pattern would not replicate across three independent complainants. It does. The correct inference from 56 uniform outcomes under these five conditions is: one institutional policy, expressed 56 times. Not 56 independent correct judgments.

20.1.0A The Escape-Route Objection: "The Litigant Should Have Filed in a Different Circuit"

The Objection. A threshold adversarial response to the Forum Nullus analysis is that the disabled litigant had an available corrective: file in a neutral circuit outside the Ninth Circuit's institutional consensus. If the Ninth Circuit is structurally compromised, the objection runs, the remedy is geographical — seek a forum without the same institutional interests, and the due process concern is resolved.

Assessment: The Objection Has Been Empirically Tested and Rejected. This objection is not theoretical. It was tested by the litigant in real time. The litigant filed in the District of Colorado (No. 23-cv-03168-RMR-MEH) — a venue with no institutional connection to the Ninth Circuit proceedings — and appealed to the Tenth Circuit (No. 24-1107), a circuit with no prior involvement in the disability accommodation history. The Tenth Circuit dismissed, expressly stating that it does not recognize the Forum Nullus doctrine, without engaging the disability or treaty arguments, and without providing accommodation for the proceeding itself.

The objection's empirical failure is analytically decisive for four reasons. First, the escape route did not work — which means the objection's proposed remedy is unavailable. The litigant attempted it and was turned away. The objection cannot simultaneously be the correct answer and have been tested and failed. Second, the Tenth Circuit's refusal to recognize Forum Nullus confirms that the doctrine is not merely unavailable in the Ninth Circuit because of that circuit's institutional stake — it is unrecognized across the federal system. The geographic corrective does not exist because the doctrinal gap is national, not local. Third, the Tenth Circuit's dismissal without accommodation replicates the Forum Nullus condition in the alternative forum, confirming that the paradox identified in Part XVIII operates at the inter-circuit level: seeking review of Forum Nullus in a forum that also does not provide accommodation for the proceeding cannot produce a neutral merits determination. Fourth, the attempt itself — the documented effort to access a genuinely external forum and the documented failure of that attempt — satisfies the exhaustion principle that international accountability mechanisms require. The litigant did not omit the obvious corrective. He attempted it. Its failure is on the official record of the Tenth Circuit at No. 24-1107. That record is the proof that the domestic system has no available internal remedy, which is the predicate for the international accountability mechanisms this thesis develops throughout Parts VII, VIII, and XXVII.

20.1.1 Objection 1: The Institutional Legitimacy Inversion

The Opponent's Strongest Argument

The thesis proposes using international treaty bodies, an independent commission, and external oversight mechanisms to correct the conduct of Article III courts — institutions whose independence from exactly this kind of external oversight is constitutionally guaranteed. The thesis frames judicial disability discrimination as a legal deficiency requiring correction; an equally plausible framing is that the thesis is proposing to subordinate the independent judicial branch to a new administrative layer that lacks constitutional legitimacy, democratic accountability, and the institutional competence that Article III courts have developed through centuries of common law development. When the thesis argues that courts 'cannot correct themselves,' it is describing a feature, not a bug: judicial independence from external correction is the constitutional design, not a failure of that design.

Thesis Response and Analysis

The objection conflates judicial independence (independence from political pressure on case outcomes) with judicial immunity from compliance with statutes that Congress has enacted and that the courts are obligated to apply to themselves. Tennessee v. Lane explicitly held that courts are ADA-covered entities; the Senate found existing law meets the CRPD standard; Section 504 applies to all federal programs receiving federal financial assistance. Judicial independence does not mean independence from law; it means independence in applying the law. Courts that do not apply the ADA to themselves are not exercising judicial independence; they are claiming exemption from law. The external oversight mechanisms the thesis proposes are analogous to Inspector General offices, the EEOC, and congressional appropriations conditions — all of which apply to the judicial branch without constitutionally implicating judicial independence. The analysis establishes the foundational distinction between the constitutional doctrine of judicial independence — which protects case outcomes from political interference — and the claim of judicial exemption from statutory obligations, which is a claim that courts are above the law. This distinction is developed throughout.

20.1.2 Objection 2: The One-Sided Record Problem

The Opponent's Strongest Argument

The thesis is built substantially on the Hazari record, which presents only the plaintiff's perspective on a complex multi-year litigation with an extremely voluminous and unusual filing pattern. The court's perspective — that a litigant who filed hundreds of pages of briefing in days could prosecute his case, that a decade-long delay in prosecuting claims was unreasonable regardless of disability, that the accommodation requests were not documented in the manner the ADA requires, that the plaintiff's own conduct contributed substantially to the outcome — is treated by the thesis as evidence of discrimination rather than as legitimate judicial case management. The thesis uses a single case whose facts are themselves contested as the empirical foundation for systemic conclusions that require far broader evidentiary support.

Thesis Response and Analysis

The objection correctly identifies a significant evidentiary limitation. The systemic discrimination analysis acknowledges the one-case limitation and argues that the seven markers are present across the full multi-court record. The IAJ's independent investigation of Julia Minkowski — conducted without reference to the Hazari analysis, producing identical structural findings — provides the comparative multi-victim evidence the systemic claim requires. The legal arguments are

independently valid regardless of the specific facts of any individual case; the factual systemic discrimination claims are supported by the multi-victim documentation established in Part XXI.

20.1.3 Objection 3: The Jus Cogens Argument Is Not Established Law

The Opponent's Strongest Argument

The thesis's most legally novel claim — that the jus cogens prohibition on CIDT overrides judicial immunity for disability accommodation denials in domestic litigation — is a law review argument, not established doctrine. No court has ever held that the jus cogens CIDT prohibition applies to disability accommodation in civil litigation. The Istanbul Protocol was designed for detention contexts and physical abuse by security forces; extending it to litigation stress and MS disease progression is an extraordinary expansion of the CIDT concept that has no support in the UNCAT travaux, no CRPD Committee precedent in the specific judicial accommodation context, and no domestic judicial recognition. The thesis presents this argument with a confidence that its novelty does not warrant.

Thesis Response and Analysis

The objection is the most legally significant of the adversarial challenges and must be engaged directly. The thesis is correct that the jus cogens/CIDT argument is novel in the specific judicial accommodation context, but novelty is not a refutation; most significant legal developments begin as novel arguments. The CIDT concept has been applied to institutional settings beyond physical detention (prisons, psychiatric hospitals), and the principle that deliberate infliction of foreseeable serious physical or psychological harm by a state actor with official authority is the core CIDT paradigm applies whether the state actor is a prison warden or a federal judge. (1) The jus cogens/CIDT argument is the most contestable claim and is distinguished throughout from the more established ADA Title II, equal protection, and Section 504 arguments. (2) The argument is presented as the strongest available characterization where the documented facts satisfy all elements. (3) The limiting principle — the jurisdictional custody test developed in Part XXI — precisely distinguishes CIDT-level accommodation denial from ordinary case management.

20.1.4 Objection 4: The Cleburne Standard Does Not Do the Work the Thesis Claims

The Opponent's Strongest Argument

The thesis treats Cleburne v. Cleburne Living Center as establishing a robust anti-discrimination standard that mandates individualized assessment in disability accommodation decisions. But Cleburne was decided under rational basis review and its holding is narrow: zoning ordinances that discriminate against mentally retarded persons require at least a legitimate governmental interest with a rational connection to the specific classification. The Court explicitly declined to hold that disability is a suspect or quasi-suspect class. Post-Cleburne, the equal protection standard for disability classifications remains rational basis, which is the most deferential standard in constitutional law. Courts routinely sustain disability classifications under rational basis. The thesis's elevation of Cleburne into a mandate for individualized assessment in accommodation decisions overstates the decision's doctrinal weight.

Thesis Response and Analysis

The objection correctly identifies an overstatement in the thesis's constitutional argument. The thesis's claim is that Cleburne establishes rational basis with bite — that mere invocation of a legitimate interest is insufficient when the specific classification rests on irrational prejudice about a specific person or group. This reading of Cleburne is supported by the decision's own analysis of the zoning ordinance, but the broader claim that Cleburne mandates individualized assessment in judicial accommodation decisions is a stronger argument than Cleburne alone supports. (1) The primary legal mandate is statutory: ADA Title II, Section 504, and Tennessee v. Lane. Cleburne reinforces and confirms the statutory framework. (2) The constitutional argument operates as a backstop when the statutory analysis is incorrectly applied. (3) The Congress-told-the-Senate argument functions as legislative history guiding constitutional interpretation.

20.1.5 Objection 5: Individual vs. Institutional Liability Confusion

The Opponent's Strongest Argument

The thesis conflates two legally distinct claims throughout: (a) institutional liability of the court system under ADA Title II and Section 504 (an established doctrine since Tennessee v. Lane), and (b) personal liability of individual judges for their accommodation decisions (an essentially foreclosed claim since Mireles v. Waco and Bradley v. Fisher). The thesis's most powerful remedial claims — damages, structural injunctions, DOJ enforcement — run only against the institution, not individual judges. The individual judge accountability arguments (oath analysis, jus cogens immunity override, criminal prosecution under § 242) are either highly speculative (jus cogens), extraordinarily rare in practice (§ 242 prosecution), or limited in remedy (oath analysis). The thesis presents these individual accountability arguments alongside the institutional arguments in a way that overstates the practical availability of personal accountability.

Thesis Response and Analysis

The objection correctly identifies a structural conflation that weakens the thesis's practical credibility. The taxonomy separates: (1) institutional liability channels (Tennessee v. Lane, ADA Title II, Section 504, DOJ enforcement, FCA qui tam) — established doctrine, available now, the primary practical remedies; (2) individual accountability channels (judicial conduct complaints, oath enforcement through impeachment, § 1983/§ 1985 conspiracy) — available but requiring additional factual predicates; and (3) international accountability channels (jus cogens override, treaty body proceedings) — operating primarily to establish international accountability rather than as domestic litigation strategy.

20.1.6 Objection 6: The Non-Self-Executing Declaration Undermines More Than the Thesis Acknowledges

The Opponent's Strongest Argument

The thesis acknowledges the CRPD's non-self-executing character and then argues that the Charming Betsy canon, Article 18 VCLT obligations, and the Senate's 'no new legislation' finding collectively preserve its domestic legal force. But this move is more controversial than the thesis admits. The Charming Betsy canon has been significantly limited by Medellin v. Texas (2008), which held that non-self-executing treaty obligations cannot be domestically enforced without implementing legislation, regardless of how the Senate voted. The Article 18 VCLT obligation not to defeat a treaty's object and purpose is a customary international law rule that U.S. courts have been

reluctant to apply against domestic legislation. And the Senate's 'no new legislation' finding is a committee report, not a statutory enactment.

Thesis Response and Analysis

Medellin v. Texas is the most important objection and requires direct engagement. In Medellin, the Supreme Court held that even a ratified treaty with Senate concurrence cannot be self-executing unless the treaty text clearly establishes it as such. The thesis’s Charming Betsy argument — that existing statutes must be interpreted consistently with the CRPD — is distinct from the Medellin self-execution question, but the distinction must be more carefully developed. The analysis examines Medellin and establishing that the thesis’s argument does not depend on the CRPD being self-executing or on the Charming Betsy canon generating judicially enforceable rights. The argument is narrower and stronger: Congress enacted the ADA and the Rehabilitation Act; those statutes are self-executing and enforceable; the Senate’s committee reports expressing the understanding that those statutes already meet the CRPD standard constitute legislative history that courts must weigh in interpreting the statutes. The CRPD is not invoked as a source of new rights; it is invoked as evidence of the meaning of existing rights that Congress has already enacted. This framing survives Medellin entirely.

20.1.7 Objection 7: The 'No New Legislation' Finding Is a Double-Edged Sword

The Opponent's Strongest Argument

If existing U.S. law already meets the CRPD's requirements, then the thesis's proposed Independent Judicial Disability Rights Commission, the Independent ADA Coordinator, the mandatory accommodation protocols, the mandatory FRE 706 appointments, and the other structural reforms are all new legislation that the Senate was told would not be required. The 'no new legislation' finding simultaneously supports the thesis's argument that courts are misapplying existing law AND undermines the thesis's argument that structural reforms requiring new legislation are necessary. The thesis cannot have both: either existing law is adequate (in which case courts just need to follow it, without a new Commission) or it is not (in which case the Senate was misled).

Thesis Response and Analysis

This objection identifies a genuine tension but not a contradiction. The argument is that existing law is adequate as a matter of statutory text but inadequate as a matter of enforcement infrastructure. New legislation to create enforcement mechanisms does not create new substantive rights — which the Senate found unnecessary — it creates mechanisms for enforcing rights that already exist. The Office of Inspector General for the executive branch does not create new substantive legal obligations on federal agencies; it creates enforcement mechanisms for existing ones. The law/enforcement distinction is central: the 'no new legislation' finding means no new substantive rights are required; it says nothing about enforcement mechanisms, which Congress may always create to ensure that existing rights are actually implemented.

20.1.8 Objection 8: The Accommodation Paradox Proves Too Much

The Opponent's Strongest Argument

Part XVIII's accommodation paradox argument, if taken seriously, establishes that the entire U.S. judicial system is incapable of adjudicating any claim against itself when the claim requires the second court to provide accommodation that the first court denied. This is an extraordinarily sweeping conclusion that proves too much: if the judicial system is logically incapable of adjudicating this class of claims, it is also logically incapable of adjudicating many other claims where the preliminary procedural question is identical to a merits question. The thesis extracts from a structural observation about a specific paradox a conclusion about the total incapacity of the judicial system that is not warranted by the analysis.

Thesis Response and Analysis

The paradox's scope is precisely delimited. It applies specifically to: (a) disabled litigants whose disability prevents standard participation; (b) challenging a court's specific accommodation denial; (c) in a system where denial is the institutional consensus. It does not apply to disability discrimination claims generally, to claims by non-disabled parties, or to systems where accommodation is not uniformly denied. The jurisdictional custody test in Part XXI further operationalizes the limiting conditions. The paradox resolves when any court provides accommodation consistent with its own established practice rather than as a defection from institutional consensus denial.

20.1.9 Objection 9: The CIDT Argument Has No Limiting Principle

The Opponent's Strongest Argument

If compelling participation in litigation with documented stress-related health consequences constitutes CIDT when the litigant has a disability, then virtually any compulsory legal process — criminal prosecution, civil discovery, compulsory appearances — could be characterized as CIDT when the affected person has a condition that is stress-sensitive. This is not a limiting principle; it is an unlimited expansion of the CIDT concept that would collapse the distinction between lawful legal process and torture. The thesis needs to explain why disability accommodation denial in civil litigation is different from (a) compelling a stress-sensitive cancer patient to appear for trial; (b) requiring a financially ruinous civil defendant to litigate; (c) imposing a lengthy criminal sentence on a person whose health will deteriorate in prison.

Thesis Response and Analysis

The limiting principle distinguishes disability accommodation denial as CIDT from lawful compulsory process that happens to be health-impacting. Four elements must all be present: (1) KNOWLEDGE: the court has specific, documented medical evidence that its procedures will cause specific physical or psychological harm to this specific litigant — not a general claim that litigation is stressful; (2) CAUSATION: the harm is directly and specifically caused by the denial of accommodation, not by the underlying medical condition or by other factors; (3) PREVENTABILITY: accommodation was specifically available that would have prevented the harm without fundamentally altering the proceeding; and (4) SEVERITY: the harm meets the threshold of serious suffering documented by objective clinical evidence — biological markers, DSM-5 diagnoses, and treatment escalation timelines. All four elements are present in both the Hazari and Minkowski records; most compulsory process scenarios do not satisfy all four simultaneously. The jurisdictional custody framework in Part XXI provides the structural concept that unifies these four elements.

20.1.10 Objection 10: The Ward v. Monroeville Structural Bias Argument Is Overbroad

The Opponent's Strongest Argument

The thesis extends Ward v. Monroeville's structural bias doctrine from its context — a mayor-judge with a direct financial interest in fines he imposed — to the abstract institutional loyalty of judges to their colleagues and their court system. But no court has extended Monroeville to require recusal based on institutional loyalty or collegial identification. The extension the thesis proposes would, if taken seriously, require virtually every judge to recuse from cases that might reflect negatively on the judicial system generally. The Monroeville doctrine requires a concrete, institutional financial or structural interest in the outcome — not an intangible collegial loyalty.

Thesis Response and Analysis

The structural bias argument is grounded in concrete institutional interests rather than intangible collegial loyalty. When a court adjudicates an ADA Title II claim against itself, it has a direct and concrete institutional interest in the outcome: avoiding damages, structural remediation, and adverse precedent that would require changes to its own procedures. These interests are structurally analogous to the mayor's financial interest in Ward v. Monroeville — not a vague claim about institutional culture, but a specific institutional stake in the outcome of the litigation it controls.

20.1.11 Objection 11: The Senate Record Is Committee-Level, Not Full-Senate Authority

The Opponent's Strongest Argument

The thesis repeatedly cites Senate Executive Reports 112-6 and 113-12 as constituting near-binding legislative authority for the proposition that existing law meets the CRPD standard. But these are Foreign Relations Committee reports that accompanied a treaty the full Senate never ratified. The CRPD failed ratification twice. The committee reports have the status of failed legislative history; they represent the views of committee members who did not prevail on the Senate floor. Using the legislative history of a failed treaty as a source of binding interpretation of enacted statutes is a significant methodological stretch.

Thesis Response and Analysis

The committee reports provide uniquely relevant legislative history rather than binding interpretive authority: the ADA was enacted by the same Congress that subsequently deliberated on the CRPD; the SFRC's finding that existing law meets the CRPD standard reflects the deliberation of the same legislative body that enacted the statutes being interpreted. This is legitimate legislative history methodology of persuasive rather than binding character. The 61-senator majority of the full Senate that endorsed the finding provides additional weight without transforming committee reports into binding authority.

§ 20.2 Areas Requiring Further Development

Beyond specific objections to existing arguments, the thesis has material content gaps — areas where important doctrine, evidence, or analysis is absent and whose absence weakens the overall

argument. These gaps were not identified in the internal structure review because they require knowledge of what is missing rather than analysis of what is present.

20.2.1 Board of Trustees v. Garrett and the Prophylactic Legislation Analysis

The ADA Title II analysis must engage with Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356 (2001), which held that Congress lacked sufficient evidence of unconstitutional state discrimination to abrogate Eleventh Amendment immunity for ADA Title I employment claims. The Court's reasoning — that Congress must compile a legislative record of unconstitutional discrimination to validly abrogate state immunity — applies to ADA Title II claims against state courts. Tennessee v. Lane's narrower holding — that Title II validly abrogates immunity in the access-to-courts context because that context involves a fundamental right — distinguishes Garrett, but this distinction warrants full development. Whether Congress compiled a sufficient legislative record specifically for judicial accommodation claims, or whether Lane's fundamental rights rationale fully displaces the Garrett analysis, is an essential doctrinal question this analysis addresses.

20.2.2 The Pro Se Litigant Doctrine's Interaction with Disability

Federal courts apply a special standard of liberal construction to pro se litigants' filings under Haines v. Kerner, 404 U.S. 519 (1972). The Hazari record involves a pro se litigant. An important dimension of the analysis is how the pro se liberal construction obligation interacts with the disability accommodation obligation: does a court's failure to liberally construe a disabled pro se litigant's accommodation request add an independent dimension of legal error to the accommodation denial? Does the combination of pro se status and disability create a heightened access-to-courts obligation? The existing pro se doctrine is a significant and potentially powerful supplement to the disability accommodation argument that the thesis has entirely omitted.

20.2.3 The Social Security Disability System as a Functional Comparator

The Social Security Administration's disability adjudication system — which processes more than two million disability claims annually, applies individualized assessment through a five-step sequential evaluation, uses ALJ hearings with accommodation protocols, and generates an extensive body of precedent on functional limitation assessment — is the most sophisticated domestic institutional framework for applying medical evidence to legal standards in the disability context. The SSA system provides the functional comparator for what a properly designed disability assessment process looks like. The contrast between the SSA's individualized, evidence-based, protocol-governed approach and the court system's 'rapid, prolix filings' formula would be analytically powerful and practically illustrative.

20.2.4 State Sovereign Immunity and Coleman v. Court of Appeals

In Coleman v. Court of Appeals of Maryland, 566 U.S. 30 (2012), the Supreme Court held that Title I's self-care leave provision did not validly abrogate state sovereign immunity because Congress had not identified a pattern of unconstitutional state conduct with respect to self-care leave specifically. This narrow holding — that abrogation must be grounded in documented unconstitutional conduct in the specific area addressed by the statutory provision — applies to ADA Title II claims against state courts in the disability accommodation context. The analysis must address whether there is a sufficient legislative record of unconstitutional state court discrimination against disabled litigants to satisfy Coleman's prophylactic legislation standard. This is a genuine doctrinal gap.

20.2.5 The First Amendment Judicial Independence Doctrine

Federal judges have constitutional protection for their judicial expression under the First Amendment and the doctrine of judicial independence. The thesis proposes an Independent ADA Coordinator with authority to issue findings that 'impeach' judicial conduct and transmit those findings to international treaty bodies. An opponent will argue that this mechanism violates the constitutional protection of judicial expression by subjecting judicial decisions to administrative sanction by a non-judicial body. The constitutional limits on administrative scrutiny of judicial decision-making of judicial decision-making. The distinction between administrative scrutiny of the institutional accommodation policy (permissible) and administrative sanction of specific judicial decisions (potentially problematic) needs careful development.

20.2.6 The Access to Justice Commission Framework

The Conference of Chief Justices, the Conference of State Court Administrators, and the Judicial Conference of the United States have all established or participated in access-to-justice initiatives that address disability accommodation as part of broader court access work. The existing institutional framework of access-to-justice initiatives and therefore cannot accurately characterize the current state of court accommodation efforts (which are more developed in some circuits than the Hazari record suggests) or position the Independent ADA Coordinator within or against the existing framework. This gap weakens the reform proposals' practical credibility.

20.2.7 The Quantitative Empirical Dimension

The thesis's systemic discrimination claim — Part X's seven markers, the Circuit Register proposal, the accommodation failure pattern — requires empirical support that the thesis does not currently provide. The Administrative Office of Courts publishes annual reports that include some disability-related data; civil rights organizations have conducted surveys of disabled litigants' experiences; law review articles have documented accommodation denial patterns in specific circuits. Without citing and analyzing this data, the thesis's systemic discrimination claim the empirical record extends beyond any single case. A rigorous defense of the systemic claim requires quantitative evidence showing that accommodation denial rates for disabled litigants are significantly higher than for non-disabled litigants in comparable procedural postures.

§ 20.3 The Thesis's Congressional Utility: A Realistic Assessment

The thesis was implicitly designed with congressional utility in mind: it builds the most comprehensive possible legal case for CRPD ratification while simultaneously documenting the consequences of non-ratification through the Hazari record. But congressional utility requires more than legal comprehensiveness; it requires political framing, coalition management, and strategic calibration of which arguments are used in which contexts. This section assesses the thesis's congressional utility realistically, including its strengths, its political vulnerabilities, and the strategic use cases for which it is best suited.

20.3.1 The Thesis's Strongest Congressional Arguments

Four arguments in the thesis have unusual congressional utility because they are grounded in established bipartisan positions, involve no new legal theory, and are directly responsive to the political objections that defeated CRPD ratification in 2012 and 2014:

Argument 1: 'No New Legislation' as Defense Against Sovereignty Objections. The single most powerful congressional argument the thesis provides is that the CRPD's ratification

requires no new domestic legislation because the SFRC, with Republican and Democratic votes, already found that existing U.S. law meets the CRPD's requirements. This finding directly rebuts the primary Senate opposition argument — that the CRPD would require changes to domestic law that undermine parental rights, states' rights, and judicial authority. If no new legislation is required, the sovereignty objections have no legal predicate. The thesis documents this finding exhaustively (Part IX) and makes it the centerpiece of the congressional engagement.

Argument 2: The Veteran Argument. Both SFRC reports, and the testimony of Senators McCain and Harkin, Secretary Shinseki, and Congresswoman Duckworth, focused heavily on the benefit to disabled American veterans who face inaccessible facilities abroad. This argument has strong bipartisan support and creates a political coalition (veterans' service organizations) that has historically been powerful in Senate ratification proceedings. The thesis documents this coalition (Part IX) and provides the foundation for a veteran-centered congressional argument.

Argument 3: The Compliance Gap as the Ratification Argument. The thesis's systemic discrimination analysis (Part X) is designed for congressional utility: it demonstrates that U.S. courts are not actually delivering the protections that the Senate was told existing law provides. This creates a powerful congressional argument: we voted against ratification because we were told existing law is adequate; the evidence shows existing law is not being implemented adequately; ratification with its accountability mechanisms is necessary to ensure the law is actually applied. This argument directly addresses the 'but we already have good laws' objection with a documented record of those laws' non-implementation.

Argument 4: The Minimal RUD Package Argument. The thesis's analysis of the proposed RUD package (Part IX) demonstrates that every significant concern raised by Senate opposition — parental rights, federalism, private conduct, the CRPD Committee's authority — is addressed by existing proposed RUDs without requiring new RUDs. This enables a congressional argument that ratification can be achieved with the same RUD package that already commanded 61 votes in 2012, without requiring additional concessions that would undermine the treaty's effectiveness.

20.3.2 The Thesis's Political Vulnerabilities in a Congressional Context

The thesis also contains arguments that are politically counterproductive for congressional use and should be strategically separated from the ratification advocacy:

Arguments to Exclude from Congressional CRPD Ratification Advocacy

1. The jus cogens/CIDT argument: characterizing U.S. federal judges as potential CIDT perpetrators will generate fierce judicial branch opposition and give Senate opponents a powerful rhetorical weapon ('the CRPD supporters are accusing American judges of torture'). This argument belongs in international treaty body submissions and academic scholarship, not in Senate hearings. 2. The accommodation paradox and systemic impossibility arguments: while analytically powerful, these arguments imply that the entire U.S. judicial system is irredeemably broken. The political response will be defensive rather than constructive. Congressional utility requires framing the reform as achievable improvement, not as proof of constitutional collapse. 3. The specific judicial officers named in the Hazari record: naming specific judges (Freeman, Koh, White) and characterizing their conduct as discriminatory creates personal political conflicts that distract from the systemic argument and generate sympathy for the named judges among their senatorial colleagues. 4. The IAJ's characterization of judicial conduct as 'torture': the IAJ Medical Torture documentation framing, while legally grounded in the Istanbul Protocol, is politically toxic in a congressional context where the word

'torture' is associated with Guantanamo and will be used by opponents to characterize the CRPD as an anti-American political document.

20.3.3 Strategic Framing for Congressional Use

The most effective congressional deployment of this thesis material uses three framings simultaneously, calibrated to different Senate audiences:

For Republican senators (sovereignty, veterans, business): "The CRPD is the ADA gone global. American companies are already compliant with ADA standards; the CRPD requires other countries to adopt the same standards, leveling the playing field for American businesses. Ratification with the existing RUD package requires no new domestic legislation — the Senate's own committee found that current U.S. law already meets the CRPD standard. The failure to ratify means American veterans and disabled Americans traveling abroad cannot demand the access rights that the treaty would require of host countries." The Hazari material supports the point about implementation failures but should be used selectively — showing that the existing accommodation system needs structural improvements that the treaty's accountability mechanisms would incentivize.

For Democratic senators (disability rights, international leadership): "The United States wrote the template for the CRPD through the ADA. We have 61 senators who already voted to ratify this treaty. The CRPD's accountability mechanisms — the Committee on the Rights of Persons with Disabilities, the periodic reporting requirements — would provide exactly the external oversight that disability advocates need to ensure courts, employers, and governments actually implement the law they are supposed to follow. The Hazari case shows what happens without those mechanisms: six years of documented medical harm, systematic accommodation denial, and no effective domestic remedy."

For the Senate Judiciary Committee (legal and constitutional questions): "The United States already has the best disability rights laws in the world. Ratification with the proposed RUD package confirms that judgment internationally while providing the accountability infrastructure to ensure those laws are actually implemented. The non-self-executing declaration means the CRPD cannot be invoked as a cause of action in U.S. courts. The Fifth Understanding locks the treaty's definitions to U.S. law. The Third Reservation aligns Article 15 with our existing constitutional standards. The committee has already found, twice, that ratification requires no new legislation. The question before the Senate is not whether to change U.S. law; the question is whether to exercise U.S. leadership on the international stage that our domestic laws have earned."

20.3.4 The Modified RUD Package: Where the Thesis Supports Modification

The thesis's analysis of the proposed RUDs (Part IX) generates specific recommendations for RUD modification that would make ratification both more politically achievable and more substantively meaningful:

- Third Reservation (Article 15 CIDT): The current formulation limits U.S. obligations to the 'same reservations and understandings' that apply to CAT and ICCPR ratification. This reservation should be maintained but supplemented with an Understanding that acknowledges the constitutional standard already prohibits the specific conduct analyzed

in the thesis — establishing a domestic legislative record that the reservation does not shield irrational-prejudice-based disability discrimination by judicial actors.

- Fifth Understanding (Definitions): The current formulation locks CRPD definitions to existing U.S. law, preventing the CRPD Committee's social model definitions from expanding domestic standards. This Understanding should be modified to include a commitment to periodic review of whether U.S. definitional standards continue to meet the CRPD's object and purpose — creating a reporting mechanism that incentivizes domestic law improvement without requiring immediate change.
- Sixth Understanding (CRPD Committee): The current formulation denies the Committee any authority to create customary international law. The Understanding should be supplemented with a commitment to submit regular reports to the Committee and to provide substantive responses to Committee recommendations — giving the Committee real if advisory influence without granting it binding authority.
- Add a New Understanding on Judicial Accommodation: The RUD package should add a specific understanding confirming that the United States interprets CRPD Articles 13 and 15 as requiring courts to provide reasonable modifications in judicial proceedings, and that the Fifth and Fourteenth Amendments, as the Senate found, already prohibit irrational-prejudice-based denial of such modifications. This understanding inserts the thesis's most powerful legal argument into the treaty's ratification record, making it part of the official U.S. statement of treaty obligations.

20.3.5 The Thesis's Overall Congressional Utility: Assessment

The thesis, as currently written, is too long, too specialized, and too legally technical for direct congressional use. Its congressional utility is primarily as a resource document for legal counsel — for Senate Judiciary Committee staff, for advocacy organization legal teams, for academic witnesses at SFRC hearings — rather than as a document that senators themselves would read. In that role, it provides exceptional value: it is the most comprehensive available domestic legal case for CRPD ratification, grounded in the U.S. Senate's own deliberative record, supported by a specific and documented case record, and organized around the arguments that address the specific objections that have defeated ratification twice.

For maximum congressional utility, the congressional presentation is strengthened by: (1) a thirty-page executive summary organized around the four strongest congressional arguments identified in § 20.3.1; (2) a separate technical annex addressing the constitutional objections for Senate Judiciary Committee counsel; (3) a case study document presenting the Hazari record’s medical evidence in a form accessible to non-lawyers; and (4) a RUD modification proposal that translates the thesis’s legal analysis into specific treaty language changes. With these supplements, the thesis becomes a comprehensive legislative campaign document for the most legally sophisticated CRPD ratification effort the U.S. Senate has ever considered.

The Thesis in Congress: Summary Assessment

STRENGTHS: The most comprehensive legal defense of CRPD ratification in the domestic literature; grounded entirely in U.S. law, U.S. constitutional doctrine, and the U.S. Senate's own record; specific and documented empirical case record; addresses every major Senate objection; provides specific RUD modification language. VULNERABILITIES: CIDT/jus cogens framing will provoke judicial opposition; systemic impossibility argument is politically toxic; naming specific judicial officers creates personal conflicts; length and technical complexity require simplification for direct congressional use. STRATEGIC ADVICE: Use the institutional liability (ADA Title II, Section 504) and Senate record

arguments in congressional testimony; reserve the CIDT and paradox arguments for academic and international contexts; develop the modified RUD package as a negotiating document; commission an independent empirical study of accommodation denial rates to address the one-case evidentiary limitation. With these adjustments, the thesis is the strongest available platform for the most credible CRPD ratification effort since the 61-vote majority of December 4, 2012.

§ 20.4 The Doctrinal Standards: A Summary Matrix

Issue	Current State in Thesis	Thesis Response and Analysis	Priority
Judicial independence/exemption distinction	Presupposed, not established	Dedicated section distinguishing judicial independence doctrine from claim of exemption from statutory obligations	Critical — foundational to entire thesis
One-sided Hazari record	Presented only plaintiff perspective	Comparative empirical data + acknowledgment of court's legitimate case management interest + plaintiff/court record distinction	Critical — systemic claim requires broader foundation
CIDT limiting principle	No explicit limiting principle	Four-element test: specific knowledge + specific causation + preventability + severity threshold	Critical — without this, jus cogens argument is easily dismissed
Jus cogens/CIDT as novel doctrine	Stated with excessive confidence	Clearly labeled as strongest available argument, not established doctrine; primary reliance shifted to ADA/Section 504 institutional liability	High — overstating novelty undermines credibility
Medellin v. Texas engagement	Not adequately addressed	Dedicated section distinguishing Charming Betsy canon from self-execution; reframe CRPD as legislative history of ADA, not independent rights source	High — critical treaty law case requires direct engagement
Individual vs. institutional liability	Conflated throughout	Explicit three-tier taxonomy: institutional (primary), individual (difficult), aspirational (international) accountability	High — remedial credibility depends on this clarity
Garrett/Coleman doctrinal gap	Not addressed	Section on prophylactic legislation analysis and Tennessee v. Lane's fundamental rights	High — necessary for state court ADA Title II claims

Issue	Current State in Thesis	Thesis Response and Analysis	Priority
		rationale as displacing Garrett in judicial accommodation context	
Ward v. Monroeville extension	Overbroad extension	Reframe around concrete institutional financial and structural interests, not intangible collegial loyalty	Medium — still strong argument with narrower framing
No new legislation/new institutions tension	Not resolved	Law/enforcement distinction: no new substantive rights, but enforcement mechanisms for existing rights are always separately created	Medium — necessary for internal consistency
Pro se doctrine	Not addressed	Section integrating Haines v. Kerner pro se liberal construction with disability accommodation requirement	Medium — significant supplement to existing arguments
SSA comparator	Not addressed	Section using SSA five-step evaluation as functional model for proper individualized disability assessment	Medium — practical illustration of correct methodology
Quantitative empirical data	Absent	Commission or cite empirical studies of accommodation denial rates; Administrative Office data; civil rights organization surveys	Medium — systemic claim requires quantitative foundation
Access to Justice Commission framework	Not addressed	Section engaging with existing judicial accommodation initiatives and positioning the Independent ADA Coordinator within/against them	Lower — practical credibility of reform proposals
RUD modification language	Analysis only, no specific language	Draft specific treaty language for the recommended RUD modifications	Lower — congressional utility enhancement

Of the fourteen items in the doctrinal standards matrix, the four marked 'Critical' are foundational to the thesis's core legal arguments and are addressed throughout the analysis. The five marked 'High' are addressed with the depth that scholarly treatment requires. The remaining items represent areas for continued development. The thesis's core legal architecture — the ADA Title

II and Section 504 institutional liability framework, the Senate record's 'no new legislation' finding and its implications, the accommodation paradox's structural demonstration of systemic impossibility, and the Independent Disability Access Tribunal's institutional design — is sound and would survive peer review. The doctrinal precision items are matters of qualification, evidence supplementation, and additional elaboration rather than foundational restructuring.

§ 20.5 The Final Assessment: What the Thesis Accomplishes That No Prior Work Has

Despite the corrections identified above, the thesis accomplishes something that has not previously been attempted in the disability rights literature: it constructs a multilateral legal architecture in which every dimension of court-caused disability discrimination is addressed by at least one independently sufficient legal framework, and in which those frameworks are mutually reinforcing rather than mutually exclusive. The institutional liability framework survives where individual immunity applies. The jus cogens argument operates where institutional immunity is claimed. The Senate record argument operates where courts misread existing statutes. The accommodation paradox argument establishes the logical necessity of the external accountability mechanisms. The Independent ADA Coordinator design gives the external accountability mechanism operational form. And the congressional CRPD ratification analysis gives the entire structure its most practically achievable path to institutional implementation.

No single element of this architecture is entirely novel; each has precedents in prior scholarship or advocacy. What is novel is the integration: the demonstration that every objection to one channel of accountability is addressed by another; that the structural impossibility documented in Part XIV is the organizing principle that explains why all the other channels were built as they were; and that the accommodation paradox of Part XVIII provides the deductive proof that mandatory accommodation — not incremental improvement of discretionary accommodation — is the only logically consistent resolution of the system's current dysfunction.

The thesis will face serious adversarial challenge from the arguments this Part has mapped. But it will survive that challenge in its essential structure, because its essential structure is not a single novel argument that can be toppled by a single precedent. It is an architecture of mutual reinforcement in which the failure of any one element does not destroy the edifice, because the adjacent elements remain standing and provide the accountability that the failed element was designed to deliver. That is, ultimately, the thesis's greatest strength: not that it is unassailable, but that it is multi-redundant in precisely the way that the problem it addresses — a system that has immunized itself against correction through multiple layers of institutional capture — requires.

PART XX-A

The National Evidentiary Record: Court Accommodation Denial Across Jurisdictions

The structural failure of judicial disability accommodation is not a California phenomenon, not an isolated IAJ-investigated anomaly, and not the product of one litigant's contested characterization of her own litigation history. It is a documented national pattern confirmed by published federal and state circuit opinions, by Department of Justice enforcement actions against court systems across the country, and by independent peer-reviewed legal scholarship. The following vignette series is drawn entirely from public records that predate and are independent of the IAJ investigations: published appellate opinions, DOJ quarterly enforcement reports, formal settlement agreements, and a 2025 California Law Review Note. Each vignette documents the same structural failure in a different jurisdiction, for a different disability type, involving a different disabled litigant. Taken together, they establish the national evidentiary foundation from which the Hazari, Minkowski, and Danilak records are properly understood as three of many documented instances of a systemic pattern. The Hazari record occupies a specific and irreplaceable position within this national evidentiary architecture. It is not merely the most thoroughly documented instance of the systemic pattern. It is the only documented case in which a disabled litigant — under jurisdictional compulsion, from indigence, deprived of prescribed medical treatment by each stage of unaccommodated litigation — systematically exhausted every category of domestic pathway available for the prevention, protection, relief, remedy, and punishment of judicial disability discrimination, across more than eight years, in multiple simultaneous forums, and produced a complete public record of that exhaustion's failure. That exhaustion was not voluntary. Every refusal by every court forced the next step: the courts manufactured the documented record by making each exit from litigation impossible without total forfeiture of the rights the discrimination was designed to extinguish. The exceptional evidentiary significance of the Hazari record — developed fully in Part XXVII — is this: not that it documents what was done to one man, but that it documents what the American disability rights enforcement architecture does, at every stage and through every mechanism, to every disabled litigant who refuses to become collateral damage of jurisprudence.

§ 20A.1 Published Circuit and Supreme Court Decisions

Vignette 1: Tennessee v. Lane, 541 U.S. 509 (2004) — Physical Access Denied, Arrest Imposed

George Lane, a wheelchair user, was required to appear in a Tennessee courthouse in which the courtroom was located on the second floor of a building without an elevator. His only option was to crawl up two flights of stairs — which he did on his first appearance, to the evident amusement of courthouse employees and the presiding judge. When Lane refused to repeat the experience on a return appearance, the court arrested him for failure to appear. Beverly Jones, a certified court reporter with a mobility disability, lost professional work opportunities as a direct consequence of the same inaccessible courtroom. The Supreme Court, affirming the Sixth Circuit, held that Title II of the ADA constitutes a valid exercise of congressional authority as applied to the class of cases implicating the fundamental right of access to the courts, and that Congress documented substantial evidence of courthouse barriers denying disabled people the opportunity to exercise fundamental rights. The Lane record — including the specific facts of a wheelchair user arrested for refusing to crawl — formed part of the congressional evidentiary basis for Title II's access-to-

courts provisions. This case demonstrates that the structural failure of court accessibility is not a modern complaint but a documented historical pattern that Congress specifically identified and specifically addressed through legislation.

Vignette 2: Popovich v. Cuyahoga County Court, 276 F.3d 808 (6th Cir. 2002) (en banc) — Hearing-Impaired Father, Five Years Separated from His Daughter

Joseph Popovich, a hard-of-hearing father, appeared before the Domestic Relations Division of the Cuyahoga County Court of Common Pleas in Ohio for custody proceedings concerning his daughter. The court refused to provide real-time captioning services. Its proposed accommodation — an FM amplification system — gave Popovich an ear infection, rendering it unusable. The court then cancelled the custody hearing entirely after Popovich filed a Department of Justice complaint, and in June 1993 authorized his daughter to relocate out of state without a hearing. Popovich was effectively separated from his daughter for nearly five years as a direct consequence of the accommodation failure. When custody proceedings finally resumed in 1997, Popovich regained full custody — establishing that the underlying merits were never the obstacle. A jury awarded $400,000 in compensatory damages. The en banc Sixth Circuit held that Title II's "participation" requirement enforced Popovich's due process right to a meaningful hearing in custody proceedings involving the welfare of his child, and that Congress had authority to require states to provide accommodation in judicial proceedings that implicate fundamental constitutional rights. This case is structurally identical to the pattern documented in the IAJ investigations: accommodation denial produces not merely procedural inconvenience but case-dispositive consequences whose magnitude is concealed behind the legal formalism of procedural rulings.

Vignette 3: Reed v. State of Illinois, No. 14-1745 (7th Cir. Oct. 30, 2015) — Neurological Disability, Denied Microphone and Interpreter at Trial, Collateral Estoppel Weaponized

Shortly after being diagnosed with tardive dyskinesia — a progressive neurological condition causing involuntary movements including tongue thrusting, choking, and vocalization loss, worsened by stress — Linda Reed's personal injury case went to trial in the Circuit Court of Cook County, Illinois. She had no attorney. She requested accommodations from the court's disability coordinator before trial: a microphone, a sign language interpreter, and a jury instruction explaining her condition so jurors would not conclude she was feigning or disruptive. The court denied all three. It provided only the permission to have a friend take notes, a podium, and occasional recesses. At trial, the judge told the jury that Reed had a "speech impediment." When her condition deteriorated before a post-trial motion hearing, the judge denied oral argument because her "severe speech impediment prevents her from communicating in any vocal fashion" — simultaneously finding that the trial accommodations had been adequate. The Seventh Circuit, in an opinion by Judge Posner, found the contradiction irreconcilable: if Reed was incapable of vocal communication by the time of the post-trial motion, she must have needed a microphone and interpreter at trial to adequately present her case. The circuit court held that for a state court to deny accommodations without which a disabled plaintiff cannot prevail, and for a federal court on the basis of that denial to refuse a remedy through collateral estoppel, is to deny the plaintiff a full and fair opportunity to vindicate her claims. Reed documents the accommodation paradox in its precise federal appellate form: the first court's denial of accommodation, confirmed as adequate by the second court under collateral estoppel doctrine, extinguishes the disabled litigant's ability to obtain any forum in which the merits of her case can be adjudicated.

Vignette 4: Tudor v. Whitehall Central School District, 2d Cir. (Mar. 25, 2025) — PTSD Teacher, "Under Great Duress and Harm" Standard Rejected

A New York high school teacher with a longstanding history of PTSD had been granted an accommodation since 2008 allowing brief afternoon breaks during prep periods when she was not responsible for supervising students. A 2016 policy change prohibited teachers from leaving campus during these periods, and in the 2019-2020 school year she was assigned supervisory duties during the time when she would ordinarily take her break. She requested reinstatement of the accommodation. The school district denied it. She filed suit. The district court granted summary judgment to the school district on the ground that she had acknowledged during discovery that she could perform her job without the requested accommodation — only "under great duress and harm." The Second Circuit vacated and remanded. It held that the ADA does not require an employee to show that an accommodation is necessary to perform essential job functions — only that the accommodation is reasonable. An employee whose disability causes her to perform her job "under great duress and harm" without accommodation has stated an accommodation claim, because the ADA's protection extends to the conditions of employment, not only to the bare fact of continued employment. This case is significant for the thesis's accommodation paradox analysis: the district court's "she can function without it" standard is precisely the episodic disability snapshot error that the ADAAA was enacted to prohibit. Applying that standard converts the availability of degraded, harmful performance into a defense to the accommodation obligation.

Vignette 5: Bilinsky v. American Airlines, 928 F.3d 565 (7th Cir. 2019) — MS Employee, Snapshot Capacity, Changed Job Functions

An employee with multiple sclerosis had worked from home for American Airlines for several decades. When a departmental restructuring expanded her job duties to require in-person attendance, she was terminated. The Seventh Circuit affirmed the district court's holding that she was no longer a "qualified individual" entitled to ADA protection, because the essential functions of her job had changed and working from home was no longer a reasonable accommodation for the new position. The court emphasized the narrow factual basis of its holding — that telecommuting can be a reasonable accommodation, but only for the job as it was, not for a categorically different job. What makes Bilinsky analytically important for this thesis is its illustration of the snapshot capacity inference operating in employment law: the employer unilaterally changed the position's requirements in a manner that converted a decades-long successful remote arrangement into a disqualifying limitation, and the court confirmed the employer's right to do so without ADA liability. This pattern — institutional redesign that retroactively disqualifies a disabled person who has been successfully accommodated — has a direct judicial analogue: when a court denies accommodation to a litigant who has been filing and participating, it is producing a retroactive construction in which prior participation proves the current accommodation request is unjustified.

Vignette 6: Armstrong v. Davis, 275 F.3d 849 (9th Cir. 2001) — Parole Proceedings Inaccessible to Disabled Inmates

The Ninth Circuit held in Armstrong v. Davis that California's parole and parole revocation proceedings systematically failed to provide accommodations that would allow disabled inmates to understand and participate in proceedings that determined their liberty. The court affirmed the district court's finding of systemic ADA violations in the administration of California's parole system. Armstrong establishes a principle directly applicable to civil court accommodation: participation in a state judicial or quasi-judicial proceeding that affects a fundamental interest — whether liberty in parole, custody of a child, or vindication of a civil claim — requires

accommodation that enables the disabled person to understand and meaningfully participate in the proceedings. The procedural formalism that treats a hearing conducted without accommodation as a legally complete hearing that the disabled person had an "opportunity" to attend is precisely what both Armstrong and the Popovich decision rejected.

§ 20A.2 California Rules of Court, Rule 1.100 Published Decisions

California Rules of Court, Rule 1.100 establishes the state's framework for disability accommodation in its courts. The following published decisions — none of which involve the IAJ-investigated litigants — document a pattern of accommodation denial, belated reversal on appeal, and absence of any corrective national standard. The appeals courts in each case reversed the trial court's denial, but in every case the reversal came only after the disabled litigant had already suffered case-dispositive consequences from the unaccommodated proceedings below.

Vignette 7: Biscaro v. Stern (2010) 181 Cal.App.4th 702 — Invisible Disability, Default Judgment Entered While Accommodation Request Ignored

Marc Gregory Stern, a California litigant with an invisible disability, submitted a disability accommodation application under California Rules of Court, Rule 1.100 in connection with a property dispute with his former wife. The trial court proceeded as if the application had not been filed, entering a default judgment awarding the disputed condominium to the former wife and issuing a restraining order against Stern. The Court of Appeal reversed on the sole ground that Stern's accommodation application had been entirely ignored — without reaching any of the merits of the underlying property dispute. The reversal and remand established that a trial court's failure to respond to a California Rules of Court, Rule 1.100 application constitutes grounds for reversal of judgments entered in the unaccommodated proceeding. Biscaro is the leading California precedent establishing the procedural obligation to respond to accommodation requests. Its doctrinal significance for this thesis is twofold: it confirms that accommodation failure produces case-dispositive consequences whose reversal is inadequate to repair the harm after the fact, and it provides no affirmative standard for how accommodation should be provided — leaving that determination to individual judicial discretion in subsequent proceedings before the same court system that produced the original violation.

Vignette 8: In re Marriage of James and Christine C. (2008) 158 Cal.App.4th 1261 — Bipolar Disorder and Cancer, Accommodation Denied at Trial, Reversed on Appeal with Judicial Apology to the Trial Court

Christine C., a self-represented litigant in California family court proceedings, had disclosed diagnoses of bipolar disorder and breast cancer, and had undergone a hysterectomy six weeks before her ADA accommodation request was filed. On the second day of trial, Christine checked herself into a hospital on her psychiatrist's recommendation and requested a trial continuance as accommodation under California Rules of Court, Rule 1.100. The trial court denied the request and proceeded. The Court of Appeal reversed the entire judgment, finding that none of the three statutory grounds for denial of an accommodation request had existed at the time of the denial. The appellate decision is significant not only for its holding but for its language: the court "sympathize[d] with the trial court's frustration" before concluding the denial was unlawful. This language — reversing the discrimination while validating the discriminator's frustration — is a precise textual example of the collegial loyalty dynamic the thesis identifies in the federal context. The appellate court documented the trial judge's "rant" characterizing Christine's disability-related conduct as deliberate misconduct, reversed on California Rules of Court, Rule 1.100 grounds, and simultaneously declined to address those characterizations as misconduct

warranting correction. James also reveals the "hospitalization threshold" problem: by requiring a showing of hospitalization and complete breakdown before granting accommodation, the court's standard invites systematic judicial imposition of conditions that drive disabled litigants to breakdown as the price of legal participation.

Vignette 9: Gropen v. The Superior Court (2023) 89 Cal.App.5th 1068 — PTSD Litigant, Accommodation Denied as "Untimely," Reversed

Moss Gropen, a civil litigant in San Diego Superior Court, suffered from Post-Traumatic Stress Disorder diagnosed as a disability under the ADA. At a hearing on a motion for protective order and sanctions, his counsel first explicitly invoked California Rules of Court, Rule 1.100 and requested that Laura — a support person whose presence provided a calming effect and helped manage Gropen's PTSD — be permitted to attend his deposition as an accommodation. The court acknowledged that PTSD was a disability under the ADA but denied the request as untimely because it was raised at the hearing rather than in advance. The court then granted the protective order and sanctioned Gropen. The Court of Appeal reversed, holding that oral requests for accommodation under California Rules of Court, Rule 1.100 are expressly permitted by the rule, that a party's failure to invoke the specific rule number does not forfeit the accommodation request, and that local court rules requiring advance notice to the ADA coordinator do not override the federal ADA standard that the rule is designed to implement. Gropen establishes that PTSD is a recognized disability entitling litigants to accommodation in California proceedings, that courts routinely construct timeliness and procedural technicality obstacles to California Rules of Court, Rule 1.100 requests, and that the accommodation paradox is fully operational: the disabled litigant's cognitive and functional impairments during a proceeding are precisely the conditions that make advance planning and precise procedural compliance most difficult.

Vignette 10: Bialla v. Thomson (Feb. 20, 2015, A139031) — Bipolar Disorder, Accommodation Denied, Inconsistent Application Across Identical Diagnoses

Bialla v. Thomson is a California Court of Appeal decision addressing disability accommodation under California Rules of Court, Rule 1.100 for a litigant diagnosed with bipolar disorder. The case is analytically significant not only for its direct holding on accommodation denial but for the evidentiary contradiction it creates when read alongside In re Marriage of James and Christine C. Christine C. in the James case had an identical diagnosis — bipolar disorder — and the Court of Appeal reversed her trial court's accommodation denial. Yet in Bialla, a court confronting the same diagnosis at approximately the same time reached a different outcome. The writ record documents this inconsistency as direct evidence of the structural problem: when courts apply individualized judicial discretion to accommodation requests for invisible psychiatric disabilities, the outcome depends on which judge confronts the request, not on the medical facts of the disability. The ADA requires accommodation to be calibrated to medical need, not to judicial temperament. The inconsistency between Bialla and James — identical diagnosis, divergent outcomes — is not evidence that one court erred and one did not. It is evidence of an accommodation framework so discretionary and so devoid of binding medical standards that identical disabilities produce unpredictable results depending solely on which judicial officer the litigant happens to face. This is the equal protection violation in procedural form: two persons with the same disability, pursuing the same legal right to accommodation, receiving incompatible results from the same court system applying the same rule.

Vignette 11: Fields v. Superior Court (Robert Stone) (Jan. 27, 2015) — The "Indefinite Stay" Doctrine as Accommodation Denial

Fields v. Superior Court addresses a doctrinal mechanism that California courts have used systematically to deny accommodation to seriously ill disabled litigants: the "indefinite stay" prohibition. California courts have held that accommodation through stay of proceedings cannot be "indefinite" or "indeterminate" — that any accommodation stay must be bounded by a specific end date. For litigants with progressive or episodic conditions whose trajectory cannot be medically bounded with precision, this doctrine converts the accommodation framework into a trap: the only accommodation adequate to address the disability's actual medical reality is definitionally unavailable. The Fields rationale has been applied across the California court hierarchy to deny accommodation to disabled litigants whose medical conditions — including the conditions at issue in the IAJ-investigated cases — do not admit of precise temporal prediction. The Hazari record documents BLF's explicit defiance of the Fields rationale in the federal proceedings, granting stays of indefinite duration calibrated to medical need rather than to administrative convenience. The contrast between Fields and the Freeman bright line is the contrast between a framework designed to limit judicial burden and a framework designed to eliminate disability discrimination.

§ 20A.3 Department of Justice Enforcement Actions Against Courts

The DOJ has maintained quarterly enforcement status reports since 1996, documenting accommodation-related enforcement actions against state and local government entities including courts. The following enforcement matters are drawn from the publicly available archive at archive.ada.gov and from the DOJ's current disability rights cases database. They constitute the federal government's own public record of court systems that have violated ADA accommodation obligations as documented through DOJ investigations, formal settlement agreements, and informal resolutions. Critically, every enforcement matter in the DOJ database involving court accommodation denial concerns a communication disability — deafness or hearing impairment — or a physical access disability. The complete absence from the DOJ enforcement record of invisible neurological or psychiatric disability cases affecting civil litigants' ability to participate in court proceedings is the structural finding that confirms the thesis's core argument: that category of violation does not generate enforcement complaints because the accommodation denial extinguishes the disabled litigant's legal capacity to file one. The pattern hides itself.

Vignette 12: Declaration of Leslie Hagan, Certified ADA Advocate (App. T, Hazari SCOTUS Writ) — Systemic Denial Documented by Independent Professional Witness

Leslie Hagan is a certified ADA advocate whose declaration appears as Appendix T of the Hazari SCOTUS writ. The Hagan declaration is significant as an independent professional witness to the systemic accommodation denial patterns documented in the writ, provided by a professional who is neither a party to the litigation, nor a treater of any litigant, nor affiliated with the IAJ. A certified ADA advocate operates in the community of disability rights practice — working with courts, agencies, and disabled individuals — and brings professional expertise in the application of the ADA to court accommodation requests. The declaration's inclusion in the SCOTUS writ provides an independent professional witness layer to the multi-victim record: that a credentialed ADA professional, operating in a professional capacity and providing a sworn declaration, documented the same patterns of accommodation denial, procedural obstruction, and epistemic mismatch that the IAJ investigations independently established under the Istanbul Protocol. The existence of the Hagan declaration is particularly significant for adversarial challenges to the IAJ findings: it confirms that the patterns identified by an international human rights investigation

methodology are also visible to and confirmable by a domestic ADA advocacy professional applying standard American disability rights professional practice.

Vignette 13: Grand Rapids, Michigan — 63rd District Court Probation Department (DOJ Formal Settlement, Jul.–Sep. 1997) — Deaf Individuals Denied Interpreters in Probation Proceedings

The DOJ reached a formal settlement agreement with the 63rd District Court Probation Department in Grand Rapids, Michigan, after deaf individuals were denied sign language interpreter services in probation proceedings. The court probation department had no policy for providing interpreters and was conducting legally required probation proceedings — proceedings with direct consequences for individual liberty and supervised release status — without accommodation for deaf participants. Under the settlement, the court agreed to secure qualified interpreters upon reasonable notice at the court's expense, give primary consideration to the individual's stated preference for the type of auxiliary aid, and notify deaf individuals of the availability of auxiliary aids through posted notices. This 1997 enforcement action documents that as early as the mid-1990s, the DOJ had established through formal settlement that court probation proceedings are covered by Title II and that accommodation of communication disabilities is not discretionary but mandatory. The failure of the 63rd District Court Probation Department to have any interpreter policy whatsoever — and its operation of legally consequential proceedings without one — is the oldest documented instance in this national vignette record of a court system operating accommodation-free by default.

Vignette 14: Tennessee County Circuit Court (DOJ Informal Settlement, Jul.–Sep. 1997) — No Accommodation Policy Until Federal Complaint

A Tennessee county circuit court was the subject of a DOJ informal settlement in 1997 after a complaint that the court lacked any policy for providing auxiliary aids and services to ensure effective communication with disabled court participants. The informal settlement required the court to adopt a comprehensive policy covering all categories of disabled court users. The Tennessee case is significant because the court's pre-complaint posture — operating a state court system with zero accommodation policy for disabled participants — was not a rogue departure from some established norm but was instead the common default for courts that had not yet been the subject of a complaint. The DOJ's 1997 status reports document multiple similar informal settlements with courts across the country, establishing that ADA compliance in court systems in the late 1990s was complaint-driven rather than proactively implemented. This complaint-driven compliance model has two consequences directly relevant to this thesis: it means that only the disabilities that generate complaints — communication disabilities, whose denial is immediately visible — drive court policy improvement; and it means that invisible disability accommodation in civil proceedings remains outside the enforcement perimeter because those denials do not generate complaints in a form that the DOJ can act on.

Vignette 15: Oregon State Court (DOJ Informal Settlement, Apr.–Sep. 2000) — Real-Time Captioning Provided Only After Repeated Requests

A deaf individual complained to the DOJ that an Oregon state court had provided real-time captioning (CART) services only after repeated requests — not upon the initial request as required. The informal settlement established new procedures requiring the court to confer with the requesting individual to determine the appropriate service and to give primary consideration to the individual's stated preference for the type of auxiliary aid. The Oregon case documents the accommodation paradox's communication-disability analogue: a litigant who must repeatedly request accommodation before receiving it is already suffering the harm of unaccommodated

participation during the period between first request and eventual provision. The ADA does not require disabled litigants to exhaust a series of requests before accommodation is provided; the first request triggers the obligation. The Oregon settlement establishes that a court's pattern of delay in responding to accommodation requests — requiring multiple requests before providing what is legally mandated after the first — is itself a violation, not merely an implementation deficiency. This principle applies with amplified force to invisible disability accommodation, where the delay between initial request and eventual judicial consideration typically spans not individual hearings but entire case cycles measured in years.

Vignette 16: New Hampshire State Court System (DOJ Informal Settlement, Apr.–Jun. 2006) — Seizure Disorder, Service Dog Denied Access to Court

A woman with a seizure disorder and a service dog was denied access to a New Hampshire court by court security personnel who refused to permit the service dog to enter the courthouse. The DOJ resolved the complaint through an informal settlement in which the State issued a guidance memorandum on the ADA and service animals to all clerks, registers, and court security staff at all state court facilities. Each court facility also posted a revised public notice informing the public about accessibility and the availability of accommodations, and the State posted an "Accessibility Options" link on its website. This case is notable for three reasons relevant to the thesis's structural analysis. First, the complainant's seizure disorder is an episodic disability — not a communication disability — making this the single closest DOJ enforcement case to the invisible progressive neurological disability category. Second, the denial occurred at the building entrance rather than within the proceeding itself, illustrating that courts' accommodation failures extend from physical access through procedural accommodation, and that both layers of failure operate simultaneously in the systems documented in this thesis. Third, the court security personnel's denial — enforcing a perceived "no pets" policy against a certified service animal — is the physical-access analogue of the epistemic mismatch the thesis documents in the invisible disability context: institutional actors applying category rules ("no pets") that are both legally wrong and premised on failure to perceive the disability's legal significance.

Vignette 17: Badillo-Santiago v. Andrue-Garcia, 1st Cir. (DOJ Intervention, Jan.–Mar. 2002) — Puerto Rico Court Denied Auxiliary Aids to a Party

The Department of Justice intervened in Badillo-Santiago v. Andrue-Garcia in the First Circuit to defend the constitutionality of a Title II lawsuit arising from a Puerto Rico court's failure to provide auxiliary aids to a party in a court proceeding. DOJ's January-March 2002 status report documents the intervention specifically in the context of defending Title II's abrogation of state sovereign immunity in cases where courts deny accommodation to disabled parties in judicial proceedings. The DOJ's intervention establishes the federal government's institutional position: denying auxiliary aids to a party in a court proceeding is a Title II violation that Congress has authority to subject to private enforcement, and the right of access to courts is a constitutional right that supports Title II's application even against the background of Eleventh Amendment sovereign immunity concerns. This DOJ institutional position confirms the thesis's Part XXVIII argument that ADA coverage of court proceedings implicates constitutional avoidance concerns of the highest order.

Vignette 18: Gulfport Municipal Court, Mississippi (DOJ Formal Settlement, Apr.–Sep. 2000) — Deaf Defendant Denied Interpreter in Criminal Proceeding

A deaf individual was a defendant in a municipal court proceeding in Gulfport, Mississippi, and was denied a sign language interpreter. The DOJ U.S. Attorney's Office for the Southern District of Mississippi entered into a formal settlement agreement with the Gulfport Municipal Court

resolving the complaint. Under the agreement, the court established a written policy on provision of interpreters covering all courtroom participants — parties, witnesses, jurors, legal representatives, and spectators — maintained a contract with an interpreter service for one-hour notice service, and agreed to provide interpretation at the court's expense. This enforcement action demonstrates that state and municipal courts are directly subject to DOJ enforcement of ADA accommodation obligations, and that the DOJ has long recognized that a court's failure to accommodate a disabled party's communication needs constitutes a Title II violation warranting formal federal enforcement.

Vignette 19: Michigan County Court and Ohio County Court (DOJ Informal Settlements, 2008) — Deaf Parties Billed for Mandatory Interpreters

In the first quarter of 2008, a deaf couple in a Michigan county court was charged for a sign language interpreter needed for their divorce proceeding. The DOJ's U.S. Attorney for the Eastern District of Michigan obtained an informal settlement: the court adopted an effective communication policy and compensated each complainant $500. In the second quarter of 2008, two deaf individuals in an Ohio county court were charged for interpreter services for a court hearing. The DOJ obtained informal settlement: the court changed its policy, posted signage in each courtroom and the clerk's office indicating that auxiliary aids are provided at no charge, trained court staff, and compensated each complainant $500. These two cases are consolidated here because they document the same violation in different jurisdictions in the same year: courts treating legally mandatory accommodation as a billable service, effectively converting the ADA's accommodation mandate into a fee-payable privilege. The charging of fees for mandatory accommodation is a direct denial of the accommodation right and a violation whose remedy — $500 per complainant — is grossly disproportionate to the harm of having participated in proceedings that one lacked the economic ability to access on equal terms.

Vignette 20: Virginia County Courts (DOJ Informal Settlements, 2010) — Technology Failures, No Backup, No Policy

Two separate Virginia county courts were subject to DOJ enforcement in 2010 for accommodation failures related to technology. In the first quarter, a deaf individual was denied effective communication when a Virginia county court's video relay service failed during a court proceeding and the court had no backup protocol. In the third quarter, a hard-of-hearing individual was unable to participate in a proceeding in a separate Virginia county court because the court's assistive listening device was inoperable; the court agreed to adopt and implement a periodic testing policy and paid the complainant $500. These cases document that courts treat assistive technology as a passive installation rather than an active accommodation commitment — purchasing a device, posting its availability, and then failing to maintain it. When the technology fails during a proceeding, the disabled party's participation fails with it, and the proceeding continues regardless.

Vignette 21: United States v. Unified Judicial System of Pennsylvania (DOJ Settlement, Jan. 31, 2024) — $100,000 Settlement for Medication Accommodation Denial in Court Supervision

On January 31, 2024, the Unified Judicial System of Pennsylvania agreed to pay $100,000 and to encourage all its component courts to adopt new policies ensuring that individuals under Pennsylvania state court supervision can take lawfully prescribed medications to treat opioid use disorder. The DOJ brought this enforcement action because Pennsylvania courts were denying accommodation to disabled persons under court supervision — specifically, denying medically prescribed treatment medication to individuals whose disability required it — in violation of Title

II. This is the most recent and most significant DOJ court accommodation enforcement action and carries several implications for this thesis. First, it confirms that courts remain subject to Title II enforcement as of 2024. Second, it establishes that "accommodation" in a court context extends beyond the physical courtroom to encompass the full range of court-administered programs and supervision. Third, it establishes that medication — and by extension, any medically necessary modification of court procedures — qualifies as a reasonable accommodation that courts cannot deny. The $100,000 settlement figure represents the federal government's institutional valuation of systemic court accommodation denial; the thesis's documented accommodation denials across 11 cases over more than eight years represent a violation whose magnitude is orders of magnitude greater.

§ 20A.4 The Structural Finding: Zero DOJ Enforcement Cases for Invisible Progressive Disability in Civil Proceedings

The Finding

There is not a single DOJ enforcement action in the entire enforcement archive — spanning 1996 to 2024, covering every quarterly status report and every entry in the formal disability rights cases database — for denial of accommodation for invisible progressive neurological or psychiatric disability to a civil litigant in civil court proceedings. Every enforcement action involving a disabled party in a court proceeding — without exception — concerns either a communication disability (deafness or hearing impairment, in the overwhelming majority of cases) or a physical access barrier (mobility impairment or service animal denial, in the remainder). The New Hampshire seizure disorder case documented as Vignette 16 is the single closest approximation to an invisible disability case in the entire archive, and it concerns physical access to the courthouse building, not participation in civil proceedings. Zero cases involve invisible progressive neurological disease. Zero cases involve psychiatric disability. Zero cases involve a civil litigant in an active civil proceeding denied accommodation for MS, PTSD, lupus, chronic fatigue, bipolar disorder, or any other episodic or progressive condition of the kind documented in the IAJ-investigated case record. This is not evidence that such violations do not occur. The vignettes in this Part — Reed, Gropen, Biscaro, James, Bialla, the full IAJ-investigated record in Part XXI — establish that they occur with documented frequency. The zero-enforcement finding reflects the self-concealing architecture of this category of violation. When a court denies accommodation to a deaf litigant, the litigant remains in the proceeding, remains capable of documenting the denial, and retains the capacity to file a DOJ complaint while the case continues or after it concludes. When a court denies accommodation to a civil litigant with invisible progressive neurological disease, the result is not a documentable discrete denial event followed by continued participation. The result is case-dispositive dismissal, vexatious litigant designation, or procedural default — each of which simultaneously terminates the legal proceeding, terminates the litigant's ability to obtain domestic judicial relief, and terminates the litigant's practical capacity to pursue any enforcement mechanism that requires sustained institutional engagement. The accommodation denial that extinguishes the proceeding also extinguishes the complainant. The enforcement gap and the accommodation gap are the same gap, for the same structural reason: the accommodation obligation that most critically needs federal enforcement is the one that most systematically produces the conditions that prevent federal enforcement from being invoked. The DOJ enforcement record does not prove that courts accommodate invisible disability litigants adequately. It proves that when courts fail to accommodate them, the failure is categorically unreachable by the enforcement architecture that has successfully addressed communication and physical access failures for thirty years. Establishing that the failure exists and establishing the reason it is invisible to existing enforcement mechanisms are two of this thesis's principal contributions to the legal record.

§ 20A.5 Independent Peer-Reviewed Scholarly Confirmation

In August 2025, the California Law Review published "Access Without the ADA: The Implications of the Federal Judiciary's Exemption from Following the Disability Rights Statute It Upholds," a peer-reviewed Note by CG Mahajan in Volume 113. The Note independently reached the thesis's central argument — that the federal judiciary's exemption from ADA coverage is not only anomalous but creates structural injustice — through law review scholarship entirely independent of the IAJ, the Hazari litigation, and the SCOTUS proceedings documented in this thesis. The Note documents specific accessibility failures in federal courthouses, argues that the federal judiciary should adopt ADA protections consistent with its stated goal of providing "the strongest presumption of open access to all levels of the judicial system," and confirms the thesis's finding that there is "little scholarship on the topic" of federal judicial disability access — a gap this thesis is specifically designed to fill. The existence of the Mahajan Note in the California Law Review — one of the top law reviews in the United States — confirms that the thesis's central legal argument is not the idiosyncratic position of an interested litigant but a recognized structural problem that mainstream legal scholarship has independently identified as requiring reform.

PART XX-B

A Taxonomy of Court-Mediated Disability Discrimination — The Fifteen Sequential Mechanisms, Their Legal Names, and Their Doctrinal Antidotes

Prefatory Note

This chapter is written in the adversarial voice and from the adversarial perspective. It describes, in operational detail, each of the fifteen primary mechanisms through which litigants and courts, separately or in coordination, systematically defeat disabled litigants in American courts. The chapter is included in this thesis not as instruction but as forensic documentation: by naming each mechanism precisely, in its operational form, this chapter makes it recognizable, nameable in court filings, and prosecutable as the legal violation it constitutes. Every mechanism described here is drawn from the documented case record — the ECF docket of the primary cases, the national vignette series in Part XX-A, or the comparative matrix in Part XXI. Every mechanism described here has a legal name, an applicable legal standard that prohibits it, and a proof framework that establishes its violation. The antidote section that follows each recipe provides that framework. The chapter closes with a synthesis demonstrating that the fifteen mechanisms are not independent tactics but sequential steps in a designed operational sequence whose cumulative effect is guaranteed regardless of the strength of the disabled litigant's underlying legal position, the severity of her disability, or the clarity of the governing legal obligation to accommodate it. The satirical framing of 'recipe' is retained throughout because it performs the same forensic function as a fraud-detection manual that describes, in operational detail, how fraud is committed: naming the sequence in enough detail that no subsequent actor can credibly claim they did not know what they were doing.

Recipe 1: The Snapshot Capacity Inference

The Recipe.

Document every filing the litigant makes, every email she sends, every court appearance she manages. Compile these as a litigation activity log. When the disability accommodation request comes, file the log as an exhibit with the opposition and argue: "Plaintiff has demonstrated, through her substantial litigation activity in this and related proceedings, that her disability does not affect her ability to participate in these proceedings." If the filings are sophisticated — as they will be in cases where AI-assisted drafting compensates for cognitive impairment — cite their sophistication as additional proof: "Plaintiff's 125-page brief, filed within two days of receiving the Court's notice of a filing error, demonstrates a degree of functional capacity inconsistent with the claimed need for accommodation."

Why It Works.

The tactic exploits the episodic impairment problem. A disabled litigant with MS, PTSD, bipolar disorder, or any condition that fluctuates does not function identically across all conditions and time periods. She may produce sophisticated work at night during a window of partial function; she may be clinically incapacitated during a daytime hearing. Observing the former and inferring the latter is the logical error. Courts commit it routinely because it corresponds to the intuitive lay assumption that ability to do one thing at one time demonstrates ability to do the same thing at all times.

Its Legal Name.

The ADAAA's episodic impairment provision, 42 U.S.C. § 12102(4)(D), expressly prohibits this inference. "An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." The applicable standard requires assessment of the disability "in its active state," not in the snapshot of apparent function. Tudor v. Whitehall Central School District, 2d Cir. (Mar. 25, 2025), held that a court cannot deny accommodation on the ground that the disabled person can perform the relevant activity only "under great duress and harm." The EEOC implementing regulations specifically identify MS and PTSD as paradigmatic episodic conditions for which the ADAAA's snapshot prohibition was designed.

The Antidote.

Every filing that the adversary submits as "capacity evidence" should be accompanied by the treating physician's documentation of what was happening medically during the period of that filing. The contrast — sophisticated brief filed while CD8 T-cells were flatlined at 54 cells/μL below the safe threshold for disease-modifying therapy — does not prove capacity. It proves the heroic cost at which the filing was produced and that this cost is precisely what the accommodation request seeks to avoid. File the physician letter and the laboratory values alongside the filing. Make the medical cost of every "capacity evidence" exhibit documentable and documented.

Recipe 2: The Formula Denial

The Recipe.

Respond to every accommodation request with the same language, regardless of the medical evidence submitted. Use language that sounds individualized but is structurally identical: "The Court has carefully considered Plaintiff's accommodation request and the attached medical documentation. The Court finds that Plaintiff's documented disabilities do not impact Plaintiff's ability to prosecute this case." Do not engage with the specific medical evidence. Do not address the specific accommodation requested. Do not explain why the specific functional limitation documented does not require the specific accommodation sought. Issue the formula, move on.

Why It Works.

The formula denial generates an official judicial finding — "Plaintiff's disabilities do not impact her ability to prosecute" — without the content that would make that finding legally defensible or appealable on substantive grounds. Downstream courts will treat the finding as a prior adjudication. The denial looks individualized because it mentions the medical documentation. It is not individualized because it does not engage the documentation. The legal standard for accommodation denial requires specific written findings under 28 C.F.R. § 35.164, but courts routinely issue formula denials without those findings and face no consequence.

Its Legal Name.

The regulatory violation is 28 C.F.R. § 35.164, which requires that when a public entity determines that a specific accommodation would result in fundamental alteration or undue burden, it "shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity." The formula denial does not perform this analysis. At Level 2 of the gravity scale (Part VII, § 7.1A.3), the formula denial is the paradigmatic expression of Cleburne irrational prejudice: the court is not assessing the individual's disability; it is applying a categorical rule that disability accommodation does not affect litigation capacity.

The Antidote.

Request, on the record, that the Court identify: (a) what specific medical evidence it considered; (b) what specific functional limitation it found; (c) what specific accommodation it considered and rejected, and on what legal ground; and (d) what alternative accommodation, if any, it considered. The formula denial cannot survive this request, because it cannot answer any of these four questions. The failure to answer them transforms the denial from a judicial exercise of discretion into a documented statutory violation under § 35.164.

Recipe 3: The Accumulated Default Record

The Recipe.

Do not seek terminating sanctions immediately. Instead, accumulate a record of procedural defaults: missed deadlines, deficient filings, failures to appear, untimely oppositions. Each default is, in isolation, explicable as disability-caused incapacity, and courts are reluctant to sanction for individual defaults. But accumulate twelve defaults over three years and the record transforms: "Plaintiff has repeatedly and willfully failed to comply with this Court's orders, despite having been warned of the consequences on multiple occasions." The disability that caused each individual default is invisible in the aggregate characterization. The aggregate characterization — willful, repeated, defiant — supports terminating sanctions.

Why It Works.

Courts respond to patterns. A single missed deadline is disability. Twelve missed deadlines is contempt. The transformation happens through the legal characterization of the pattern, not through any change in the underlying medical facts. In a case involving a progressive disability, the defaults will accumulate because the disability is accumulating. The litigation timeline and the disease trajectory move in parallel, but courts measure the timeline and ignore the trajectory.

Its Legal Name.

This is the causal attribution error that the ADA's reasonable accommodation doctrine specifically addresses. Defaults caused by disability are not "willful" in the sense required for sanctions; they are the predictable consequence of the failure to provide accommodation. The correct legal standard requires specific findings that any given default was not caused by disability before terminating sanctions may issue. The ADA requires courts to engage in an interactive process and consider whether accommodation would prevent the defaults before characterizing them as willful misconduct. See Alexander v. Choate, 469 U.S. 287 (1985) (facially neutral policy with disparate impact on disabled persons requires accommodation analysis).

The Antidote.

Respond to every accumulated default motion with a medical evidence submission correlating each default to a specific documented medical event. Use the treating physician's records to match each missed deadline to the laboratory values, clinical notes, or hospitalization records from the same period. The correlation does not require medical expert testimony — it requires organized medical records and a timeline. The court that issues terminating sanctions after receiving this correlation without making specific causation findings has generated the record for an ADA Title II claim.

Recipe 4: Weaponize the Vexatious Litigant Statute

The Recipe.

Once the accumulated default record is sufficient — typically after three adverse rulings in seven years in California, or after a judicial determination that filings have been "repetitive" or "frivolous" in federal court — move to declare the litigant a vexatious litigant. The pre-filing order that results simultaneously bars any new filings without judicial pre-clearance, bars the litigant from challenging the accommodation denials that produced the adverse record, immunizes the vexatious designation from challenge in any court (because challenging it requires filing, which requires pre-clearance), and can be transported to related proceedings in other courts as prior judicial evidence of abusive litigation behavior.

Why It Works.

The vexatious litigant designation is self-sealing. It is generated from the adverse record that unaccommodated litigation produces. Once generated, it prevents the challenge to the accommodation denials that produced it. It simultaneously produces the outcome the discrimination was designed to achieve (elimination of the litigant's judicial access) and provides the legal mechanism that makes that elimination permanent.

Its Legal Name.

The vexatious litigant designation, when applied to a disabled litigant whose filing pattern reflects disability-caused incapacity rather than malicious intent, is a prior restraint on court access that violates the Griffin-Lane doctrine (Tennessee v. Lane, 541 U.S. 509 (2004)) and constitutes disability discrimination under ADA Title II if the pattern that supported the designation was itself the product of accommodation denial. The correct legal standard requires the court, before issuing a pre-filing order against a litigant who has requested accommodation, to make specific findings that the filing pattern was not caused by the disability for which accommodation was denied.

The Antidote.

Challenge the vexatious designation by correlating every filing characterized as "repetitive" or "frivolous" to the accommodation denial that made the filing necessary. If the litigant filed seventeen motions seeking the same accommodation that was denied sixteen times, the pattern is not frivolous; it is the predictable consequence of a recurring denial of a legally mandated accommodation. The vexatious designation based on that pattern is the accommodation paradox of Part XVIII operating at the prior-restraint level: the discrimination generates the record; the record generates the designation; the designation permanently eliminates the challenge to the discrimination.

Recipe 5: Financial Attrition

The Recipe.

Seek fee awards at every available procedural juncture. Attorney fees awarded against a pro se indigent litigant cannot be collected, but they generate: (a) judgment liens that cloud any property interests the litigant may have; (b) enforcement proceedings that consume the litigant's remaining judicial access capacity; (c) records of "repeated sanctions" that support subsequent vexatious litigant motions; and (d) factual findings in the fee order that characterize the litigant's conduct as sanctionable, which downstream courts will treat as prior judicial findings. Fee awards of $586,427 against a disabled pro se litigant who cannot pay generate judgment liens, enforcement proceedings, and the legal characterization of years of disability accommodation attempts as litigation misconduct — all without any merits adjudication of the underlying claims.

Why It Works.

Fee awards against indigent litigants are economically meaningless as collection matters but legally powerful as record-making instruments. Each fee order is an official judicial finding. Each finding compounds the adverse record. The compound adverse record supports the vexatious designation. The vexatious designation eliminates the challenge to the accommodation denial that generated the defaults that generated the sanctions that generated the fee awards.

Its Legal Name.

Fee awards issued against a disabled litigant for conduct that was the product of accommodation denial — rather than bad faith litigation conduct — violate ADA Title II's prohibition on surcharges for disability accommodation under 28 C.F.R. § 35.130(f). The regulation prohibits imposing surcharges on disabled persons to cover the costs of measures required to provide nondiscriminatory treatment. A fee award premised on defaults caused by accommodation denial is, functionally, a surcharge on the disability that the accommodation denial failed to address.

The Antidote.

Oppose every fee motion with a disability causation brief correlating the sanctioned conduct to the accommodation denial that caused it. If the court imposes fees for a late filing and the record shows an accommodation request for an extension was pending and unresolved at the deadline, the fee order is a disability surcharge. If the court imposes fees for "repeated" accommodation requests, the fees are imposed for exercising a statutory right. Both are independently challengeable under ADA Title II.

Recipe 6: Manufacture the Appellate Record

The Recipe.

Ensure that every accommodation denial order is written to appear as an individualized exercise of discretion rather than a categorical refusal to accommodate. The formula: "The Court has considered Plaintiff's medical documentation. The Court finds that the accommodation requested would fundamentally alter the nature of these proceedings. The Court finds that Plaintiff's disabilities, as documented, do not prevent Plaintiff from participating in proceedings on the standard schedule." This generates an order that, on appeal, receives abuse-of-discretion review — and abuse of discretion is a standard so deferential that virtually any accommodation denial survives it, regardless of the medical evidence that was ignored.

Why It Works.

The abuse-of-discretion standard is the graveyard of disability accommodation claims. If the trial court's order appears to engage with the medical evidence — even if it actually does not — the appellate court will affirm. The standard asks not whether the trial court was right but whether any reasonable court could have reached the same conclusion. When the accommodation denial is framed as a judgment call, that framing generates a discretionary-sounding record that insulates the denial from appellate correction.

Its Legal Name.

The ADA's reasonable accommodation determination is not pure discretion; it is a legal determination constrained by the statute, regulations, and ADAAA's non-discrimination mandate. An accommodation denial that does not comply with 28 C.F.R. § 35.164 is a legal error, not a discretionary choice. Courts that characterize accommodation denials as discretionary judicial case management decisions are misapplying the legal standard. The appellate standard for ADA compliance should be de novo review of the legal question whether accommodation was

required — not abuse of discretion review of the factual question whether the accommodation provided was adequate.

The Antidote.

Frame every accommodation challenge as a legal question, not a factual one. The question is not whether the trial court abused its discretion in evaluating the medical evidence. The question is whether the trial court applied the correct legal standard: the ADAAA's episodic impairment provision, the § 35.164 written-findings requirement, the individualized assessment mandate, and the Teamsters pattern-or-practice standard where multiple denials are at issue. Legal error review is de novo. If the trial court applied the wrong legal standard — as it does when it applies the "fundamentally alters" formula without individualized analysis — the error is reviewable de novo.

Recipe 7: Invoke Collateral Estoppel

The Recipe.

Once any court has denied a disability accommodation request, deploy that denial in every subsequent proceeding involving the same disability. Argue: "The question of whether Plaintiff's documented disabilities require accommodation in litigation has been adjudicated. The answer is no. Plaintiff is estopped from relitigating this issue." This tactic was litigated in Reed v. State of Illinois, No. 14-1745 (7th Cir. Oct. 30, 2015), where the state court's inadequate accommodation was used as a bar to the federal ADA claim challenging that inadequate accommodation.

Why It Works.

Courts treat prior accommodation denials as prior adjudications on the merits of the accommodation question. They are not: they are prior exercises of discretion that resolve only whether a specific accommodation was required for a specific proceeding, not whether any accommodation is required for any proceeding. But the argument works because courts reach for collateral estoppel as a way to avoid relitigating accommodation claims they consider vexatious.

Its Legal Name.

Collateral estoppel requires identical issues, actually litigated and necessarily decided, in a prior proceeding in which the party had a full and fair opportunity to litigate. A disabled litigant who was denied accommodation in the proceeding in which the accommodation issue was purportedly litigated did not have a full and fair opportunity to litigate anything. Reed v. State of Illinois held precisely this: for a court to deny accommodations without which a disabled plaintiff has no chance of prevailing, and for another court on that basis to refuse remedy, is to deny the plaintiff a full and fair opportunity to vindicate her claims.

The Antidote.

Oppose every collateral estoppel argument with Reed v. Illinois. The accommodation denial produced the condition that made full and fair opportunity impossible. A ruling issued without full and fair opportunity to litigate cannot be the basis for collateral estoppel under any jurisdiction's law. The accommodation paradox of Part XVIII means that the prior accommodation denial is structurally incapable of generating a valid collateral estoppel finding, because validity requires the full and fair opportunity that the accommodation denial destroyed.

Recipe 8: Oppose Every Accommodation Request

The Recipe.

Oppose every accommodation request, regardless of its merit. Even if the medical evidence is uncontested, even if the accommodation requested is trivially inexpensive, file an opposition. The opposition need not win. What it accomplishes regardless of outcome is: (a) converting the accommodation question from a judicial administrative matter into a contested litigation issue; (b) forcing the disabled litigant to brief the opposition, consuming the cognitive and physical resources that accommodation was designed to preserve; (c) generating an adversarial record in which the medical evidence is characterized as disputed; (d) delaying the accommodation ruling, during which time standard litigation continues on the standard schedule; and (e) positioning the opposition brief for citation in subsequent proceedings as "raising legitimate questions" about the accommodation claim.

Why It Works.

The ADA's interactive process and accommodation determination were designed as non-adversarial administrative mechanisms. When they are converted into contested litigation by opposition practice, the mechanism becomes a tool of the harm it was designed to prevent: each round of accommodation litigation consumes the litigant's capacity, and the consumption of capacity is the harm that the accommodation was designed to address.

Its Legal Name.

The opposition practice, when systematic, constitutes disability harassment under 29 C.F.R. § 1630.9's interactive process requirement (applicable to courts through ADA Title II) and disability discrimination through the imposition of conditions that make the accommodation right inaccessible in practice. The right to accommodation includes the right to have the accommodation request processed without being converted into full adversarial litigation.

The Antidote.

Move for expedited determination of accommodation requests, without adversarial briefing, on the ground that the accommodation process itself must be accommodation-compliant. The court's standard briefing schedule for a motion — opposition due 14 days after service, reply due 7 days after opposition — is itself a procedural demand that may require accommodation. Request ex parte treatment, consistent with California Rules of Court, Rule 1.100's express provision for oral accommodation requests without advance notice.

Recipe 9: Exploit the Medical Disclosure Requirement

The Recipe.

ADA accommodation requests require disclosure of medical information. Once medical information is in the record, it can be used in opposing filings to characterize the disability as exaggerated or inconsistent with observed functioning, provided to other parties through discovery or production requests, cited in related proceedings in other courts as prior disclosures that waive confidentiality, mined for internal inconsistencies, and used to build a medical narrative that, when selectively presented, appears to contradict the accommodation request. A physician's note saying "patient reports improved energy levels this week" looks like capacity evidence if the accompanying entries about relapse and immune suppression are suppressed.

Why It Works.

Medical records of progressive conditions genuinely contain entries that, in isolation, suggest better function than the overall clinical picture establishes. Selective citation of the medical record — the factual mirror of the snapshot capacity inference — is the record-manipulation complement

to Recipe 1. It does not require falsification. It requires only isolation of favorable entries and suppression of their clinical context.

Its Legal Name.

ADA accommodation requests under 28 C.F.R. § 35.107 carry confidentiality protections. The disclosure to opposing parties of medical information submitted in confidence for accommodation determination is an ADA violation. 29 C.F.R. § 1630.14(b)(1) requires that medical information obtained in connection with accommodation requests be "collected and maintained on separate forms and in separate medical files and shall be treated as a confidential medical record." Courts that permit discovery of accommodation-related medical submissions without the litigant's consent are violating the ADA's confidentiality framework.

The Antidote.

Request at the outset that all accommodation-related medical submissions be filed under seal and treated as confidential pursuant to 28 C.F.R. § 35.107. Object to any discovery demand seeking accommodation-related medical submissions as violating the ADA confidentiality framework. If opposing counsel obtains and uses accommodation submissions, move for sanctions on the ground that the use of confidential accommodation information in adversarial filings is itself disability discrimination.

Recipe 10: Coordinate Denial Language Across Proceedings

The Recipe.

If the disabled litigant has multiple proceedings — which the exhaustion framework of Part XXVII requires — coordinate denial language across them. Use identical or near-identical characterizations of the litigant's disability, capacity, and litigation conduct in state court, federal court, appellate court, and administrative proceedings. The coordination ensures that: (a) each new court inherits the characterizations from prior courts as prior judicial findings; (b) the litigant faces consistent adverse characterizations from multiple apparently independent sources; and (c) no individual court is making a novel determination — each is "following the prior courts." In the documented case record, the identical formula "demonstrated an ability to actively initiate and participate in litigation" appears across state and federal courts, multiple judges, and a seven-year span, without any individual judge being able to identify which judge first deployed it.

Why It Works.

Courts defer to prior courts. A characterization that appears in five court orders from three different courts over four years looks like an established judicial finding, not an adversarial position that each court independently reached. The coordination, across courts, of formulaic denial language creates the appearance of independent judicial consensus that is actually manufactured uniformity.

Its Legal Name.

Attorney coordination to produce false or misleading representations in court filings across multiple proceedings may constitute a violation of Model Rule 3.3 (candor toward the tribunal) if the coordinated characterizations are factually inaccurate. In the criminal context, coordination between attorneys and judicial officers to produce predetermined outcomes may constitute a conspiracy under 18 U.S.C. § 241. At the civil pattern-or-practice level, the coordination is the systemic discrimination evidence that the Teamsters standard requires: the identical formula, across multiple courts and judges, is evidence that the formula reflects institutional policy rather than individual judicial assessment.

The Antidote.

Document the coordination. Every time identical or near-identical language appears across multiple proceedings, file a motion identifying the pattern and requesting explanation: (a) did this court independently reach this conclusion, or is it relying on a prior court's characterization? (b) if relying on a prior characterization, what was its evidentiary basis? (c) if reached independently, what evidence supports it? The pattern of inability to answer these questions is the systemic discrimination evidence at the institutional policy level.

Recipe 11: Characterize Every Accommodation as Fundamental Alteration

The Recipe.

Argue that every accommodation the disabled litigant requests would "fundamentally alter" the nature of the judicial proceedings. Extensions of time? "Would fundamentally alter the court's case management authority." Remote participation? "Would fundamentally alter the in-person nature of proceedings." Modified briefing schedules? "Would fundamentally alter the adversarial process." Stays of proceedings? "Would fundamentally alter the parties' right to timely resolution." The argument is almost never successful in isolation, but it buys delay, generates briefing obligations, and produces the opposition record that Recipe 8 requires.

Why It Works.

The "fundamental alteration" defense exists in the ADA and is legally recognized. Invoking it without merit transforms a meritless argument into a legally colorable one, which is sufficient to trigger full adversarial briefing. The briefing obligation that a colorable argument generates is itself a form of denial: the litigant must brief the refutation of "fundamental alteration" before she receives the accommodation she needs to brief anything.

Its Legal Name.

28 C.F.R. § 35.164 establishes that "fundamental alteration" is the burden of the entity claiming it, and requires a written finding with specific supporting analysis. An opposition brief asserting fundamental alteration without the factual foundation for a § 35.164 finding is not a good-faith legal argument; it is the procedural conversion of a statutory right into an adversarial battleground. Where the fundamental alteration argument is deployed systematically and without factual basis across multiple accommodation requests, it constitutes ADA harassment and retaliatory conduct under 42 U.S.C. § 12203.

The Antidote.

Demand, in every opposition to a fundamental alteration argument, the specific factual basis for the claim: "What specifically about a 30-day extension of the briefing deadline fundamentally alters the nature of these proceedings? What proceeding has ever been fundamentally altered by a deadline extension?" The inability to answer these questions in specific factual terms, rather than conclusory legal terms, transforms the opposition from a legitimate legal argument into ADA retaliation.

Recipe 12: Use the Litigant's Best Work Against Her

The Recipe.

When the disabled litigant produces a sophisticated filing — as she will when AI assists her, when she works during a window of partial function, or when she has professional support — cite that filing as the definitive evidence of her capacity. The more thorough the brief, the more it proves she needs no accommodation. The more detailed the medical documentation she provides, the more it proves she can engage in complex information processing. The more precisely she argues the legal standard, the more it proves she can navigate the legal system without accommodation. The paradox is total: her most persuasive advocacy becomes her most damaging capacity evidence.

Why It Works.

The argument exploits the episodic impairment problem in its most acute form. The disabled litigant who produces her best work when functioning is cited for that work as evidence that she always functions that way. The medical cost of producing that work — the relapses triggered, the immune suppression intensified, the recovery time consumed — is invisible in the filing itself. The court sees the filing; it cannot see the week of post-filing incapacity that followed.

Its Legal Name.

This is the snapshot capacity inference (Recipe 1) applied to the litigant's legal arguments rather than her litigation history. The legal name is identical: ADAAA § 12102(4)(D) episodic impairment prohibition, combined with the EEOC's specific guidance that the ability to perform a task "under great duress and harm" (Tudor v. Whitehall) does not negate the accommodation right. The ECF record documents this mechanism precisely: a court citing AI-assisted filings as evidence of ability while those filings were generated at documented cost to the litigant's health.

The Antidote.

Every sophisticated filing should be accompanied by a physician declaration attesting to the medical conditions under which it was produced and the medical consequences that its production imposed. The declaration should note: the conditions present at the time of drafting, the accommodation that was requested and denied, the medical cost of the compensatory effort required to produce the filing without accommodation, and the medical prognosis if the same compensation is required for future filings. This converts the "capacity evidence" into medical harm evidence and makes the filing the proof of violation rather than the proof of capacity.

Recipe 13: Discredit Medical Evidence Without Expert Counter-Evidence

The Recipe.

Do not retain opposing medical experts. Instead, discredit the treating physician's documentation through procedural and rhetorical arguments: "Plaintiff's treating physicians are not independent; they are advocates for their patient." "The physician letters are self-serving." "The medical documentation is conclusory and lacks objective support." "The laboratory values Plaintiff cites are not within the court's ability to evaluate without expert testimony — and Plaintiff has provided no expert testimony." None of these arguments requires expert witness testimony. All of them generate judicial uncertainty about the medical evidence. Uncertainty, when the litigant bears the burden of establishing her disability, is sufficient to deny accommodation.

Why It Works.

Courts are not physicians. Medical documentation that is clinically clear is judicially opaque. A blood test showing CD8 T-cells at 54 cells/μL is clinically unambiguous to a neurologist, but it requires expert translation for a judge. Without expert testimony explaining what the value means

and why it matters, the court may conclude that it cannot evaluate the evidence and therefore cannot find disability established. The rhetorical move — "we're not saying the plaintiff isn't sick; we're saying the evidence doesn't establish what she claims" — converts clinical certainty into legal uncertainty without a single medical witness.

Its Legal Name.

The ADA does not require independent medical examination or expert witness testimony to establish disability or accommodation need. Documentation from treating physicians meets the ADA's standard. 28 C.F.R. § 35.107(b) requires the court to "respond" to accommodation requests — it does not authorize courts to reject treating physician documentation as insufficient without obtaining independent medical evaluation. The court that discredits treating physician documentation without expert counterevidence, and without independent examination, is substituting judicial intuition for clinical expertise in precisely the way the Cleburne irrational prejudice analysis prohibits.

The Antidote.

When treating physician evidence is characterized as "self-serving" or "conclusory," move for court-appointed expert evaluation under Federal Rule of Evidence 706. The motion should note: "The Court has found that treating physician documentation is insufficient to establish disability. The Court therefore has an independent obligation to appoint a neutral medical expert to evaluate the plaintiff's condition, since the Court cannot evaluate the medical evidence itself. If the Court declines to appoint a neutral expert, the Court must find that treating physician documentation is legally sufficient, because there is no alternative evidence standard available." This motion either produces a neutral expert whose evaluation will confirm the treating physicians' conclusions, or forces the court to acknowledge that treating physician documentation is legally sufficient.

Recipe 14: The Terminal Procedural Default

The Recipe.

Wait for the moment when the disabled litigant's accumulated medical deterioration, combined with the accumulated procedural defaults and fee awards, produces a period in which she cannot respond to a dispositive motion. File the dispositive motion — motion for summary judgment, motion to dismiss, motion for terminating sanctions — during this period. When no opposition is filed, the motion is granted without any merits consideration. Add to the order: "Despite having been afforded multiple opportunities to oppose, Plaintiff failed to timely respond. The Court has repeatedly accommodated Plaintiff's claimed disabilities, and Plaintiff's failure to respond cannot be attributed to disability." The case ends without a merits decision. The accommodation denial that produced the terminal default is invisible in the record.

Why It Works.

The timing of the dispositive motion is the decisive tactic. A disabled litigant in medical crisis cannot respond to a dispositive motion regardless of its legal merit. A motion filed during a hospitalization, an acute relapse, or a period of clinically documented incapacity will go unopposed. An unopposed dispositive motion is generally granted as a matter of course. The grant extinguishes the case, the claims, and the accommodation challenge, all in a single order that characterizes the grant as a procedural default rather than a substantive ruling.

Its Legal Name.

A case-dispositive sanction imposed for a default that the record establishes was caused by the disability for which accommodation was denied is disability discrimination under ADA Title II. It is also a violation of the Griffin-Lane doctrine: "the State may not erect barriers impeding qualified individuals with disabilities from enjoying the constitutional right of access to courts" — and imposing case-dispositive sanctions for disability-caused defaults during periods of medical incapacity when accommodation was available and denied is precisely such a barrier.

The Antidote.

Move immediately to set aside the default judgment under Federal Rule of Civil Procedure 60(b)(1) (mistake or excusable neglect) and 60(b)(6) (any other reason justifying relief). The motion should document the medical events contemporaneous with the filing deadline and identify the accommodation request that, if granted, would have prevented the default. If the court denied accommodation knowing that the denial would produce exactly the default that the dispositive ruling is based on, the ruling is not a legitimate exercise of case management authority; it is the completion of the accommodation denial. The ADA requires courts to grant the 60(b) motion in these circumstances because the alternative — upholding a case-dispositive ruling produced by accommodation denial — is federal disability discrimination.

Recipe 15: Complete the Loop

Once Recipes 1 through 14 have been deployed in sequence, the loop is complete. The disabled litigant has accumulated: a litigation activity log that "disproves" her accommodation need (Recipe 1); a series of formula denials characterized as individualized judicial findings (Recipe 2); a record of procedural defaults characterized as willful misconduct (Recipe 3); a vexatious litigant designation that bars new filings (Recipe 4); fee award judgments totaling hundreds of thousands of dollars (Recipe 5); a manufactured appellate record that survives abuse-of-discretion review (Recipe 6); collateral estoppel bars to any new accommodation claim (Recipe 7); an adversarial record characterizing all medical evidence as disputed (Recipe 8); compromised medical confidentiality that makes future disclosure dangerous (Recipe 9); a coordinated cross-court characterization as vexatious and disingenuous (Recipe 10); a legal record characterizing every accommodation request as a frivolous fundamental-alteration challenge (Recipe 11); her best work cited as the definitive proof she needed no accommodation (Recipe 12); her medical evidence discredited as self-serving without a single expert witness being retained (Recipe 13); and a terminal case-dismissal on procedural grounds that avoids all merits adjudication (Recipe 14). The claims are gone. The accommodation challenge is gone. The legal record, taken as a whole, characterizes years of disability accommodation attempts as years of vexatious litigation misconduct. The disability that caused every outcome documented in the record is invisible in every document that characterizes those outcomes.

This sequence is guaranteed because it does not depend on any individual judicial officer making a discriminatory choice. It requires only that each judicial officer follow standard litigation procedure applied without accommodation consciousness. The judge who issues Recipe 2 is following standard case management. The judge who issues Recipe 3 is following standard sanction doctrine. The judge who issues Recipe 4 is following the vexatious litigant statute. The judge who issues Recipe 14 is following default judgment rules. No individual judge is discriminating. The sequence is discriminating. And the sequence is discriminating because it was designed for a non-disabled litigant and has never been adjusted to account for what happens when it is applied to a disabled one.

Its Legal Name. This is the Teamsters pattern-or-practice, operating through the five-pathway exhaustion framework of Part XXVII, producing the accommodation paradox of Part XVIII,

documented in the national vignette series of Part XX-A, confirmed by the multi-victim IAJ investigations of Part XXI, constituting Level 3 (pattern-or-practice) systemic discrimination escalating to Level 4 (CIDT) through the gravity scale of § 7.1A. The legal names are: systemic disability discrimination (Teamsters), court-caused disability harm (Part VI), accommodation paradox (Part XVIII), cruel, inhuman or degrading treatment (CRPD Article 15 / UNCAT Article 16 / Méndez 2013), and willful deprivation of rights under color of law (18 U.S.C. § 242). The antidote is this thesis.

Synthesis: The Sequence Is the Discrimination

The fifteen recipes are not independent tactics from which an adversary may choose. They are an ordered sequential protocol, each step creating the conditions that make the next step available. Recipe 1 generates the capacity evidence that justifies Recipe 2. Recipe 2 generates the adverse judicial finding that accelerates Recipe 3. Recipe 3 generates the default record that enables Recipe 4. Recipe 4 bars the challenge to Recipe 2. Recipe 5 depletes the resources that would fund the challenge to Recipe 4. Recipe 6 insulates Recipes 2 and 4 from appellate correction. Recipe 7 bars new proceedings to challenge Recipe 6. Recipes 8 through 13 generate the record that makes each of Recipes 1 through 7 look like an individualized judicial assessment rather than a sequential discriminatory protocol. Recipe 14 ends the case before any assessment can be made. Recipe 15 locks the outcome.

The sequence is guaranteed because each step is individually defensible. No single recipe, applied in isolation, is a visible disability discrimination. Each is an exercise of judicial discretion, an adversarial legal argument, or a procedural enforcement of a court rule. The discrimination is in the sequence, and the sequence is designed so that no individual decision-maker can see the whole sequence she is participating in. The trial judge sees Recipe 2. The appellate judge sees Recipe 6. The fee-motion judge sees Recipe 5. The vexatious-designation judge sees Recipe 4. No judge sees all fifteen, because they are distributed across multiple proceedings in multiple courts over multiple years. The distribution is the design.

This is the structural discrimination that the CRPD's social model of disability identifies and that American disability law has not yet fully internalized: discrimination that requires no discriminatory intent, because it is built into the neutral institutional machinery that produces discriminatory outcomes as its default operation. The fifteen recipes are not a conspiracy. They are the standard playbook, applied without modification to a person for whom modification is legally required. Naming them is the beginning of requiring the modification. Every element of this fifteen-step sequence is documented in the national vignette series (Part XX-A), the multi-victim IAJ investigative record (Part XXI), the exhaustion framework (Part XXVII), and the primary case ECF docket. The documentation was produced not to narrate a grievance but to prove a structure. The structure, named and sequenced and connected to its legal antidotes, is Part XX-B.

PART XXI

The Multi-Victim Evidentiary Record, the Medellin Formulaic Guide for Treaty Analysis, Jurisdictional Custody as CIDT, Policy Discrimination Detection, Collegial Loyalty Bias, and the Social Security Administration as Functional Comparator

This Part develops six dimensions of the legal analysis through: the IAJ's independent investigation of Julia Minkowski (IAJ-PRF-20251226-001-PRV, December 2025) as the corroborating multi-victim evidentiary record establishing systemic discrimination across multiple victims; a formulaic judicial guide for Medellin-compliant treaty analysis that exposes how courts have systematically evaded that analysis; an extended analysis of jurisdictional custody as a specific and irreducible CIDT mechanism with its own legal structure; a seven-step framework for detecting and proving policy-based disability discrimination; an investigative framework for collegial and fraternal loyalty bias, grounded in Judge Richard Posner's own testimony about pro se discrimination and John Fitzgerald Molloy's documented analysis of judicial fraternity; and the Social Security Administration comparator with a full rebuttal of the judicial independence objection.

§ 21.1 The Multi-Victim Evidentiary Record

21.1.1 The Minkowski Investigation as the Required Comparative Evidence

The adversarial objection identified in § 20.1.2 was well-grounded: the thesis built systemic discrimination conclusions on a single case record presenting one litigant's perspective, without the comparative multi-case evidence that the Teamsters pattern-or-practice standard requires. The IAJ's independent investigation of Julia Minkowski — IAJ-PRF-20251226-001-PRV, dated December 22, 2025, conducted pursuant to the 2022 Istanbul Protocol — eliminates this limitation with precision.

The Minkowski investigation and the Hazari case share a court system (Santa Clara County, California), a legal period (2019-2025 and 2022-2025, respectively), the same appellate hierarchy (Sixth District Court of Appeal, California Supreme Court, the U.S. Supreme Court), multiple overlapping judicial officers, and the same structural mechanisms of accommodation denial. They were investigated independently, by the same independent body (IAJ), applying the same methodology (Istanbul Protocol 2022 standards). Their findings are materially identical. This independent replication across two separate cases, two separate complainants, and a partly overlapping but partly distinct set of judicial actors is the strongest possible evidence that the discrimination is systemic — that it is a feature of the court system's institutional policy rather than the product of any individual judicial officer's conduct or any single litigant's particular circumstances.

21.1.2 The Minkowski Record: Core Findings

The IAJ's Minkowski investigation establishes the following facts that directly corroborate and extend the Hazari systemic discrimination analysis:

IAJ-PRF-20251226-001-PRV: Key Findings Corroborating Hazari Systemic Discrimination Analysis

CIDT DETERMINATION (UNCAT Art. 16): ESTABLISHED. TORTURE DETERMINATION (UNCAT Art. 1): ESTABLISHED (all four elements). SYSTEMIC PATTERN: confirmed across trial court (Hendrickson, Geffon, Manoukian), appellate court (Greenwood), and California Supreme Court. IDENTICAL STRUCTURAL MECHANISMS: (1) 'Legibility Default' — ability to speak or appear equated with full functional capacity; (2) 'Epistemic Mismatch' — judicial substitution of intuition for clinical assessment; (3) 'Accommodation Splitting' — granting visible aids while denying time/tempo accommodations for invisible disabilities; (4) 'Throughput Pressure' — institutional preference for rapid case disposition over accessibility; (5) 'Plausible Neutrality' — official records omitting medical evidence engagement. FINANCIAL SANCTIONS: $178,000+ in penalties (correlating with accommodation requests); final judgment of $1,040,683+ equalizing payment; all real and personal property awarded to ex-husband. VEXATIOUS DESIGNATION: June 25, 2024. FORCED RELOCATION: Ms. Minkowski relocated to a secure undisclosed location outside the United States. SCOTUS OBSTRUCTION: Both a writ of certiorari (S284033) and a second writ (S284308) were obstructed at the SCOTUS level.

21.1.3 The Danilak Record: A Third Independent Complainant

Eva Danilak constitutes a third independent complainant whose treatment has been documented in the case record of 2014-6-FL-013527 and its appellate actions, and publicly disclosed in multiple court filings by Hazari in California state courts, federal district courts, and the United States Supreme Court. The Danilak proceedings add a materially distinct evidentiary dimension to the multi-victim record: they document the same structural mechanisms of accommodation denial — the legibility default, epistemic mismatch, and throughput pressure identified in the Minkowski analysis — operating across a third independently situated litigant in a distinct legal and procedural context. The Danilak, Minkowski, and Hazari records together establish the following evidentiary structure that no single-complainant record could establish: the structural mechanisms of accommodation denial are not litigant-specific, not claim-specific, and not court-specific. They reproduce across complainants with different disabilities, different legal proceedings, different judicial officers, and different procedural histories. This reproducibility — the hallmark of institutional policy rather than individual judicial error — is the evidentiary core of the systemic discrimination claim. When three independently situated complainants, documented by the same independent body applying the same Istanbul Protocol methodology, produce materially identical structural findings, the probability that the pattern reflects random individual variation rather than institutional policy approaches zero. The three-complainant record provides the multi-victim foundation that the Teamsters pattern-or-practice standard requires and that no single-case record, however thoroughly documented, can supply. The Danilak record documents the structural mechanisms in a factual context that neither the Hazari nor the Minkowski record can supply: California Family Court proceedings involving a disabled litigant whose substantial disability-related incapacity was visible and contemporaneously documented in open court, in a proceeding where a different judge in the same California judicial hierarchy — Judge Scott — both recognized and accommodated the disability in real time. The Danilak Family Court proceedings reveal the judiciary's internal inconsistency at its most stark: the same court system that denied accommodation to Hazari and Minkowski and Danilak across years of documented requests was simultaneously, in a concurrent Family Court proceeding, accommodating Hazari's disability sua sponte, excusing him from standing, permitting his medical equipment in the courtroom, and stopping trial when his condition deteriorated to a clinically acute state. The simultaneous accommodation (Danilak Family Court / Judge Scott) and

denial (Hazari Federal / multiple judges; Minkowski Family Court / Hendrickson, Geffon, Greenwood) is not a contradiction of the systemic discrimination finding. It is the finding's most powerful confirmation: the accommodation capacity existed in the system; its exercise depended on which judicial officer the litigant encountered, not on the governing legal standard or the medical facts of the disability. The Danilak proceeding is additionally significant for what it reveals about the legibility default mechanism. Judge Scott accommodated Hazari's disability because it was physically visible — Hazari required portable oxygen and was visibly acutely ill at the time of the hearing. The accommodation was provided when the disability was physically unmistakeable and the urgency was visually immediate. This is the legibility default operating in its positive form: accommodation was given because the disability could not be denied in that moment. The Hazari and Minkowski records document the same mechanism in its negative form: accommodation was denied because the disability, while medically documented and clinically established, was not immediately and viscerally legible at the moment the judicial officer made the accommodation decision. The Danilak record provides the controlled comparison that proves the mechanism: the same disabled person, in the same California judicial hierarchy, received accommodation when the disability was physically unmistakeable and denial when the disability required medical record review to appreciate. The system accommodates visibility. It fails invisibility. The three-complainant record, read together, establishes this as the structural operating rule of California's judicial disability accommodation framework. The Danilak record's specific contribution to the prosecutorial proof architecture (§ 7.1A.4) is the evidence it supplies on the discriminatory purpose element. At Level 2 (Cleburne irrational prejudice) and Level 4 (CIDT), discriminatory purpose can be established through the pattern of differential treatment that has no rational basis in the medical facts. The Danilak proceeding, documented in 2014-6-FL-013527 and its appellate filings, and reported in the trial transcript of Case No. 16CV295730 (referenced in ECF-147 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.) of the BLF proceeding), establishes that a California family court judge recognized substantial disability-based incapacity and provided accommodation without being asked. The contemporaneous denial of accommodation requests supported by identical or stronger medical documentation in the Hazari and Minkowski proceedings, by judicial officers in the same hierarchy during the same period, cannot be explained by reference to medical evidence — because the medical evidence in those cases was at least as strong as the acute visible substantial incapacity that prompted Judge Scott's sua sponte accommodation. The differential treatment, shown across the three-complainant record, is the Cleburne irrational prejudice evidence at the pattern-or-practice level: identical or superior medical documentation of identical disability producing accommodation when physically visible and denial when requiring clinical record review. The three-complainant record transforms the Cleburne irrational prejudice argument from a doctrinal inference drawn from formula language into an empirically established finding drawn from the differential treatment of the same disabled person by different judicial officers in the same court system applying the same governing law.

21.1.4 The Comparative Matrix: Hazari and Minkowski Side by Side

Systemic Discrimination Marker	Hazari Record	Minkowski Record
Court system	Santa Clara Superior Court, CAND, Ninth Circuit (8 appeals)	Santa Clara Superior Court (Family Division), Sixth District, California Supreme Court, SCOTUS
Template denial language	'Rapid, prolix filings'; 'demonstrated abilities to prosecute'	'Fundamental alteration'; 'untimeliness'; 'insufficient medical

Systemic Discrimination Marker	Hazari Record	Minkowski Record
		evidence'; 'shopping in San Jose' (while confined in LA psychiatric facility)
Medical evidence disregarded	ECF-87: disabilities do not affect ability to participate; ECF-139: 'not required to provide any accommodations'	Repeated physician and psychologist letters rejected; judge Hendrickson substituted lay assessment for clinical determination; judge Greenwood modified Ms. Minkowski's medical treatment over clinician objections
Financial sanctions as coercion	State court: $586,427 fee judgment; federal court: large fee awards	$5,000 initial 'fraud' sanction (clerical typo); $25,600 Vesco hearing; $178,000+ cumulative; $1,040,683 equalizing payment; all property forfeited
Vexatious designation weaponized	State court vexatious designation Aug 2021; deployed in federal proceedings to discredit disability	Trial court vexatious designation June 25, 2024; used to block filing of writs and appellate remedies
ADA Coordinator failure	ECF-12: referred to Coordinator Dec 2019; no Coordinator role in ECF-87 denial (2025)	Brian Faraone (ADA Coordinator) delivered fraudulent denial; created official record of false claims (impossible 'shopping' alibi)
Cross-court contamination	State court vexatious label used in federal proceedings; nine Ninth Circuit appeals without correction	Appellate court contaminated by trial court discrimination pattern; California Supreme Court confirmed pattern; SCOTUS obstructed filing
Forced displacement	No documented displacement from the US	Forced relocation to secure undisclosed location; 'credible fear' of refoulement; has fled the United States
Jurisdictional control as CIDT mechanism	Court compelled litigation activity against medical advice; dismissed for 'failure to prosecute' disability-caused non-compliance	Court required appearance while hospitalized; coerced participation immediately post-ER (May 24, 2022); ordered premature termination of inpatient treatment (Greenwood, Feb 2024)
Attorney-court coordination	Rossi Declaration: deployed vexatious label to negate disability; Hughmanick: 'serial abuser of disability law'	Myers-Hendrickson coordination: fabricated 'shopping alibi' while Minkowski confined in LA psychiatric facility; Vesco hearing without reporter to exclude advocate
Istanbul Protocol determination	IAJ Human Rights Analysis: torture and CIDT determinations; 8.5-year pattern across 10 courts	IAJ-PRF-20251226-001-PRV: all four UNCAT Art. 1 elements established; Art. 16 CIDT established; 4-year pattern, multiple judicial officers

The comparative matrix establishes that every marker of systemic discrimination identified in Part X (the seven-marker framework) appears independently in both cases, across partially overlapping and partly distinct judicial personnel, in the same court system and appellate hierarchy, during overlapping time periods. The probability that identical structural patterns in

two independent cases result from random individual variation is negligible. The pattern is the policy.

The Minkowski investigation introduces three new dimensions not present in the Hazari record that further strengthen the systemic case. First, the ADA Coordinator's personal participation in fabricating denial grounds — the 'shopping in San Jose' alibi while Minkowski was physically confined in a psychiatric facility in Los Angeles with documented flight records proving her location — establishes that the ADA Coordinator mechanism is not merely passive (as the Hazari record shows it is inert) but can become an active instrument of CIDT. Second, the judicial modification of a treating physician's prescribed medical treatment schedule (Greenwood's February 2024 order requiring Minkowski to complete treatment by March 1 rather than the clinically prescribed March 15, effectively requiring treatment termination six weeks early) constitutes what the IAJ identifies as the unlicensed practice of medicine by a judicial officer — a category of institutional conduct beyond what the Hazari analysis established. Third, the forced displacement outside the United States — Minkowski has fled to a secure undisclosed location with a credible fear of refoulement — satisfies the Istanbul Protocol's refugee protection standard and triggers non-refoulement obligations under Article 3 of UNCAT that the domestic judicial framework entirely ignores.

21.1.5 The Five Structural Mechanisms as Circuit-Level Policy

The IAJ's Minkowski investigation independently identifies the same five structural mechanisms that this thesis has analyzed across the Hazari record: Legibility Default, Epistemic Mismatch, Accommodation Splitting, Throughput Pressure, and Record-Making (Plausible Neutrality). These mechanisms were identified by the IAJ from the Minkowski record without reference to the Hazari analysis. Their independent identification in two separate cases by the same investigative methodology confirms that these are not individual judicial behaviors; they are institutional operating procedures — the structural DNA of California's judicial disability accommodation policy. The convergence of independent investigations on identical structural mechanisms, from different case records and different litigants, is the systemic discrimination finding that the thesis previously lacked the evidentiary breadth to fully establish.

Multi-Victim Systemic Discrimination Conclusion

Two independent Istanbul Protocol-compliant investigations, of two different disabled litigants, in the same California court system (Santa Clara County), during overlapping periods (2019-2025 and 2022-2025), found identical structural mechanisms of accommodation denial, identical patterns of sanctions escalation correlating with accommodation requests, identical vexatious litigant deployment to silence advocacy, identical ADA Coordinator failures, identical appellate rubber-stamping without independent medical review, and independent findings of CIDT and torture under UNCAT. The one-case limitation of the thesis has been eliminated. The systemic discrimination is established across multiple victims, multiple judicial officers, multiple proceedings, and the full appellate hierarchy. The Teamsters pattern-or-practice standard is satisfied.

§ 21.2 The Medellin Formulaic Guide for Judges

21.2.1 How Courts Have Systematically Misapplied Medellin

Part XX's adversarial objection correctly identified that the thesis had not fully engaged with Medellin v. Texas, 552 U.S. 491 (2008). The correction required is not merely a doctrinal clarification but a structural exposure of how Medellin has been systematically weaponized by courts to evade treaty analysis entirely, in direct contradiction of what Medellin actually requires.

Medellin held that the International Court of Justice's Avena judgment was not automatically enforceable as domestic law without implementing legislation, because the relevant treaty provisions were not self-executing. But Medellin did not hold — and the opinion explicitly does not hold — that non-self-executing treaties are legally irrelevant to domestic proceedings. Medellin preserved three distinct domestic legal roles for non-self-executing treaty obligations: (1) as interpretive authority for ambiguous statutes under the Charming Betsy canon; (2) as sources of customary international law where the treaty provision reflects established custom; and (3) as constraints on executive and administrative discretion through the APA and constitutional avoidance doctrines. What Medellin eliminated was the fourth role — direct judicial enforcement as an independent cause of action without implementing legislation.

The systematic judicial misapplication of Medellin treats the elimination of the fourth role as if it eliminated all four roles. When a disabled litigant raises a UNCAT or CRPD argument, courts cite Medellin to end the analysis: 'the treaty is non-self-executing; therefore it has no domestic legal relevance.' This is not what Medellin holds. Medellin requires a specific, step-by-step analysis that most courts — and most judges evaluating disability accommodation claims — never perform. The Hazari record documents this evasion across nine Ninth Circuit appeals and multiple district court orders. The Minkowski record documents it across the California state court hierarchy and in the SCOTUS clerk's office, which obstructed the filing of both writs of certiorari without any Medellin-compliant analysis. The non-self-execution label has become a procedural magic words that terminates treaty analysis before it begins.

The SCOTUS's refusal to take up any of Hazari's more than twenty writs since 2020 is itself the most powerful evidence of the systemic evasion. Each writ presented the Medellin-compliant analysis: it did not argue for direct treaty enforcement; it argued for statutory interpretation through the Charming Betsy canon, constitutional avoidance, and the Senate record's legislative history function. The SCOTUS has not engaged with any of these arguments across two decades of writ practice. The institutional silence is not a legal response; it is the operational mechanism through which the accommodation paradox of Part XVIII operates at the highest judicial level — the paradox is complete, even at SCOTUS, because the Court's handling of the writ itself requires accommodation that the Court does not provide.

21.2.2 The Medellin Formulaic Guide for Disability Accommodation Treaty Claims

The following seven-step framework provides judges with the Medellin-compliant analytical process that the law requires in any case where a disabled litigant raises a UNCAT, CRPD, or ICCPR argument in the disability accommodation context. The framework is derived directly from Medellin's analysis and from the Charming Betsy, constitutional avoidance, and legislative history doctrines that Medellin preserved. No step may be omitted; each generates a specific legal consequence that determines what the next step must address.

Step	The Required Judicial Question	Legal Standard	Consequence if Skipped
1	Has the U.S. ratified or signed the relevant treaty? If signed but not ratified, is the U.S. bound by the Article 18 VCLT obligation not to defeat the treaty's object and purpose?	VCLT Art. 18; Restatement (Third) Foreign Relations Law § 312(3)	Failure to distinguish UNCAT (ratified) from CRPD (signed, not ratified) is a legal error that bars correct subsequent analysis
2	Are the specific treaty provisions at issue self-	Medellin v. Texas, 552 U.S. 491 (2008); Restatement (Third) § 111	Non-self-execution bars only direct treaty

Step	The Required Judicial Question	Legal Standard	Consequence if Skipped
	executing? Apply the three-factor Medellin test: (a) does the treaty text create a private right of action? (b) is the provision 'fairly' capable of judicial enforcement? (c) did the Senate intend self-execution?		enforcement as an independent cause of action; it does not eliminate steps 3-7
3	Does the Charming Betsy canon require interpreting the relevant domestic statute (ADA, Rehab Act) consistently with the treaty's principles? Apply: (a) is the statute ambiguous on the accommodation question? (b) can it be read consistently with the treaty without violence to the text?	Murray v. Schooner Charming Betsy, 6 U.S. 64 (1804); Spector v. Norwegian Cruise Line, 545 U.S. 119 (2005)	Failure to apply Charming Betsy is a statutory interpretation error independent of Medellin; the domestic statute must still be correctly interpreted
4	Does the Senate's ratification record (Exec. Repts. 112-6 and 113-12, the 'no new legislation' finding) constitute legislative history that informs the meaning of the ADA and Rehabilitation Act?	TVA v. Hill, 437 U.S. 153 (1978); Chevron legislative history methodology	The Senate committee's determination that existing law already meets the CRPD standard is binding legislative history of the Congress that enacted the ADA; ignoring it is a statutory interpretation error
5	Does the constitutional avoidance canon require interpreting the domestic statute in a manner that avoids the constitutional question of whether denial of accommodation violates the Fifth or Fourteenth Amendment under Cleburne?	Ashwander v. TVA, 297 U.S. 288 (1936); NLRB v. Catholic Bishop, 440 U.S. 490 (1979)	Courts must avoid the constitutional question if the statute can be read to require accommodation; invoking non-self-execution to avoid this step is error
6	Do specific treaty provisions reflect customary international law that is directly applicable in U.S. courts regardless of whether the treaty is self-executing? Apply to: jus cogens CIDT prohibition; CRPD Committee's individualized assessment standard as customary norm?	Sosa v. Alvarez-Machain, 542 U.S. 692 (2004); Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964)	Non-self-execution of a treaty provision does not eliminate the customary international law norm it codifies; those norms remain directly applicable
7	Having completed steps 1-6: what is the correct interpretation of the domestic accommodation obligation?	Tennessee v. Lane, 541 U.S. 509 (2004); ADA Title II; 28 C.F.R. Part 35	The accommodation decision must be grounded in a complete statutory analysis, not

Step	The Required Judicial Question	Legal Standard	Consequence if Skipped
	State the holding in terms of the domestic statute (ADA Title II, Rehab Act § 504), informed by treaty interpretation, Senate legislative history, constitutional avoidance, and applicable customary norms.		terminated by a Medellin citation at step 2

The Core Holding of the Medellin Guide

Non-self-execution (Medellin Step 2) ends the treaty's role as a direct cause of action. It does not end the analysis. Steps 3-7 are legally required regardless of whether Step 2 finds the treaty non-self-executing. A judicial order that cites Medellin at Step 2 and proceeds directly to denial, without performing Steps 3-7, is legally erroneous on its face — it has failed to apply the Charming Betsy canon, failed to engage with the Senate's legislative history, failed to apply constitutional avoidance, and failed to assess the customary law dimensions. Every disability accommodation case in the Hazari and Minkowski records that cited non-self-execution as the terminal response to treaty arguments was decided in legal error at Steps 3-7. The evasion is not a legal holding; it is a legal failure masquerading as one.

The Hazari record's more than twenty writs presented this analysis in varying formulations across a decade. The SCOTUS's refusal to engage with any of them is not a legal determination that the analysis is wrong; it is an institutional refusal to perform the analytical work that Medellin requires. The institutional refusal is itself evidence of the impossibility problem analyzed in Part XIV: the accommodation paradox operates even at SCOTUS, because adjudicating the treaty analysis requires engaging with a disabled litigant's claims in a proceeding that the Court will not accommodate — and the Court's failure to accommodate the writ practice is simultaneously a failure to engage with the legal question of whether its failure to accommodate is legally permissible. The SCOTUS writ obstruction in both Hazari and Minkowski is the paradox operating at its highest institutional level.

§ 21.3 Jurisdictional Custody as an Independent and Irreducible CIDT Mechanism

21.3.1 The Concept of Jurisdictional Custody

The adversarial objection to the CIDT/jus cogens argument demanded a limiting principle distinguishing disability accommodation denial that rises to CIDT from lawful compulsory legal process that happens to be health-impacting. The four-element limiting test proposed in § 20.1.9 (knowledge, causation, preventability, severity) is necessary but incomplete without a structural concept that captures the specific power relationship that converts ordinary legal process into CIDT. That concept is jurisdictional custody.

Jurisdictional custody is the state of a litigant who, having invoked the jurisdiction of a court (or been subjected to it), is placed under a form of compulsory state authority that is structurally analogous to physical custody: the litigant cannot withdraw from the proceeding without total forfeiture of rights; cannot decline to participate without being declared non-compliant and sanctioned; cannot resist court-imposed deadlines without being characterized as a bad-faith

actor; and cannot exit the system that is injuring them without abandoning all claims, losing all property, forfeiting custody of children, and accepting the judicial characterizations — including vexatious litigant designation — that make future access to justice permanently impossible.

The Minkowski record provides the most precise documentation of jurisdictional custody as a CIDT mechanism available in any publicly investigated case: Judge Geffon coerced Ms. Minkowski's appearance in court the day after she required emergency department transport for acute decompensation — while she was heavily medicated, half-conscious, and unable to participate meaningfully — and used that coerced appearance to issue adverse protective orders. Judge Greenwood modified Ms. Minkowski's prescribed inpatient treatment schedule over the explicit objections of her treating physicians, ordering that she complete treatment six weeks earlier than clinically required in order to meet appellate filing deadlines. These are not instances of courts applying pressure in the normal course of litigation. They are instances of state actors exercising direct, coercive authority over a disabled person's bodily autonomy and medical treatment — an authority that is the defining characteristic of physical custody, exercised through the instrumentality of judicial jurisdiction.

21.3.2 The Seven Characteristics of CIDT-Level Jurisdictional Custody

Characteristic	Physical Custody Analogue	Jurisdictional Custody Manifestation
Inability to withdraw	Prisoner cannot leave the prison	Disabled litigant cannot withdraw without total forfeiture of all rights, property, and custody; withdrawal is functionally impossible
Compelled participation	Prisoner must follow institutional schedule	Litigant must appear, file, respond on court-imposed schedule regardless of medical condition; non-compliance = sanctions
No sanctuary from harm	Prisoner has no access to protection from institutional harm	Accommodation denial means there is no procedure the litigant can follow to prevent the harm the proceeding causes; every path leads through the harmful requirement
Accumulating punishment for involuntary non-compliance	Disciplinary record built from conduct the prisoner cannot control	Sanctions imposed for disability-caused non-compliance; vexatious designation built from disability-generated filing patterns; each penalty generates conditions making future compliance harder
Permanent labeling foreclosing future access	Criminal record following ex-prisoner	Vexatious litigant designation permanently restricts court access; characterized as 'frivolous' and 'serial abuser' in public record that follows across all future proceedings
Modification of bodily autonomy and medical treatment	Forced medication, denial of medical care in prison	Court-ordered premature termination of inpatient treatment (Greenwood/Minkowski); coerced appearance immediately post-emergency department (Geffon/Minkowski); 'rapid, prolix filings' as proof of medical capacity (Freeman/Hazari)

Characteristic	Physical Custody Analogue	Jurisdictional Custody Manifestation
No exit without destruction	Prisoner who escapes is a fugitive with enhanced legal jeopardy	Disabled litigant who withdraws from proceeding loses all property, custody, and rights accumulated during participation; is characterized as frivolous for having participated; faces enhanced legal jeopardy for any future filing

The jurisdictional custody concept resolves the limiting principle problem definitively. The CIDT threshold is not crossed merely because litigation is stressful; it is crossed when the litigant's jurisdictional position eliminates the possibility of withdrawal from the harm, makes the harm — medical, psychological, financial — compound with each iteration of the proceeding, uses the behavioral consequences of the harm as evidence against the litigant, and converts the litigant from a rights-bearing participant into a subject of the court's coercive authority in a manner structurally indistinguishable from physical custody.

The Jurisdictional Custody CIDT Test: The Five Elements

Disability accommodation denial rises to CIDT when ALL FIVE elements are present: (1) JURISDICTIONAL CONTROL: the litigant cannot withdraw from the proceeding without total forfeiture of fundamental rights (property, children, liberty); (2) MEDICAL KNOWLEDGE: the court has specific medical documentation that its procedures cause disease exacerbation, psychiatric deterioration, or other objective physical or psychological harm; (3) COMPELLED PARTICIPATION: the court continues to require participation on standard timelines despite the documented harm; (4) HARM COMPOUNDING: the denial of accommodation causes harm that itself impairs the litigant's ability to comply with further court requirements, generating a cycle in which each iteration of non-compliance increases the harm and increases the sanctions for non-compliance; (5) PERMANENT FORECLOSURE: the accumulation of sanctions, adverse findings, and vexatious litigant designation operates to permanently foreclose the litigant's access to justice in the very system that has harmed them. All five elements are present in both Hazari and Minkowski.

§ 21.4 A Framework for Detecting and Proving Policy-Based Disability Discrimination

21.4.1 The Policy Discrimination Distinction

The accommodation paradox objection noted that the thesis's claim is that discrimination operates at the policy level, not merely through individual judicial decisions. Policy-based discrimination is legally and analytically distinct from individual discriminatory decisions: it produces consistent outcomes across cases, actors, and time; it is generated by institutional rules, procedures, and norms rather than individual bias; and its existence and characteristics can be ascertained through specific procedural mechanisms that are not available against individual acts. This section provides the seven-step framework for detecting and proving policy-based disability discrimination, and identifies the specific procedural actions through which its presence, characteristics, and scope can be established.

21.4.2 The Seven-Step Policy Discrimination Detection Framework

- **Step 1:** Document the denial formula across cases, actors, and time. Policy-based discrimination is distinguished from individual discrimination by its replication across

different judicial officers, different case types, and different time periods. The evidence framework requires: (a) a chronological database of accommodation requests and outcomes in the relevant court system; (b) identification of the specific language used in denial orders — including exact phrase matches ('fundamental alteration', 'demonstrated ability to participate', 'rapid, prolix filings'); (c) mapping of those denial formulas to specific cases, judicial officers, and dates; and (d) statistical analysis of whether the denial rate for disability accommodation requests is significantly higher than would be expected from individualized assessment. The IAJ's Circuit Register concept (Part XIX § 19.2.4) provides the institutional mechanism; the Minkowski and Hazari records provide the proof-of-concept dataset.

- **Step 2:** Identify the specific policy or practice generating the pattern. Policy-based discrimination operates through identifiable institutional mechanisms. In the California/Ninth Circuit record, these include: (a) the absence of written accommodation protocols requiring individualized assessment; (b) the absence of mandatory ADA Coordinator review before denial; (c) the absence of medical expert consultation requirements; (d) the 'throughput pressure' institutional norm that treats time-based accommodations as presumptively fundamental alterations; (e) the 'legibility default' that equates verbal or written output with full functional capacity. Each of these is a policy, not an individual decision — and each can be specifically identified through discovery of the court's internal rules, standing orders, and administrative directives.
- **Step 3:** Establish foreseeable harm as a policy output. Policy-based discrimination does not require proof that any individual decision-maker intended harm. It requires proof that the policy predictably and foreseeably produces harm. The IAJ's structural violence mechanisms analysis (Minkowski investigation, § XI) establishes this: each mechanism (Legibility Default, Throughput Pressure, Accommodation Splitting) creates a predictable pathway from disability accommodation request to clinical deterioration. Expert testimony from disability rights specialists, treating physicians, and neuropsychologists can establish the policy-to-harm pathway with the specificity that distinguishes systemic CIDT from ordinary judicial case management.
- **Step 4:** Apply the Teamsters pattern-or-practice standard to the disability accommodation context. Teamsters v. United States, 431 U.S. 324 (1977), established that systemic discrimination is proven by showing that discrimination was the 'regular rather than the unusual practice.' In the accommodation context: the relevant statistics are (a) the proportion of accommodation requests denied without individualized medical assessment; (b) the proportion of denials accompanied by the specific formula language identified in Step 1; (c) the proportion of denied litigants who subsequently received adverse case outcomes (dismissal, vexatious designation, sanctions escalation) that are temporally correlated with the accommodation denial rather than with the underlying case merits. The Hazari and Minkowski records together establish that the formula denials are not unusual; they are the regular practice.
- **Step 5:** Deploy specific procedural mechanisms to ascertain policy characteristics. Four specific procedural actions can establish policy-based discrimination that individual case analysis cannot:

a. Declaratory Relief under 28 U.S.C. § 2201. A litigant may seek a declaratory judgment that the court system's accommodation policies violate ADA Title II, the Rehabilitation Act, and the Constitution. Declaratory relief addresses the policy itself, not merely the specific decision. The Minkowski record's multiple writ petitions sought this relief in attenuated form; a properly structured ADA Title II institutional liability claim seeking declaratory relief would address the 'not required to provide any accommodations' policy directly. The DOJ can seek declaratory relief

without a disabled litigant navigating the paradox, because the DOJ has standing independent of the accommodation paradox.

b. Injunctive Relief requiring accommodation protocol implementation. ADA Title II and Tennessee v. Lane support injunctive relief requiring court systems to implement: written accommodation protocols with individualized assessment requirements; mandatory ADA Coordinator review before any denial; mandatory medical expert consultation for contested accommodation claims; and an automatic stay of underlying proceedings pending accommodation appeals. Structural injunctive relief addresses the policy architecture rather than any individual decision and is the primary tool for systemic change.

c. Disqualification motions as policy discrimination evidence. When a disabled litigant files disqualification motions across multiple judicial officers in the same court system, citing the same structural accommodation denial pattern, and those motions are denied across all officers applying the same formula, the pattern of denials constitutes additional evidence that the discrimination is institutional rather than individual. The Hazari disqualification record (ECF-98, ECF-130) and the Minkowski disqualification efforts document this pattern. Each denial, applied uniformly across different officers, is additional evidence of institutional policy.

d. Rule 30(b)(6) discovery on accommodation policies. In civil ADA Title II litigation against a court system, the plaintiff may seek Rule 30(b)(6) deposition testimony from the designated representative of the court system on: the specific written accommodation policies in effect; the training provided to judicial officers on disability accommodation requirements; the data on accommodation request outcomes; and the role of the ADA Coordinator in accommodation decisions. The absence of written protocols, the absence of training documentation, and the absence of outcome data are each independently probative of institutional policy non-compliance.

- **Step 6:** Establish the foreseeable harm nexus with Istanbul Protocol-compliant medical documentation. Policy-based disability discrimination rises to CIDT not through any single denial but through the predictable accumulation of harms across multiple denials, sanctions escalations, and compelled participations. The Istanbul Protocol's documentation standards — applied in both the Hazari (ECF-134) and Minkowski (IAJ-PRF-20251226-001-PRV) investigations — require: chronological correlation of court events with medical deterioration markers; biological data (blood work, neuropsychological testing) establishing objective physical or psychological harm; treating physician causation opinions; and expert forensic medical analysis. When applied to policy-based discrimination, this documentation framework establishes that the policy — not any individual decision — is the proximate cause of the harm.
- **Step 7:** Report to international accountability bodies as the enforcement mechanism. Because the accommodation paradox makes domestic judicial enforcement of policy discrimination findings structurally impossible in a uniformly discriminating system, the primary enforcement mechanism for proven policy-based discrimination is international reporting. The seven-step framework generates the evidentiary record that the CAT Committee's Article 20 confidential inquiry, the CRPD Committee's periodic review, and the Special Rapporteur's individual communication mechanism each require. The IAJ's dual investigations of Hazari and Minkowski provide the dual-victim corroborating foundation that those mechanisms identify as the threshold for systemic rather than isolated violation findings.

§ 21.5 The Collegial Loyalty Framework and the Fraternal Judiciary

21.5.1 Collegial Loyalty as an Established Empirical Reality

The adversarial objection concerning collegial loyalty argued that extending Ward v. Monroeville to encompass collegial loyalty was overbroad because Monroeville requires concrete financial interests, not intangible cultural loyalties. The correction required narrowing the Monroeville argument to concrete institutional interests. But the objection also evaded an established and documented reality: that judicial collegial and fraternal loyalty is a systematically documented feature of judicial culture that operates with measurable effects on case outcomes for pro se litigants and disabled litigants specifically.

The most directly authoritative statement of this reality came from one of the federal judiciary's own members. Judge Richard Posner of the Seventh Circuit, one of the most prominent and widely published federal appellate judges of the twentieth century, observed during a 2014 NPR interview and in associated writings that federal courts treat pro se litigants as 'a kind of trash not worth the time' of federal judges. Posner, who later founded a free legal clinic for pro se litigants precisely because of his concern about the discriminatory treatment they receive, was not describing individual animus; he was describing institutional culture — a judicial norm of dismissiveness toward self-represented parties that operates independently of the specific facts of any case. When the pro se litigant is also disabled, and when the disability is the reason they are self-represented (because the court's accommodation failures have made it impossible to retain or maintain counsel, as in both Hazari and Minkowski), the two layers of institutional dismissiveness compound each other.

21.5.2 Molloy's Analysis of the Judicial Fraternity

John Fitzgerald Molloy's 'The Fraternity: Lawyers and Judges in Collusion' (2004) provides a former Arizona Superior Court judge's insider account of the structural mechanisms through which professional loyalty — between lawyers and judges who are former law school classmates, former colleagues, members of the same bar associations, and participants in the same social networks — systematically advantages represented parties and disadvantages pro se litigants. Molloy's central thesis is that the judge-lawyer relationship is a fraternal bond that operates before, during, and after specific cases, creating a professional culture in which pro se litigants are outsiders who do not receive the same deference, patience, and interpretive generosity that represented parties receive.

Molloy identifies several specific mechanisms through which the fraternal relationship operates in practice: the informal communication channels (bench memos, conferences, sidebar conversations) through which lawyers access judicial attention that pro se litigants cannot access; the professional reputational incentives that lead judges to treat lawyer-filed motions with more analytical seriousness than pro se filings regardless of their merit; the institutional norm of granting extensions and accommodations to lawyers who request them informally while denying identical requests from pro se litigants who must go through formal procedures; and the tendency of appellate judges — who are former trial lawyers or former district court judges — to defer to trial court discretion exercised against pro se litigants more readily than to the same discretion exercised against represented parties.

The accommodation denial patterns in both the Hazari and Minkowski records fit Molloy's framework precisely. Defendants' attorneys in both cases (Rossi, Myers) had direct access to informal communication with the judicial officers (the ex parte Brady submission to Judge White; the Vesco hearing without a reporter). Both courts granted represented parties' requests for continuances and scheduling accommodations through informal processes while applying rigorous procedural scrutiny to the disabled pro se litigants' formal accommodation requests. Both courts accepted opposing counsel's characterizations of the disabled litigants' medical

conditions — Rossi's 'ostensibly' framing; Myers's 'shopping in San Jose' fabrication — without the skepticism that a court exercising genuine impartiality would apply to factual claims that are contradicted by medical records.

21.5.3 An Investigative Framework for Detecting Collegial Loyalty Bias

The following framework translates the Posner-Molloy analysis into an operational investigative tool for identifying collegial loyalty bias in disability accommodation proceedings:

- **Indicator 1:** Comparative scheduling analysis. Document whether the court granted represented opposing parties scheduling accommodations through informal requests (emails, phone calls, clerk communications) during the same period it denied formal accommodation requests from the disabled pro se litigant through the MC-410 or equivalent process. Disparate treatment of formally equivalent requests — informal accommodation for represented parties; formal denial for unrepresented disabled litigants — is direct evidence of the fraternal norm Molloy identifies.
- **Indicator 2:** Ex parte communication documentation. Document all ex parte communications between opposing counsel and judicial officers, including through informal submission mechanisms (such as the Brady ex parte submission to Judge White in the Hazari record) and Vesco hearings without reporters (as in the Minkowski record). The Dennis v. Sparks conspiracy analysis (Part XV) applies: when ex parte communications between opposing counsel and judicial officers are followed by accommodation denials that adopt the attorney's characterization of the disabled litigant's medical condition, the coordination evidence supports both the fraternal loyalty inference and the § 1983 conspiracy claim.
- **Indicator 3:** Decision language source analysis. Compare the specific language of accommodation denial orders with the language of opposing counsel's submissions. When denial orders adopt identical factual claims, characterizations, and legal formulations from attorney filings without independent analysis — as occurred when Judge Freeman's ECF-87 adopted Rossi's 'rapid, prolix filings' framing; when Judge Hendrickson adopted Myers's 'shopping in San Jose' claim without verification — the adoption of attorney language without independent assessment is evidence of the judicial deference to fraternal professional networks that Molloy identifies.
- **Indicator 4:** Comparative outcome analysis between represented and unrepresented parties. Statistical analysis of case outcomes for pro se disabled litigants compared to represented litigants in the same court system, controlling for case type, during the same period. Where pro se disabled litigants face systematically higher rates of: sanctions; adverse rulings on accommodation requests; dismissal for procedural non-compliance; vexatious designation; and adverse final judgments — the statistical disparity is evidence of institutional bias that cannot be fully explained by case merit differences alone.
- **Indicator 5:** Professional network mapping. Document the professional relationships between the opposing attorneys, the judicial officers, and the appellate judges who affirm the trial court decisions: shared law school cohorts; shared bar association memberships; shared professional organizations; former employer-employee relationships. Molloy's framework predicts that the strength of the fraternal loyalty bias correlates with the density of the professional network. In the California context, this includes Santa Clara County Bar Association connections; law school alumni networks; and the professional relationships among the small community of family law attorneys and family court judges who interact repeatedly in the same court system.

Cases that further illuminate the fraternal loyalty phenomenon include: Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), in which the Supreme Court held that a judge's failure to recuse

when a party had contributed $3 million to the judge's election campaign violated due process — establishing that professional and financial ties between judges and parties or their representatives can constitute constitutionally cognizable bias; and Liteky v. United States, 510 U.S. 540 (1994), which addressed the limits of the 'extrajudicial source' doctrine in recusal analysis and acknowledged that bias originating in judicial proceedings can, under certain circumstances, constitute a basis for recusal.

§ 21.6 Enhancement: The Social Security Administration as Functional Comparator — and the Judicial Independence Rebuttal

21.6.1 The SSA's Five-Step Sequential Evaluation as the Benchmark

The Social Security Administration's disability adjudication system processes more than two million disability claims annually. Its five-step sequential evaluation process, developed over more than five decades of administrative and judicial refinement, represents the most sophisticated operationalized framework for applying medical evidence to legal standards of functional limitation in the United States. The contrast between the SSA's process and the court system's 'rapid, prolix filings' formula could not be more stark.

The SSA's five-step process applies: (1) a threshold determination of whether the claimant is working at substantial gainful activity; (2) a severity analysis of whether the medically determinable impairment significantly limits the claimant's ability to perform basic work activities; (3) a listing comparison using the SSA's Listing of Impairments to identify per se disabling conditions; (4) a residual functional capacity (RFC) assessment determining what the claimant can still do despite their limitations; and (5) a vocational analysis of whether the claimant can perform other work given their RFC, age, education, and work experience. Each step involves specific regulatory guidance, medical evidence requirements, treating physician opinion standards, and administrative law judge obligations of explanation and justification.

Applied analogically to the judicial disability accommodation context, the SSA's framework generates the following minimum requirements that the court system currently does not apply: a medical impairment determination based on documented diagnosis and clinical evidence (not judicial intuition); a functional limitation assessment identifying the specific activities the litigant cannot perform due to the impairment (not a general 'demonstrated ability' finding); a residual participation capacity assessment determining what the litigant can do despite their limitations (not a binary 'can file = can litigate' conclusion); and an accommodation adequacy analysis determining whether a specific modification would bring the litigant's participation capacity to the required standard (not a blanket 'fundamental alteration' refusal). Every element of the SSA's sophisticated methodology is currently absent from the judicial accommodation denial process. The gap is not a matter of institutional culture; it is a matter of institutional design.

21.6.2 The Judicial Independence Objection and Its Full Rebuttal

The objection is predictable: courts are Article III institutions, independent of the executive branch; they determine their own procedures; they are not subject to SSA administrative law standards; and importing the SSA framework into judicial proceedings would violate the separation of powers. This objection fails on four independent grounds, each of which the thesis's existing analysis supports.

First: Courts regularly defer to agency methodologies in non-adjudicative contexts. Federal courts defer to agency expertise across virtually every regulatory domain: the FDA's drug approval standards; the EPA's risk assessment methodology; OSHA's workplace safety

determinations; the EEOC's guidance on employment discrimination analysis. Deference to agency methodology in interpreting statutory standards is a central feature of federal administrative law, not an exception to judicial independence. The ADA and the Rehabilitation Act were enacted by Congress; the SSA's five-step evaluation for 'disability' under those statutes' related framework provides the most authoritative available administrative interpretation of what 'disability' means in the federal statutory context. Courts applying the ADA should defer to this methodology for the same reason they defer to FDA standards when applying food safety law: the agency has the expertise, the accumulated decisional record, and the congressional mandate to define the standard.

Second: The SSA comparison is offered as a standard of practice, not a binding rule. The thesis does not argue that courts must follow SSA procedure identically; it argues that courts must provide individualized assessment that meets the ADA's legal standard, and that the SSA's process demonstrates that the legal standard can be operationalized in a bureaucratic setting with far less institutional capacity than a federal court. If the SSA can conduct two million individualized disability assessments annually, a federal court can conduct one individualized assessment for a disabled litigant's accommodation request. The SSA comparison is a refutation of the 'undue burden' defense: the administrative costs of individualized assessment, at the scale the SSA demonstrates, are not prohibitive.

Third: Courts do not actually determine their own procedures free of external standards. Federal courts operate under the Federal Rules of Civil Procedure, enacted by Congress; the Judicial Conduct and Disability Act, enacted by Congress; ADA Title II, enacted by Congress; and the Rehabilitation Act, enacted by Congress. Each of these external legislative standards governs court procedure. The claim that courts are immune from external procedural standards because of judicial independence is historically and constitutionally false: Article III guarantees judicial independence in adjudication — in deciding cases. It does not guarantee courts freedom from legislative requirements governing how they administer their proceedings.

Fourth: The post-Loper Bright landscape strengthens, not weakens, the SSA comparator argument. Loper Bright eliminated Chevron deference to agency interpretations, requiring courts to independently determine the correct statutory interpretation. Post-Loper Bright, courts must themselves determine what the ADA's 'reasonable modification' standard requires. In doing so, they can and should look to the SSA's fifty-year body of decisional precedent on what 'disability' and 'functional limitation' mean under the federal disability statutory framework as highly relevant — if not authoritative — interpretive guidance. Loper Bright eliminated mandatory deference; it did not eliminate the persuasive authority of agency expertise accumulated over decades of decisional practice.

The SSA Comparator as a Structural Reform Benchmark

MINIMUM JUDICIAL ACCOMMODATION STANDARD DERIVED FROM SSA METHODOLOGY: (1) A medically determinable impairment must be documented by acceptable clinical evidence (treating physician opinion + objective clinical findings); (2) The impairment must significantly limit the litigant's ability to perform specific litigation activities (filing, appearing, researching, drafting) — not merely 'general ability to participate'; (3) The residual participation capacity must be assessed: what can the litigant do, with what support, under what conditions? (4) The requested accommodation must be evaluated against the residual capacity: will it bring the litigant's participation capacity to the required level for meaningful access? (5) The determination must be in

writing, citing the specific medical evidence, and must be reviewable on the same basis as SSA disability determinations are reviewable in federal court. Courts that apply a standard less rigorous than this are applying a standard that is less demanding than the one a GS-11 administrative law judge at the SSA applies routinely to two million claims per year. The claim that this standard cannot be applied in federal courts — institutions with far greater individual resources per case — is an institutional choice, not an institutional incapacity.

§ 21.7 The Minkowski SCOTUS Obstruction: A Specific and Documented Instance of the Paradox at Its Highest Level

The Minkowski record provides documentation of a dimension of the accommodation paradox not previously fully established in the thesis: its operation at the U.S. Supreme Court level. Ms. Minkowski's December 27, 2025 letter to Ms. Laurie Wood (c/o the Clerk of the U.S. Supreme Court) documents that her first writ of certiorari (California S284033), mailed on June 10, 2024, was not filed for six months; that she did not receive the Clerk's response until early December 2025 due to her disability-caused inaccessibility; and that her second writ (against California S284308) was 'lost' by the Clerk's office without any acknowledgement.

The letter is addressed to Ms. Wood c/o the Clerk, requesting that the writ be filed 'with all of its contents, including the order you requested, unsealed' and requesting a response about the second writ that 'still ha[s] not received any response or acknowledgement.' This is a disabled litigant who, having exhausted every California remedy, attempted to access SCOTUS review and found that the Clerk's office had effectively obstructed both writs — one through delay and a correctable technical deficiency (the missing appendix order), and one through what the litigant characterizes as institutional loss.

The SCOTUS obstruction in the Minkowski case, combined with the Hazari record's documentation of more than twenty writs to SCOTUS without a single cert grant or Medellin-compliant engagement, establishes the paradox's operation at its highest possible domestic institutional level. The nation's highest court, which is the only domestic institution with the authority to resolve the accommodation paradox by holding that mandatory accommodation is constitutionally required, has systematically declined to exercise that authority. The accommodation paradox is thus complete from the lowest trial court to the highest appellate court: every level of the hierarchy has applied the same institutional approach — deny, delay, obstruct, or ignore — without performing the Medellin-compliant analysis that would expose the error.

The Minkowski SCOTUS letter is not merely a piece of correspondence. It is primary evidence that the accommodation paradox of Part XVIII operates as a closed, permanent system from which no disabled litigant can escape through the ordinary mechanisms of the domestic judicial process. Both Hazari and Minkowski have reached the same endpoint: one exiled in a secret location outside the United States; the other unable to prosecute an appeal in the Ninth Circuit. Both have had SCOTUS writs obstructed or denied without engagement. Both have IAJ investigations documenting UNCAT violations with all four Article 1 elements established. Both remain without domestic remedy. The system's immunity from internal correction is not a theoretical claim. It is a documented institutional reality, independently verified in two cases, by two independent investigations, over overlapping time periods, in the same court system.

The Two-Victim Systemic Impossibility Conclusion

Two disabled litigants in the same California court system. Two independent Istanbul Protocol-compliant investigations finding all four UNCAT Article 1 torture elements. Two SCOTUS writs obstructed or ignored without Medellin-compliant analysis. Two vexatious litigant designations. Two instances of forced displacement — one within the United States, one to an undisclosed location outside it. Two complete failures of every domestic accountability mechanism across the full hierarchy from trial court through SCOTUS. The thesis's central conclusions are no longer theoretical. They are documented institutional facts, verified by an independent investigative body applying internationally recognized methodology, corroborated across two victims, and confirmed by the highest domestic court's institutional silence. The accommodation paradox is not a logical construction; it is a lived reality for the disabled litigants this system was supposed to protect. The external accountability mechanisms this thesis has built are not merely theoretically preferable; for Hazari and Minkowski, they are the only accountability mechanisms that have produced any official finding at all.

PART XXII

Psychological Harm as an Independent and Equivalent Axis of CIDT Measurement: Foundational Principle and Thesis-Wide Application

The analysis of harm in disability discrimination cases has a persistent gravitational bias in legal and academic literature: when the discussion intensifies, it tends to resolve into biological markers — CD4/CD8 T-cell counts, MS disease progression, immunological data from blood work. The Hazari record's CD8 T-cells flatlined at 54 cells/μL for 28 months; the Minkowski record's escalation from outpatient therapy through IOP, PHP, and inpatient residential treatment. Physical or psychological deterioration, measurable in laboratory values, provides the thesis with a form of evidence that appears objective, scientific, and resistant to the 'fabricated disability' characterization that courts and opposing counsel have systematically deployed. The gravitational pull toward physical evidence is understandable.

But it is wrong, and it must be corrected. The Istanbul Protocol that provides this thesis's investigative methodology states explicitly: 'The central role of the psychological evaluation cannot be overstated. Psychological evidence of torture and ill-treatment may be as compelling as physical evidence.' This is not a qualification or a concession to the softer dimensions of suffering. It is a foundational methodological principle: psychological harm is a primary, independently sufficient axis of CIDT measurement, not a secondary or supplementary one. Courts, legal practitioners, and adjudicators who treat psychological harm as less serious, less objective, or less legally consequential than physical or psychological harm are violating the Protocol's first principles.

This Part corrects the thesis's bias. It establishes the psychological harm equivalence principle as a foundational doctrine, grounded in international law, clinical science, and constitutional jurisprudence. It then traces the principle through every prior Part of the thesis, identifying where the analysis needs strengthening and providing the substantive development that each Part requires. The principle is not supplementary; it is structural. Many of the thesis's most important legal arguments — the CIDT determination, the jus cogens claim, the jurisdictional custody analysis, the Cleburne irrational prejudice standard, the systemic discrimination framework — are actually stronger when psychological harm is treated as a primary independent axis rather than as a secondary confirmation of physical or psychological harm.

The Foundational Principle

Physical and psychological harm are independent, equivalent axes of CIDT measurement under the Istanbul Protocol, UNCAT, CRPD, and ICCPR. Psychological suffering: (a) does not require a physical correlate to constitute CIDT; (b) is as legally significant as physical or psychological suffering when documented by qualified clinical professionals; (c) may in many cases be the primary or sole harm, and still satisfies all four elements of UNCAT Article 1; (d) is, in the judicial disability discrimination context, often the more direct and causally traceable harm, because the psychological mechanisms connecting litigation stress to psychiatric deterioration are more immediately documented and more specifically attributable to identifiable judicial acts than the complex immunological cascades that connect stress to physical disease progression or psychological

deterioration. This thesis treats psychological harm not as corroboration of physical or psychological harm but as a primary right in its own analytical framework.

§ 22.1 The International Law Equivalence Principle

22.1.1 The Istanbul Protocol's Mandate

The Istanbul Protocol's Chapter VI, on psychological evidence, states that psychological evidence may be 'as compelling as physical evidence' and provides a comprehensive framework for documenting psychological harm. The Protocol identifies specific psychological consequences of CIDT that constitute independently sufficient evidence of the prohibited treatment: PTSD; major depressive disorder; anxiety disorders; cognitive impairment; functional decompensation; and the specific phenomenology of traumatic stress — hypervigilance, re-experiencing, avoidance, numbing — that characterizes the survivor's psychological relationship to the traumatic event.

The Protocol's guidance on psychological assessment is as detailed and technically demanding as its guidance on physical examination: it specifies the diagnostic instruments (PTSD checklists, depression rating scales, neuropsychological testing), the interview methodologies, the temporal correlation analysis, and the standards for evaluating whether psychological symptoms are consistent with the described ill-treatment. It does not treat psychological evidence as less reliable, less probative, or less legally significant than physical evidence. On the contrary, it identifies psychological evidence as particularly important in institutional CIDT contexts — precisely the judicial disability discrimination context that this thesis addresses — because psychological harm is often the primary mechanism through which institutional coercion operates on its victims.

Istanbul Protocol (2022), Chapter VI — Psychological Evidence

"The central role of the psychological evaluation cannot be overstated. Psychological evidence of torture and ill-treatment may be as compelling as physical evidence. All persons who allege torture or ill-treatment should be evaluated psychologically. The psychological evaluation should follow the principles governing physical evaluation in terms of documentation, consent, follow-up and reporting." […] "The examiner must be alert to the ways in which the effects of torture may manifest psychologically rather than physically, and must avoid the error of treating the absence of physical or psychological sequelae as evidence against the occurrence of ill-treatment."

22.1.2 UNCAT Articles 1 and 16: The Equal Standing of Psychological Suffering

UNCAT Article 1 prohibits 'severe pain or suffering, whether physical or mental.' The conjunction 'whether physical or mental' is not a qualification; it is an affirmative statement of equivalence. Mental suffering is independently sufficient to satisfy the 'severe pain or suffering' element of Article 1. Article 16's prohibition on cruel, inhuman or degrading treatment similarly encompasses mental suffering without requiring physical or psychological harm. The CAT Committee's General Comment No. 2 (2008) establishes that states must protect individuals from mental suffering that does not amount to physical or psychological harm, and that the distinction between physical and psychological suffering is not legally operative for purposes of the absolute prohibition.

The ICCPR’s Article 7 prohibition encompasses mental anguish explicitly. The UN Human Rights Committee’s General Comment No. 20 (1992) states that the prohibition applies to both physical and mental treatment and that states must prevent the infliction of psychological suffering. CRPD Article 15 mirrors this language precisely: ‘freedom from

torture or cruel, inhuman or degrading treatment or punishment’ encompasses psychological treatment and psychological harm. There is no hierarchy in international human rights law between physical and psychological suffering. The thesis must not create one.

22.1.3 The Objective Assessment Standard and Psychological Harm

The CAT Committee's objective intent assessment framework, applied in both the Hazari and Minkowski IAJ investigations, is equally applicable to psychological harm claims. The objective assessment framework does not require proof of subjective intent to cause psychological harm; it requires proof that the psychological harm was foreseeable, that the state actor knew of the risk, and that the actor persisted in the conduct despite that knowledge. In the judicial disability discrimination context, this standard is readily satisfied for psychological harm: courts in both the Hazari and Minkowski records received detailed clinical documentation that their procedures were causing and would continue to cause specific psychological harm — PTSD reactivation, depressive episode deepening, anxiety escalation, cognitive decompensation — and continued to impose those procedures regardless.

§ 22.2 The Clinical Science of Psychological Harm in Litigation Stress Contexts

22.2.1 Why Psychological Harm Is Often the Primary Harm

In the judicial disability discrimination context, psychological harm is often not secondary to physical or psychological harm but primary to it. The mechanism of harm runs: judicial coercion → psychological stress → psychological deterioration → physical or psychological deterioration (where present). The psychological deterioration is the first-order harm; the physical or psychological deterioration is, in many cases, a downstream consequence of the psychological deterioration rather than an independent harm pathway. When MS disease activity increases in response to litigation stress, the causal mechanism runs through the psychological stress response — the HPA axis activation, the cortisol dysregulation, the autonomic nervous system overload — not through a direct biological pathway from court orders to immune dysfunction. The psychological harm IS the harm; the physical or psychological harm is its biological expression.

This means that for litigants whose conditions do not have the same direct stress-to-physical-disease pathway as multiple sclerosis — litigants with PTSD, depression, anxiety, ADHD, cognitive impairment, or psychiatric conditions more generally — the absence of dramatic physical or psychological markers does not diminish the severity or legal significance of the harm they experience. The Minkowski record is paradigmatic: Ms. Minkowski's documented harms are primarily psychological — PTSD, major depressive disorder, anxiety, functional decompensation from high-functioning employment to disability — with physical or psychological sequelae (gastrointestinal problems, thyroid nodes, insulin resistance) appearing as downstream consequences. Her case would be legally and analytically equivalent to Hazari's under the psychological harm equivalence principle, even in the absence of the additional physical or psychological sequelae.

22.2.2 The DSM-5 Framework as a Legal Measurement Tool

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), provides a standardized, evidence-based framework for documenting psychological harm that is operationally equivalent to laboratory blood work for documenting physical or psychological harm. DSM-5 diagnoses are not subjective characterizations; they are standardized clinical

determinations based on specific symptom criteria, duration thresholds, severity indicators, and functional impact assessments. A DSM-5 diagnosis of PTSD documents specific re-experiencing symptoms, avoidance behaviors, negative cognitive alterations, and autonomic arousal changes, each with defined severity levels. A DSM-5 diagnosis of major depressive disorder documents specific cognitive and affective symptoms, duration, and functional impairment. These are objective clinical determinations, as reliable and as legally significant as blood work values.

The thesis's the analysis to this point has used the Hazari record's neuropsychological evaluation (processing speed at the 0.1 percentile) as the primary psychological evidence point. This underweights the broader DSM-5 documentation that both the Hazari and Minkowski records contain. The full psychological harm inventory must include: the specific diagnoses and their documented severity; the treatment escalation timeline as an objective measure of psychological harm severity (IOP → PHP → residential reflects the DSM-5 severity spectrum from moderate to severe to incapacitating); the treating clinicians' functional capacity opinions; and the temporal correlation between specific judicial acts and specific psychological symptom escalations. This thesis develops this inventory as rigorously as it developed the CD4/CD8 T-cell analysis.

22.2.3 The Treatment Escalation Timeline as the Psychological CIDT Severity Scale

The escalation from outpatient therapy through intensive outpatient (IOP) to partial hospitalization (PHP) to inpatient residential treatment is the clinical equivalent of the physical or psychological harm severity scale that moves from chronic condition management through acute medical episode through hospitalization through intensive care. Each level of the treatment escalation timeline corresponds to a measurable increase in psychological harm severity, documented by independent clinical professionals operating under established standards of care. This thesis develops this treatment escalation scale as a primary, not secondary, measure of CIDT-level psychological harm:

Treatment Level	Clinical Criteria for Step-Up	Psychological Harm Severity	CIDT Significance
Standard outpatient therapy	Moderate symptoms; able to function with support	Moderate psychological harm; significant but not incapacitating	Relevant background — treatment need establishes disability
Intensive Outpatient Program (IOP)	Symptoms impairing function despite outpatient treatment; step-up required by clinical assessment	Severe psychological harm; significant functional impairment	CIDT threshold crossed when IOP entry is triggered by judicial conduct over physician objection
Partial Hospitalization Program (PHP)	IOP insufficient; daily intensive treatment required; risk of hospitalization without PHP	Very severe; near-incapacitating psychological harm	Strong CIDT indicator — judicial conduct caused harm requiring daily clinical management
Inpatient / Residential Treatment	PHP insufficient; imminent risk to self or sustained functional collapse; 24/7 supervision required	Incapacitating psychological harm; loss of autonomous functioning	CIDT established — harm has reached the level requiring institutional care; participation in any judicial proceeding is medically contraindicated

The Minkowski record documents the complete escalation from outpatient to inpatient residential treatment across the litigation period: IOP (January 2023, October-December 2023), PHP (December 2023 to January 2024, March to April 2024), and two separate residential treatment admissions (February to March 2024, April to June 2024). The Hazari record documents sustained disability and neuropsychological impairment. Both records demonstrate that the harm reached the inpatient level — the most severe point on the psychological harm severity scale — and that the escalation was temporally correlated with specific judicial acts (accommodation denials, sanctions orders, compelled appearances).

§ 22.3 Psychological Harm Integration Throughout the Legal Analysis

22.3.1 Psychological Harm in the Court-Caused Harm Analysis

Part VI's analysis of court-caused harm identified three categories: physical disease exacerbation, cognitive deterioration, and psychological trauma. The analysis treated these as parallel categories but weighted physical disease exacerbation most heavily by featuring the biological evidence most prominently.

The analysis in Part VI's harm taxonomy requires recognizing that psychological trauma — PTSD, depression, anxiety, cognitive decompensation — is not merely one of three parallel categories but often the primary harm mechanism through which courts injure disabled litigants. Courts do not generally cause direct physical or psychological harm through their orders; they cause psychological harm through the coercive demands they impose, and that psychological harm may or may not manifest in downstream physical or psychological consequences depending on the litigant's specific conditions. The three-category framework should be restructured as: primary psychological harm (always present in the judicial disability discrimination context); primary physical or psychological harm (present where disability involves direct physical disease pathways); and secondary physical or psychological harm (physical or psychological consequences of the psychological harm, present in some but not all cases). This restructuring reflects the actual causal sequence and prevents the analytical error of treating psychologically-primary cases as legally weaker than physically-primary ones.

The court-caused harm analysis must specifically address the 'state-created psychological danger' doctrine as a companion to its state-created physical or psychological danger analysis. The DeShaney doctrine's positive duty principle applies to psychological harm with equal force: when a court's compulsory jurisdiction places a disabled litigant under its authority and that litigant has documented psychological conditions that the court's standard procedures predictably exacerbate, the court has created a psychological danger that triggers its positive duty to accommodate. The psychological harm is not incidental to the judicial process; it is the direct and foreseeable product of the court's exercise of coercive authority over a person with documented psychological vulnerability.

22.3.2 Psychological Harm and the Absolute Prohibition

Part VII's CIDT analysis built its most powerful evidentiary arguments around the Hazari record's biological markers — the CD8 T-cell data, the immunosuppression, the infection indicators. The jus cogens argument was presented primarily through the lens of physical or psychological harm of a severity that approaches the torture threshold. This presentation, while legally and factually accurate, inadvertently implies that psychological harm below the physical or psychological severity threshold does not engage the jus cogens prohibition. This is incorrect.

The jus cogens prohibition on CIDT is absolute, non-derogable, and applies to psychological suffering independently of whether that suffering has physical manifestations. The Istanbul Protocol's statement that psychological evidence 'may be as compelling as physical evidence' applies directly to the jus cogens threshold: psychological harm of sufficient severity, caused intentionally by a state actor with official authority over the victim, who cannot withdraw from the source of harm, satisfies the jus cogens prohibition regardless of the presence or absence of physical or psychological markers. The Minkowski record's documentation of PTSD, MDD, and functional decompensation to residential treatment level satisfies this threshold independently. The thesis's The absolute prohibition analysis explicitly states that the jus cogens CIDT threshold can be reached through psychological harm alone, and that the Minkowski record establishes this as a second independent pathway to the jus cogens determination alongside the Hazari record's physical or psychological harm pathway.

The Psychological CIDT Standard: Four Elements Applied to Psychological Harm

SEVERE PSYCHOLOGICAL SUFFERING: Established when: DSM-5 diagnosis of PTSD, MDD, or equivalent severe psychiatric condition is documented; treatment escalation to IOP/PHP/residential level is clinically required; functional capacity to work, maintain relationships, or manage daily life is substantially impaired; the treating clinicians explicitly state that judicial participation without accommodation will cause additional psychological injury. INTENTIONAL INFLICTION: Established when: the court received clinical documentation of the psychological harm risk and continued to impose the harm-causing conditions; the pattern of accommodation denial after explicit medical warnings is present. PROHIBITED PURPOSE: Established when: the psychological harm is used as evidence against the litigant (filing activity during symptomatic periods characterized as disproving disability); the litigant is sanctioned for the behavioral consequences of the psychological harm (non-compliance during acute decompensation characterized as bad faith). STATE ACTOR INVOLVEMENT: Established when: a judicial officer, in official capacity, issued the orders that required participation under the conditions that caused the psychological harm. All four elements are present in both the Hazari and Minkowski records based on psychological harm evidence alone.

22.3.3 Psychological Harm in the Systemic Discrimination Analysis

Part X’s seven systemic discrimination markers should be amended to explicitly incorporate psychological harm as the primary harm mechanism in five of the seven markers. The ‘template language’ marker (Marker 1) causes psychological harm directly: being characterized as a ‘serial abuser of disability law’ or a malingerer fabricating disability is a documented psychologically harmful act. The identity attack on disability status is a specific form of psychological harm — the destruction of the litigant’s self-conception as a person legitimately using legal protections to which they are entitled.

The 'vexatious litigant as prior restraint' analysis in Part XIII should additionally address the specific psychological harm of permanent labeling: the internalization of the vexatious designation, the learned helplessness produced by the systematic dismissal of the litigant's claims and advocacy, and the PTSD-like hypervigilance that develops when every filing risks triggering additional sanctions. These are documented psychological consequences of the vexatious litigant label that are independent of any physical or psychological harm and that constitute CIDT independently of physical or psychological sequelae.

22.3.4 Psychological Dignity and the Rational Basis Analysis

Part XI's Cleburne analysis focused on the irrational-prejudice-based denial of accommodation and its physical or psychological harm consequences. The amendment requires recognizing that the irrational-prejudice-based denial of disability accommodation is psychologically harmful as a dignity violation independently of whether it produces physical or psychological harm. The Supreme Court's equal protection jurisprudence has recognized dignity injury as a cognizable constitutional harm in multiple contexts: the psychological harm of stigma and second-class status (Brown v. Board of Education); the psychological harm of official characterization as having lesser worth (Obergefell v. Hodges); and the psychological harm of institutional denial of personhood claims (Tennessee v. Lane). When a court denies a disability accommodation based on the irrational prejudice that the disabled litigant's filing activity proves they do not need accommodation, the court is simultaneously causing the psychological harm of institutional disability denial — the official judicial characterization that the litigant's disability is fabricated, their advocacy is abuse, and their fundamental human rights claims are 'without merit.' This dignity harm is cognizable under both the constitutional framework and the UNCAT/CRPD prohibition on degrading treatment, independently of any physical or psychological sequelae.

22.3.5 The Psychology of Permanent Exclusion Through Vexatious Litigant Designation

Part XIII's analysis of the vexatious litigant label as prior restraint should be substantially strengthened by the psychological harm analysis. The vexatious designation imposes psychological harm through five specific mechanisms:

- **Mechanism 1:** Learned helplessness. The systematic dismissal of every filing, every accommodation request, every appeal, and every grievance produces the documented psychological state of learned helplessness — the clinical condition in which repeated experiences of uncontrollable harm cause the person to stop attempting to protect themselves even when protection becomes theoretically available. Learned helplessness is a documented clinical consequence of sustained institutional CIDT that the Istanbul Protocol specifically identifies as a sequela of torture-level treatment.
- **Mechanism 2:** Identity contamination. The vexatious litigant label, as a permanent judicial characterization, contaminates the litigant's identity in every subsequent judicial proceeding and in every professional or social context where the label becomes known. The psychological harm of identity contamination — of being officially and permanently characterized as an abuser of the legal system for the behavioral consequences of one's disability — is distinct from the legal consequences of the label and constitutes an independent form of degrading treatment.
- **Mechanism 3:** Anticipatory terror. The continuing threat of additional sanctions, dismissals, and pre-filing order violations generates a state of chronic anticipatory anxiety that is functionally equivalent to the hypervigilance state documented in PTSD. The litigant lives in anticipatory terror of each filing being met with sanctions rather than merits engagement. This psychological state is the direct and foreseeable product of the vexatious designation mechanism.
- **Mechanism 4:** Forced self-censorship. The pre-filing order requires the litigant to obtain judicial approval before filing. The knowledge that approval may be denied — based on discretion exercised by the same institution whose discrimination generated the filing pattern — forces the litigant to self-censor legitimate claims. The psychological harm of compelled self-censorship about one's own rights is a form of the degradation of personhood that the CRPD's dignity principle and the ICCPR's expression protections are specifically designed to prevent.

- **Mechanism 5:** Epistemic isolation. When a litigant's claims are systematically dismissed as frivolous across all courts in a system, the litigant loses access to any validating authority that can confirm the accuracy of their legal analysis. The psychological harm of epistemic isolation — of having one's understanding of reality systematically denied by the institutional actors who control the mechanisms through which legal reality is constructed — is a form of psychological harm that the Istanbul Protocol's analysis of torture's disorientation effects specifically addresses.

22.3.6 Psychological Harm Compounding Through the Impossibility of Relief

Part XIV's impossibility analysis was framed primarily in terms of the court system's institutional incapacity to adjudicate its own CIDT. The psychological harm dimension of the impossibility problem requires explicit development: the impossibility itself causes psychological harm. The recognition that there is no available legal remedy for one's ongoing harm — that every appeal replicates the violation, that every court is part of the discriminating system, that the nation's highest court will not engage with the legal analysis — produces a specific psychological state that clinicians recognize as a component of complex PTSD: the loss of trust in protective systems, the experience of total abandonment by the institutions that were supposed to protect one's rights, and the despair that follows the exhaustion of all available remedies without relief.

Both the Hazari and Minkowski records document this psychological state explicitly. Hazari's filings describe the experience of having raised constitutional, statutory, and treaty arguments that the court characterizes as 'without merit' without engaging their substance — across twenty-plus SCOTUS writs, across nine Ninth Circuit appeals, across more than eight years of state and federal proceedings. Minkowski's SCOTUS letter documents the experience of having a writ of certiorari obstructed for six months and a second writ 'lost' — the experience of having the very mechanism of supreme review rendered inaccessible by the institution that controls access to it. The psychological harm of systemic legal abandonment is documented, clinically significant, and directly attributable to the institutional impossibility that Part XIV analyzes. It must be explicitly recognized as part of the harm that the impossibility itself causes.

22.3.7 The Psychology of the Trapped Litigant

The accommodation paradox of Part XVIII has a specific and devastating psychological dimension that the Part did not adequately develop: the paradox is not merely a logical structure that makes legal remedy impossible; it is an experience of entrapment that produces the specific psychological harm that clinical literature associates with inescapable harm situations. Research on the psychology of entrapment — from the original Seligman learned helplessness studies through the clinical literature on complex PTSD — establishes that the experience of being unable to escape from a source of recurring harm, even when the harm is recognized and protested, produces predictable psychological deterioration: hopelessness, helplessness, loss of agency, identity disintegration, and — in severe cases — the suicidal ideation that represents the ultimate attempt to escape an inescapable situation.

The disabled litigant trapped in the accommodation paradox experiences: the harm of the accommodation denial; the harm of being characterized as frivolous for protesting it; the harm of attempting to challenge it and finding that the challenge replicates the harm; the harm of recognizing that no court in the system will provide the accommodation needed to challenge the system's non-accommodation; and finally the harm of the paradox's logical closure — the recognition that the system has designed itself, whether intentionally or structurally, to be immune from accountability. This is not a description of ordinary litigation frustration. It is a description of a specific form of institutionally-caused psychological trauma that the Istanbul Protocol identifies as characteristic of CIDT: the systematic destruction of the victim's capacity to

trust in protective institutions, combined with the repeated demonstration that protest produces punishment rather than relief.

§ 22.4 The Psychological Harm Documentation Framework

The following framework provides the minimum documentation standard for establishing psychological CIDT-level harm in judicial disability discrimination proceedings. It is operationally equivalent to the physical or psychological harm documentation framework derived from the IAJ's blood work analysis, and it must be treated with equal evidentiary weight.

22.4.1 Core Documentation Elements

- **Element 1:** DSM-5 clinical diagnosis with specific symptom criteria documented. The clinical record must establish: the specific diagnoses; the symptom criteria met for each diagnosis; the severity level (moderate, severe, or extreme); the duration of the condition; and the functional impact on major life activities including litigation participation.
- **Element 2:** Treatment escalation timeline with clinical justification for each step-up. Each escalation from a lower to a higher level of care must be documented with the clinical reasons for the step-up. The reasons for step-up are the clinical evidence of psychological harm severity: 'IOP insufficient because patient decompensated when required to attend court without accommodation; PHP required to stabilize' is documentation of court-caused psychological harm reaching PHP-severity level.
- **Element 3:** Temporal correlation analysis between specific judicial acts and specific psychological symptom changes. The clinical record must establish, with dates, the correlation between: specific accommodation denials, specific sanctions orders, specific compelled appearances — and specific psychological symptom escalations, medication changes, treatment intensifications. The Minkowski record's documentation of acute decompensation on May 23, 2022 (the day after the first accommodation denial) is the paradigm for this temporal correlation evidence.
- **Element 4:** Treating clinician functional capacity opinions on litigation participation. Explicit clinician statements, specific to the litigation context, documenting: inability to participate in legal proceedings; the specific cognitive and affective impairments that prevent effective participation; and the specific harm that would result from continued participation without accommodation. These opinions must be contemporaneous with the judicial acts they address.
- **Element 5:** Causation narrative establishing the judicial act → psychological harm pathway. A qualified forensic psychologist or treating clinician must establish the pathway from specific judicial acts to specific psychological harm: not merely 'litigation is stressful' but 'this specific denial of accommodation on this specific date triggered this specific PTSD reactivation episode that is documented in this specific medical record.'
- **Element 6:** Documented behavioral consequences of psychological harm. The psychological harm must be documented in its functional expressions: inability to meet deadlines (not as bad faith but as cognitive impairment); prolific filing (not as harassment but as anxiety-driven compensatory behavior); inability to organize complex arguments (not as frivolousness but as executive function impairment); physical presence in court while psychologically absent (not as contempt but as dissociation during PTSD reactivation).

The Equivalence Principle Applied: Physical vs. Psychological Harm Comparison

PHYSICAL HARM DOCUMENTATION (exemplified by Hazari): CD8 T-cells at 54 cells/μL (severely below normal minimum of 180, flatlined 28 months); disease-modifying therapy suspended due to infection risk; active infection requiring antibiotics; neurologist/immunologist opinions establishing causation. PSYCHOLOGICAL HARM DOCUMENTATION (exemplified by Minkowski): PTSD, MDD, anxiety (DSM-5 documented); treatment escalation IOP → PHP → residential (twice); functional decompensation from mid-six-figure executive employment to complete disability; treating clinician consensus that participation without accommodation causes additional injury; temporal correlation of acute decompensation (ER transport May 23, 2022) with specific judicial act (accommodation denial May 22-23, 2022); clinician documentation of sleep disruption (2-3 hours/night), concentration impairment, panic attacks. LEGAL EQUIVALENCE: Both documentation records satisfy all four UNCAT Article 1 elements. Both satisfy the Istanbul Protocol's documentation standards. Both establish CIDT-level harm with the same legal consequence: state actor with official authority, foreseeable harm, intentional continuation despite medical warning, no accommodation provided. The thesis treats both as equal. Neither requires the other as corroboration or confirmation.

§ 22.5 The Dignity Harm Dimension: Degrading Treatment as a Psychological Construct

The 'degrading' element of 'cruel, inhuman or degrading treatment' is inherently and primarily psychological. Physical pain that does not affect dignity is legally distinguished from treatment that degrades — that strips the person of their worth, their personhood, and their standing as an autonomous human being. The judicial disability discrimination pattern documented throughout this thesis involves degrading treatment in this specific sense: the institutional denial of the litigant's disability, the characterization of their medical needs as fabricated, the designation of their advocacy as abuse, and the permanent labeling of their personhood as 'vexatious' are all forms of dignity degradation that operate through psychological mechanisms and produce psychological harm.

CRPD Article 15's prohibition on 'cruel, inhuman or degrading treatment or punishment' must be read in conjunction with CRPD Article 3's foundational principles, which include 'respect for inherent dignity' as the first and most fundamental principle of the entire Convention. A court that treats a disabled litigant's disability as a litigation strategy rather than a medical reality is violating that litigant's inherent dignity under Article 3. The violation occurs through the psychological mechanism of institutional denial — and it constitutes degrading treatment under Article 15 independently of any physical or psychological harm.

The Minkowski record's documentation of 'denialism and ableism' — the IAJ's framework of 'treating invisible disabilities as fraudulent' — captures precisely this dignity degradation. When Judge Hendrickson characterized Minkowski as 'shopping' while she was physically confined in a psychiatric facility, the judge was not merely making a factual error. The judge was officially characterizing Minkowski's disability as fabricated — an act that denies the most fundamental aspect of Minkowski's identity as a person with a disability and constitutes degrading treatment in its most direct form: the official, judicial, on-the-record denial of a person's fundamental human reality.

§ 22.6 Concrete Corrective Amendments to Prior Parts: Specific Replacement Language

The following table identifies the specific passages in prior Parts that require amendment to reflect the psychological harm equivalence principle, and provides the replacement analysis for each:

Prior Part	Current Formulation (Inadequate)	Required Amendment	Why Critical
Part VI, Court-Caused Harm	Three harm categories treated as parallel; physical or psychological harm featured most prominently in biological marker analysis	Restructure taxonomy: psychological harm as primary mechanism; physical or psychological harm as co-primary or secondary (downstream of psychological harm); dignity harm as independent third axis	Psychological harm is the direct product of the judicial act; physical or psychological harm is often downstream; the taxonomy must reflect the actual causal sequence
Part VII, CIDT Analysis	Jus cogens argument centered on CD4/CD8 biological data; psychological harm presented as corroboration	Jus cogens threshold explicitly reachable through psychological harm alone; Minkowski record establishes second independent CIDT pathway through psychological harm without requiring biological markers	Creates impression that CIDT requires physical or psychological markers; this is incorrect and would leave psychologically-primary cases legally underprotected
Part X, Seven Markers	Marker language focused on physical or psychological harm consequences; 'not required to provide accommodations' analyzed as physical or psychological harm policy	Explicitly state that each marker produces psychological harm as its primary mechanism: identity attacks cause identity contamination harm; vexatious designation causes learned helplessness, anticipatory terror, epistemic isolation	Systemic discrimination's primary harm mechanism is psychological; physical or psychological harm is a downstream consequence in many cases
Part XI, Rational Basis	Irrational-prejudice-based denial analyzed primarily through physical or psychological harm lens	Add explicit dignity harm dimension: official judicial denial of disability is degrading treatment under CRPD Art. 3/15 independently of physical or psychological harm; constitutional dignity injury recognized in Brown, Obergefell applies here	Courts must understand that discrimination causes cognizable harm through dignity violation, not only through physical or psychological consequence
Part XIII, Vexatious Litigant	Prior restraint analyzed primarily through access-to-courts and financial harm lenses	Add five psychological harm mechanisms: learned helplessness, identity contamination, anticipatory terror, forced self-censorship, epistemic isolation	Vexatious designation causes psychological harm that is independently sufficient for CIDT determination, separate from its legal consequences
Part XIV, Impossibility	Impossibility framed as institutional incapacity issue	Add: impossibility itself causes psychological harm (complex PTSD component: loss of trust in protective institutions, despair at	The psychological harm of the impossibility is itself a CIDT element that must be recognized and documented

Prior Part	Current Formulation (Inadequate)	Required Amendment	Why Critical
		exhaustion of remedies, hopelessness)	
Part XVIII, Paradox	Paradox analyzed as logical/structural problem	Add psychology of the trapped litigant: inescapable harm situations produce learned helplessness and complex PTSD; paradox-caused psychological harm is itself a separate CIDT violation	The psychological harm of entrapment is documented clinical harm, not merely theoretical; it must be treated as a primary harm claim
Part XIX, ADA Coordinator	Coordinator qualifications include medical literacy for physical or psychological conditions	Explicitly include: qualification requirements for psychological harm assessment; DSM-5 diagnostic framework literacy; trauma-informed methodology; PTSD and anxiety disorder functional capacity assessment	Coordinator without psychological harm expertise will replicate the courts' ableism toward invisible psychiatric disabilities
Part XXI, Minkowski Comparison	Comparison matrix uses physical or psychological markers as primary comparators	Restructure comparison to treat psychological harm escalation timeline as primary comparator alongside physical markers; establish psychological harm as independently sufficient in Minkowski case	Minkowski record is primarily a psychological harm record; treating it as requiring physical corroboration undervalues its independent legal significance

§ 22.7 The Complete Psychological Harm Argument: A Self-Contained Legal Case

The thesis's correction does not merely add psychological harm as a supplementary axis to an otherwise physically-grounded argument. It establishes a complete, self-contained legal case for CIDT based on psychological harm alone — a case that would succeed even if the Hazari record contained no biological markers and no physical disease progression whatsoever. This self-contained psychological harm case is as follows:

Factual predicate: The court received specific medical documentation that its standard procedures, applied without modification to a disabled litigant, would cause specific and foreseeable psychological harm — PTSD reactivation, depressive episode deepening, anxiety escalation, cognitive decompensation. This documentation was provided by multiple qualified clinical professionals (treating physicians, psychotherapists, neuropsychologists) whose opinions met the evidentiary standards the court itself applies to expert testimony.

State actor predicate: The court, as a state actor acting through judicial officers in their official capacity, exercised jurisdictional authority over the disabled litigant that made withdrawal from the harm-causing situation impossible without total forfeiture of all fundamental rights.

Intentional continuation: Despite the clinical documentation of foreseeable psychological harm, and despite documented instances of actual harm (acute decompensation, emergency department transport, treatment escalation), the court continued to impose the harm-causing conditions and characterized the litigant's psychological harm as evidence against the legitimacy of the disability claims.

Prohibited purpose: The court used the litigant's psychological disability against the litigant: characterizing disability-caused filing behavior as 'prolix' harassment; using disability-caused non-compliance as a basis for sanctions; deploying the vexatious litigant designation to permanently restrict access to the justice system that had caused the harm; and treating the litigant's advocacy for their own human rights as evidence of bad faith.

Psychological harm at CIDT threshold: The treatment escalation to inpatient/residential level, the loss of employment and functional capacity, and the forced displacement from home and country document psychological harm that reached the severity, duration, and functional impact that the Istanbul Protocol identifies as sufficient for CIDT and torture determinations — independently of any physical or psychological markers.

Every element of the UNCAT Article 1 analysis is satisfied by this case built exclusively on psychological harm evidence. The jus cogens prohibition applies. The institutional liability framework of Tennessee v. Lane applies. The Cleburne dignity violation applies. The CRPD Article 15 prohibition applies. The thesis is read — as making this case with full force alongside, not merely in addition to, the physical or psychological harm analysis.

The Psychological Harm Equivalence Principle: Final Statement

The prohibition on cruel, inhuman or degrading treatment or punishment is violated when: a state actor with official authority subjects a person to conditions that cause severe psychological suffering; the person cannot withdraw from those conditions without forfeiting fundamental rights; the state actor knows of the psychological harm risk and continues to impose the conditions regardless; the psychological suffering results from the state actor's exercise of coercive institutional authority rather than from external causes; and the suffering reaches the threshold of clinical severity documented by qualified mental health professionals. This standard is satisfied by psychological harm alone. It does not require physical or psychological harm as a predicate or confirmation. The Istanbul Protocol's statement that psychological evidence 'may be as compelling as physical evidence' is not a concession; it is a command. This thesis treats it as such.

ECF-48-2 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.) (February 17, 2022): Spousal Harm First Documented on the Official Record

The thesis identifies secondary victims of judicial disability discrimination in Part XXII (Psychological Harm as CIDT). The primary source document for the spousal harm evidence — Karen Hazari's brain tumor, the vestibular dehiscence, and the Tesla accident — is ECF-48-2, filed February 17, 2022 in support of the seventh accommodation motion. This declaration is the first filing in the BLF record to place spousal harm on the official federal court record with specific medical detail.

ECF-48-2 paragraph 15 states: 'Stanford neurologist Dr. Steernesson diagnosed her vestibular dehiscence and stated on a recording that her stress from my abuse by courts and opponents is causing fluctuations in brain pressure that cause her vertigo and loss of balance and other symptoms.' Paragraphs 21-24 document the brain tumor: 'Stanford ER did extensive imaging and diagnosed her with a massive brain tumor. She was admitted on December 23, 2021 and kept over Christmas. During this time, her heart monitor showed abnormal heart rhythm. Her operation resulted in successful removal of the tumor.' Paragraphs 40-45 document the Tesla accident approximately four weeks post-surgery, during which Karen was struck by a vehicle, taken to the ER, and discharged with 'many cuts and wounds.'

Paragraph 36: 'I was approved for IHSS [In-Home Supportive Services] in 2019 because of my significant disability.' The spousal harm, the IHSS approval, the brain tumor, the cardiac findings, and the Tesla accident all appear in a federal court filing that was sealed and unavailable to defendants until ECF-80 (March 3, 2025) — which is also the day the Ninth Circuit issued ACMS-37. The medical causal chain from judicial conduct to a third party's neurological harm, documented by a named Stanford neurologist on a recording, is the strongest third-party causation evidence in the entire record.

PART XXIII

From Coordinator to Tribunal: The Independent Disability Access Tribunal as the Institutional Architecture Required by Law, Science, and the Accommodation Paradox

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The Independent ADA Coordinator model — a single officer, appointed by an external authority, with protected tenure, budgetary independence, and authority to issue findings against judicial conduct. The single-officer model is a substantial improvement over the current embedded ADA Coordinator model, which the Hazari and Minkowski records have demonstrated is either structurally inert or actively complicit in the discrimination it is supposed to prevent. But the IAJ's analysis, developed through its investigation framework and its institutional experience as an independent investigative body, identifies a deeper structural problem with the single-coordinator model that Part XIX's design does not fully resolve.

The problem is this: disability accommodation in judicial proceedings is not an administrative function to be managed by a single generalist officer. It is a continuous, interdisciplinary clinical

and legal process that requires: a full independent medical assessment of each disabled litigant's specific conditions, functional limitations, and accommodation needs; an ongoing monitoring function that adjusts the accommodation as conditions change; a quality assurance function that measures whether the accommodation is actually achieving equal access; a documentation and knowledge-management function that builds institutional learning from each case; and a proactive outreach function that ensures disabled litigants are offered accommodation without being required to navigate complex formal request procedures that their disability may prevent them from accessing. No single individual — however qualified, however independent, however well-resourced — can perform all of these functions across an entire federal circuit.

The institutional architecture that these functions require is not a coordinator; it is a tribunal. An Independent Disability Access Tribunal (IDAT) — a standing body of medical and legal specialists, independent of the judicial system, constituted as a formal adjudicative institution with the authority to issue binding determinations, continuous monitoring obligations, and a quality-improvement mandate — is what the law, the clinical science, the Istanbul Protocol, and the accommodation paradox collectively require. This Part develops the IDAT's full institutional design, its operational framework, its relationship to existing bodies (including the IAJ), and its constitutional and statutory basis.

The IAJ's Foundational Principle

The ADA Coordinator must be entirely independent of the court. More than that: the ADA Coordinator must be the extension of an independent tribunal of medical and legal experts whose only function is to ensure that a full medical assessment, and the continuous provision of court accommodations, are in force, offered proactively without compromise and without undue burden to the recipient, monitored and documented for quality and effectiveness, and enhanced by a database of cases from which process and accommodation improvements may be achieved. The IAJ provides independent tribunal services toward this end.

§ 23.1 Why the Coordinator Model Is Insufficient: The Five Structural Deficits

23.1.1 Deficit 1: Single-Assessor Limitation

A single ADA Coordinator, however qualified, cannot provide the interdisciplinary assessment that disability accommodation in judicial proceedings requires. A full assessment requires: a psychiatrist or clinical psychologist to evaluate psychiatric conditions (PTSD, depression, anxiety, cognitive impairments); a neurologist or relevant specialist to evaluate organic conditions affecting cognitive or physical function (MS, TBI, epilepsy, chronic fatigue); a neuropsychologist to evaluate cognitive functional limitations through standardized testing; a disability rights attorney to assess the legal adequacy of proposed accommodations; and a social worker or care coordinator to assess the practical barriers to accessing accommodations (transportation, technology, communication). No single person holds all of these qualifications. The single-coordinator model produces assessments that are inevitably partial — conducted from one professional perspective, blind to dimensions visible only from others.

23.1.2 Deficit 2: One-Time Rather Than Continuous Assessment

The current ADA Coordinator model, even in its best-functioning versions, treats accommodation as a discrete event: a request is made, an assessment is performed, a decision is issued. But disability — especially the episodic and progressive conditions documented in the Hazari and Minkowski records — is not a discrete event. It is a dynamic, changing condition whose functional

impact on litigation participation varies with disease activity, treatment stage, environmental stressors, and the specific demands of the litigation at particular moments. An accommodation that is adequate in one phase of litigation may be wholly inadequate in another. A litigant who can participate in document review may be unable to participate in a contested hearing. The one-time assessment model fails precisely because it fixes a static determination onto a dynamic condition.

The jurisdictional custody analysis in Part XXI makes this deficit particularly acute: the litigation process itself is a source of psychological stress that changes the disabled litigant's condition over time. Accommodation must be continuous and responsive, not one-time and fixed. The treatment escalation timeline documented in the Minkowski record — IOP to PHP to residential, twice — is the empirical demonstration that a one-time accommodation determination made at the beginning of the case is clinically and legally worthless by the time the case reaches its later stages.

23.1.3 Deficit 3: Reactive Rather Than Proactive

The accommodation request model requires the disabled litigant to initiate the process: to know that accommodation exists, to know how to request it, to complete the required forms, to submit medical documentation, and to navigate the administrative process — all while disabled, under litigation stress, often self-represented, and frequently in conditions of cognitive or psychological impairment that make form completion and procedural navigation genuinely difficult or impossible. The very disability that creates the need for accommodation also impairs the ability to request it through the existing formal process.

The proactive model required by the CRPD's Article 13 effective access guarantee and by the ADA's 'primary consideration' standard for effective communication does not wait for the disabled litigant to request accommodation. It identifies disabled litigants at case intake, offers accommodation proactively, assesses their needs without requiring them to navigate a request bureaucracy, and provides accommodation as the default unless the litigant affirmatively declines. The current system's reactive model inverts this: denial is the default; accommodation requires the disabled litigant to overcome systemic barriers to access the process that is supposed to provide access. The IDAT must reverse this inversion structurally.

23.1.4 Deficit 4: No Quality Measurement or Continuous Improvement

The existing accommodation system — to the extent it functions at all — has no mechanism for measuring whether the accommodations it provides are actually achieving their purpose: equalizing the disabled litigant's effective participation. An accommodation may be formally provided and factually inadequate: a 14-day extension may be provided when the medical evidence required 90 days; a remote appearance may be permitted when the medical evidence required a 60-day stay of proceedings. There is no feedback loop, no outcome measurement, no quality control. The accommodation is issued and the case moves on, regardless of whether the accommodation actually enabled equal access.

The quality assurance deficit means the system has no institutional memory, no capacity to learn from failures, and no mechanism for improving accommodation design over time. Each case is treated as the first case. Each accommodation request is evaluated without reference to what worked and what failed in similar cases. Each judicial officer reinvents the wheel — or more commonly, refuses to reinvent it and applies the same formula denial regardless of what the medical evidence shows. The IDAT's database function is not an ancillary administrative feature; it is the foundational mechanism through which accommodation law becomes institutionally operational rather than theoretically available.

23.1.5 Deficit 5: No Accountability for Accommodation Effectiveness

The current system has no accountability mechanism for measuring whether the accommodation actually worked. If a disabled litigant receives an accommodation and then fails to meet the accommodated deadline, the system treats the failure as evidence of bad faith or incapacity rather than as evidence that the accommodation was inadequate. The result is the accommodation paradox applied at the individual level: the litigant who receives an inadequate accommodation and fails to comply with it is in a worse position than the litigant who received no accommodation, because the inadequate accommodation creates the appearance of compliance opportunity that did not actually exist.

The IDAT staffing and resource analysis above derives its standards from the institutional design requirements identified in this thesis. The national empirical record independently confirms that those requirements are not aspirational — they respond to a documented and quantified accountability failure across American judicial systems.

National Commission Staffing Data: Why IDAT Resource Requirements Are Not Aspirational

The IDAT's proposed staffing and independence requirements are grounded in empirically demonstrated necessity, not theoretical preference. Reuters' national investigation of judicial conduct commissions found: NATIONAL AVERAGE: One full-time staff member per 155 judges. At this staffing level, meaningful proactive accommodation monitoring is structurally impossible. ARKANSAS COMPARISON: One staff member per 53 judges — and Arkansas disciplines judges at more than double the national rate (13 per 100 judges vs. 6 per 100 nationally). Resource adequacy directly determines accountability outcomes. INDEPENDENCE DEFICIT: The GAO confirmed that federal judicial accountability investigations are referred to the originating component — the same court system that produced the conduct under review. Nothing prohibits investigation by individuals with close relationships to the subject. COMPLAINANT DETERRENCE: Commission rules "intimidate anyone with a legitimate complaint." For a disabled litigant whose disability is caused or exacerbated by litigation stress, the fear of retaliation from the tribunal that controls their legal proceedings is not an irrational calculation — it is a documented institutional reality. The IDAT's proposed staffing ratio (one tribunal per court system), fixed tenure protections, external appointment authority, and independent investigative capacity are calibrated to the minimum required to overcome the structural deficits that Reuters, the GAO, and the state commission literature have documented at the national level.

An accountability system requires measuring: (1) whether the litigant was able to comply with the accommodated requirements; (2) if not, whether the non-compliance is attributable to the inadequacy of the accommodation; (3) what modification of the accommodation would have enabled compliance; and (4) whether the accommodation was designed in consultation with the litigant and their medical providers or imposed unilaterally by a non-clinical judicial officer. None of these measurements currently exist in any court system.

§ 23.2 The Independent Disability Access Tribunal: Institutional Architecture

23.2.1 Composition and Expertise Requirements

The Independent Disability Access Tribunal (IDAT) is a standing multi-member body with the following required composition for each regional division:

Member Role	Required Qualifications	Specific Function	Independence Requirement
Presiding Legal Member (Chair)	JD + 10 years disability rights practice; no prior court employment within 10 years; demonstrated advocacy for disabled litigants	Chairs the tribunal; signs accommodation determinations; oversees legal analysis; issues findings against judicial conduct	Must have adversarial record of challenging court accommodation failures, not merely advisory practice
Psychiatrist / Psychologist Member	MD/PhD in psychiatry or clinical psychology; licensed; board-certified; 5+ years treating disability populations; Istanbul Protocol training	Conducts or supervises full psychiatric/psychological assessment; assesses functional capacity; provides clinical opinions; monitors treatment escalation indicators	Independent of all healthcare systems that contract with courts; no professional relationship with any judge in the relevant jurisdiction
Neurologist / Medical Specialist Member	MD in neurology or relevant specialty (depending on case type); licensed; 5+ years treating relevant conditions	Assesses neurological, organic, and physical dimensions of disability; evaluates medical documentation; provides specialist opinions on functional limitations and prognosis	Independent of all healthcare systems that contract with courts; consults with treating physicians but provides independent assessment
Disability Rights Specialist Member	Graduate degree in disability studies, rehabilitation counseling, or equivalent; 5+ years direct practice with disabled litigants; CRPD expertise	Identifies accommodation options; evaluates adequacy of proposed accommodations; assesses whether accommodation achieves equal access; provides accommodation design recommendations	Active disability rights advocacy background required; must have personal or professional disability experience
Case Manager / Quality Officer	Graduate degree in social work, case management, or equivalent; disability services background; data management expertise	Continuous monitoring of accommodation effectiveness; data collection; quality reporting; proactive outreach to disabled litigants; maintains the IDAT database	Employed by IDAT, not by any court system; reports to IDAT chair, not to any judicial officer

The tribunal composition reflects the five deficits identified in § 23.1: the multi-member requirement addresses the single-assessor limitation; the psychiatrist/psychologist addresses psychological harm equivalence (Part XXII); the neurologist addresses physical disease dimensions; the disability rights specialist addresses accommodation design expertise; and the case manager addresses continuous monitoring and quality assurance.

23.2.2 The Proactive Assessment Protocol: From Request-Based to Rights-Based

The IDAT's most fundamental operational departure from the existing accommodation model is the reversal from reactive to proactive. Accommodation is not something disabled litigants request; it is something the IDAT provides as a right, offered at case intake, without requiring the disabled litigant to navigate a request bureaucracy. The proactive protocol operates in four stages:

Stage 1 — Case Intake Screening (within 48 hours of case filing): The IDAT Case Manager reviews every new case filing for disability indicators. The screening protocol is broad: any reference to disability, medical condition, mental health treatment, medical leave from employment, or difficulty meeting standard deadlines triggers a proactive outreach contact. The Case Manager contacts the litigant directly — not through the court's administrative system — to offer IDAT services. The contact is made in accessible format: written communication in the litigant's primary language; telephone option; video option; representative contact available.

Stage 2 — Full Interdisciplinary Assessment (within 10 business days of intake contact): For litigants who accept IDAT services, the full panel conducts an interdisciplinary assessment. The assessment includes: clinical interview by the psychiatrist/psychologist; review of all medical documentation; neuropsychological testing where indicated; functional capacity analysis specific to the litigation activities required; and a disability rights consultation on available accommodation options. The assessment is conducted entirely by the IDAT panel, not by the court. The court has no role in the assessment process.

Stage 3 — Accommodation Determination and Plan (within 5 business days of assessment): The IDAT panel issues a written Accommodation Determination specifying: the litigant's specific diagnoses; the specific functional limitations affecting litigation participation; the specific accommodations required (time extensions, hearing modifications, technology supports, format changes, stay orders, representation assistance); the legal basis for each accommodation; and the monitoring schedule for reassessment. The Accommodation Determination is transmitted directly to the court. Under the IDAT's statutory authority, the Determination is binding unless the court files a specific written objection within 5 business days with the IDAT, citing specific legal grounds.

Stage 4 — Continuous Monitoring and Reassessment: The IDAT Case Manager maintains continuous contact with the litigant and their treating providers throughout the litigation. Reassessment is triggered automatically: (a) at each major litigation phase (hearing, trial, deposition, filing deadline); (b) whenever the litigant's treatment level changes (e.g., escalation from IOP to PHP); (c) whenever a treating provider issues a new opinion on litigation capacity; and (d) whenever the litigant reports that the accommodation is not enabling effective participation. The Accommodation Plan is updated in real time, not frozen at the initial determination.

23.2.3 The Binding Determination Authority and the Court's Role

The IDAT's determinations are not advisory recommendations that courts may accept or reject. They are binding administrative determinations under the IDAT's statutory authority — analogous to binding EEOC compliance findings or consent decree compliance monitor determinations. A court that does not implement an IDAT Accommodation Determination is in statutory non-compliance, subject to: automatic stay of the relevant proceeding; DOJ referral for ADA Title II investigation; notification to the circuit Judicial Council; and publication in the IDAT's public database as a non-compliance event.

The court retains two legitimate grounds for objecting to an Accommodation Determination: (1) the fundamental alteration defense — but this defense must be supported by specific written findings identifying the specific alteration, supported by evidence, reviewed by the IDAT panel's legal member, and resolved by the full panel within 5 business days; and (2) the undue burden defense — but because courts are federal institutions with substantial resources, the undue burden threshold in the judicial context is exceptionally high. Scheduling inconvenience is not undue burden. Cost of additional hearing time is not undue burden. Bureaucratic complexity of implementing a modified procedure is not undue burden.

What the court cannot do under the IDAT framework: refuse to implement an Accommodation Determination by invoking general docket management authority; substitute a less-protective accommodation for the IDAT's determination without the IDAT's approval; characterize a disabled litigant's compliance with an IDAT-approved accommodation as evidence of incapacity or bad faith; or impose sanctions on a litigant whose non-compliance with standard procedures was within the scope of an IDAT accommodation order. The ECF-139 'not required to provide any accommodations' statement is the paradigm of what the IDAT framework prohibits: a judicial assertion of authority over the accommodation determination that belongs, under the IDAT model, exclusively to the independent tribunal.

§ 23.3 The No-Undue-Burden Principle and the Proactive Access Mandate

23.3.1 The Meaning of 'Without Undue Burden to the Recipient'

The IAJ's formulation specifies that accommodation must be offered 'without undue burden to the recipient.' This is a crucial phrase that inverts the standard accommodation analysis. In the existing ADA framework, the 'undue burden' analysis asks whether the accommodation imposes undue burden on the providing institution. The IAJ's formulation adds the recipient dimension: the process of accessing accommodation must itself not impose an undue burden on the disabled person seeking it.

This principle — that the accommodation access process must not be so burdensome that it defeats the accommodation's purpose — is not merely a policy preference. It is logically required by the ADA's equal access mandate. If the process of requesting accommodation requires cognitive, physical, or psychological capacities that the disability has impaired, the request process itself discriminates against the persons most in need of accommodation. The MC-410 form, the California Rules of Court, Rule 1.100 writ procedure, the tight deadlines for accommodation requests — these are all procedures that impose disproportionate burden on the disabled litigant whose disability prevents efficient navigation of formal processes. They are structurally self-defeating: the access mechanism is least accessible to the people who most need access.

The IDAT's proactive model resolves this structural defect by removing the burden from the recipient entirely. The IDAT finds the disabled litigant; the IDAT conducts the assessment; the IDAT issues the accommodation plan. The litigant's only required action is to cooperate with the assessment — and even this cooperation must be structured in a manner accessible to the specific disability (remote assessment, multiple format options, representative-assisted communication). The accommodation access process is designed around the litigant's actual functional capacities, not around bureaucratic convenience.

23.3.2 The Proactive Offer Mandate: Legal Foundation

The legal foundation for the proactive offer mandate is established at three levels. Under ADA Title II, the 'effective communication' standard requires covered entities to take proactive steps to ensure that persons with communication-related disabilities can communicate effectively with the entity — not merely to respond to requests for assistance. Courts are covered entities under Tennessee v. Lane; the effective communication obligation applies to their judicial proceedings. A court that waits for a disabled litigant to formally request accommodation before offering it has not complied with the effective communication standard.

Under CRPD Article 13, states must ensure 'effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations.' The phrase 'ensure effective access' is an active obligation, not a passive one. A state that makes accommodation theoretically available through a formal request process but does not 'ensure' that it reaches the persons who need it has not fulfilled the active obligation Article 13 imposes. The Istanbul Protocol's requirement of proactive state action to prevent CIDT in institutional settings confirms this: prevention requires anticipatory action, not merely reactive response.

Under the Istanbul Protocol's preventive standard, once a state actor has knowledge of a person's vulnerability to harm from a specific institutional process — as courts have when they receive disability documentation from medical providers — the state has an affirmative duty to prevent the foreseeable harm through protective action. Waiting for the vulnerable person to formally request protection that the state knows they need does not discharge this duty. The IDAT's proactive assessment is the operational implementation of the preventive obligation.

§ 23.4 The IDAT Database: From Individual Cases to Systemic Knowledge

23.4.1 The Database as a Legal Instrument

The IDAT's database function is not a bureaucratic record-keeping system. It is a legally significant instrument that transforms the accommodation function from an individual transaction into an institutional learning process with legally operative consequences. The database serves seven distinct legal and operational functions:

- **Function 1:** Pattern documentation for DOJ enforcement. The database is the IDAT's primary contribution to DOJ pattern-or-practice enforcement under ADA Title II. It provides the aggregate statistical evidence — accommodation request rates, denial rates, formula denial frequency, outcome correlations — that the Teamsters pattern-or-practice standard requires. Any DOJ investigation of judicial accommodation failures in a circuit begins with the IDAT database.
- **Function 2:** Treaty body reporting. The database provides the empirical foundation for the IDAT's annual reports to the CAT Committee, the CRPD Committee, and the Special Rapporteur on Torture. It converts anecdotal cases into aggregate treaty compliance data — exactly what international treaty bodies require and what Part XIX's international reporting mandate specified.
- **Function 3:** Accommodation design optimization. By tracking which accommodations achieve effective access for which conditions in which litigation contexts, the database enables evidence-based improvement of accommodation design. Over time, the database establishes what works: which time extensions enable completion of which types of documents for which types of cognitive impairments; which hearing modifications reduce PTSD reactivation for which types of trauma history; which technology tools enable

effective remote participation for which physical or psychological conditions. This knowledge cannot be generated by one-off individual assessments; it requires systematic data collection across a population of cases.

- **Function 4:** Quality assurance measurement. The database tracks whether accommodated litigants were able to comply with accommodated requirements. Non-compliance despite accommodation triggers a follow-up assessment to determine whether the accommodation was adequate. This feedback loop is the mechanism through which accommodation quality improves over time and through which inadequate accommodations are identified and corrected.
- **Function 5:** Judicial officer performance tracking. The database records which judicial officers issued accommodation denials, which issued non-compliance with IDAT Determinations, which applied the prohibited formula language, and which imposed sanctions on litigants in a manner correlated with accommodation requests. This tracking creates an official performance record that feeds into the Judicial Conduct process and the DOJ referral mechanism.
- **Function 6:** Precedential accommodation guidance. As the database accumulates cases, it generates a body of IDAT precedent: conditions for which specific accommodations have been found effective; conditions that require residential treatment-level stays; litigation phases that create particular stress risks for specific conditions. This precedent guides future assessments and reduces assessment time for common condition profiles. It also provides the empirical basis for the IDAT's training materials for judicial officers.
- **Function 7:** Academic and policy research access. With appropriate privacy protections, anonymized IDAT data is available to academic researchers, policy analysts, and disability rights organizations studying the relationship between judicial accommodation and case outcomes. This research function builds the knowledge base for future reform — including the empirical foundation that this thesis identifies as the thesis's most significant content gap.

23.4.2 Database Architecture and Privacy

The IDAT database architecture requires: individual case records with full medical documentation, IDAT panel determinations, court responses, accommodation outcomes, and case outcomes (including whether the underlying case was resolved on the merits, dismissed for procedural default, or abandoned by the litigant); aggregate analytics tools that identify patterns across cases without exposing individual litigant data; a secure, court-independent IT infrastructure hosted outside the federal judiciary's systems; access controls that provide: full access to IDAT staff; aggregate-only access to DOJ; anonymized case-level access to academic researchers; and public access to aggregate statistics without case-identifying information.

Privacy protection for disabled litigants is a paramount design requirement. Medical information in the IDAT database is subject to HIPAA protections and must be handled under the same strict confidentiality protocols applicable to clinical records. The database must be designed such that court systems — including the courts whose accommodation denials are recorded in it — cannot access individual litigant medical information without a specific legal process. The principle is: the database protects litigants from further exploitation of their medical vulnerability, even as it uses that information to improve the accommodation system.

§ 23.5 The IDAT and the Accommodation Paradox: How the Tribunal Architecture Resolves What the Coordinator Cannot

Part XIX's ADA Coordinator design addressed the accommodation paradox by creating an institution external to the court system that could issue administrative findings without requiring the disabled litigant to navigate the paradox's binary. The IDAT advances this resolution in three specific ways that the single-coordinator model cannot achieve.

23.5.1 The Binding Determination Bypasses the Court's Role in the Paradox

The accommodation paradox's mechanism depends on the court retaining discretion over the accommodation decision: as long as accommodation is a discretionary judicial act, the grant of accommodation by any court constitutes a judgment about the merits of the underlying claim. The IDAT's binding determination removes the accommodation decision from the court's discretion entirely. The court does not 'grant' accommodation; it 'implements' an IDAT determination. The implementation is compliance, not judgment. The paradox dissolves because there is no court act of granting — there is only an IDAT determination that the court is legally obligated to implement, just as it is legally obligated to implement an EEOC compliance order.

23.5.2 The Proactive Protocol Prevents the Paradox from Forming

The paradox forms because the disabled litigant must initiate the accommodation process through a formal request that the court may deny. If the IDAT has already assessed the litigant and issued an Accommodation Determination at case intake — before any accommodation denial has occurred — the paradox has no opportunity to form. There is no denial for the litigant to challenge, because the IDAT's proactive determination has pre-empted the denial. The court receives the Accommodation Determination before the first procedural deadline; the accommodation is already in place; the litigant can participate on the accommodated terms from the case's outset. This is the prevention model that the Istanbul Protocol requires and that no reactive model can achieve.

23.5.3 The Database Provides the Evidence Without the Litigant Having to Navigate the Paradox

The paradox forces the disabled litigant to generate evidence of systemic discrimination by personally challenging every denial in a system that replicates the denial at every level. The IDAT database generates this evidence independently, from the aggregate record of all cases, without requiring any individual litigant to sustain the harm of the challenge process. A DOJ pattern-or-practice investigation triggered by IDAT database evidence does not require any litigant to prove the pattern from scratch; the pattern is already documented, measured, and published. This transforms the systemic discrimination claim from a burden imposed on its victims into an institutional documentation function that the IDAT performs on society's behalf.

§ 23.6 The IAJ as an Existing Independent Tribunal: Institutional Recognition and Formalization

23.6.1 What the IAJ Has Already Demonstrated

The Institute for the Advancement of Justice & Human Rights has, through its investigations of Hazari and Minkowski, demonstrated that an independent body operating outside the court system can: conduct Istanbul Protocol-compliant investigations of judicial disability discrimination; produce findings that all four UNCAT Article 1 elements are established; document the specific structural mechanisms through which accommodation denial generates CIDT; identify complicit parties including ADA Coordinators, judicial officers, and attorneys; and

produce reports that are legally significant for international accountability proceedings regardless of domestic court system concurrence. The IAJ has done this as a private institution, without statutory authority, without subpoena power, and without any formal relationship to the courts it has investigated.

The IAJ's investigations provide proof of concept for the IDAT model at every level of the design. The IAJ has demonstrated: that independent interdisciplinary assessment of disability accommodation claims is methodologically feasible; that Istanbul Protocol-compliant documentation standards can be applied to judicial proceedings; that the structural mechanisms of accommodation-based CIDT are identifiable through forensic methodology; and that the resulting findings are authoritative for international treaty body purposes. What the IAJ lacks is statutory authority, formal institutional permanence, and the proactive assessment function that the IDAT's design requires. These can be provided by legislative action.

23.6.2 The Relationship Between the IDAT and the IAJ

The IDAT and the IAJ serve complementary but distinct functions within the accountability architecture this thesis has built. Their relationship is best understood as follows:

Function	IDAT Role	IAJ Role
Proactive assessment	Proactively identifies disabled litigants, assesses accommodation needs before denial occurs, issues binding Accommodation Determinations	Investigation-based: responds to documented violations; not a proactive service provider
Binding authority	Issues legally binding Accommodation Determinations that courts must implement under statutory mandate	Issues authoritative findings under Istanbul Protocol standards; not domestically binding but internationally authoritative
Continuous monitoring	Maintains ongoing relationship with disabled litigants throughout litigation; updates accommodation plans as conditions change	Conducts point-in-time investigations; does not provide ongoing case monitoring
Quality database	Maintains systematic database of accommodation outcomes for institutional learning and policy development	Maintains case records and investigation files; contributes to international reporting body of knowledge
International reporting	Annual reports to CAT Committee, CRPD Committee, Special Rapporteur as an official domestic governmental body	Submits investigation findings to international bodies as independent civil society organization; complementary to IDAT reporting
Investigation of violations	Issues Notices of Non-Compliance and Istanbul Protocol-Threshold Findings; refers to DOJ for investigation	Conducts full Istanbul Protocol investigations; produces comprehensive medico-legal findings; supports IDAT referrals with independent evidentiary foundation
IAJ's institutional role	The IDAT draws on IAJ investigation methodology for its own assessment protocols; recognizes IAJ findings as authoritative for IDAT compliance determinations; may formally designate IAJ as IDAT's investigative arm for systemic pattern investigations	Independent of IDAT; reinforces IDAT determinations with independent investigative authority; provides the external investigation backstop when IDAT's authority is challenged

The IDAT-IAJ relationship creates a layered accountability architecture that addresses both proactive prevention (IDAT) and responsive investigation (IAJ). Neither institution duplicates the other's function; each operates in the domain where its institutional design provides the greatest effectiveness. Together, they constitute the first coherent institutional response to the systemic judicial disability discrimination that the preceding the Parts have documented.

§ 23.7 The IDAT's Constitutional and Statutory Basis

23.7.1 Congressional Authority

Congress has the constitutional authority to create the IDAT under three independent sources of legislative power. First, the Commerce Clause and Spending Clause power underlying the ADA and the Rehabilitation Act: Congress can condition federal judicial branch funding on compliance with the IDAT's protocols, just as it conditions other federal funding on compliance with civil rights requirements. Second, the enforcement powers under Section 5 of the Fourteenth Amendment: the IDAT is a 'prophylactic legislation' mechanism that prevents the unconstitutional disability discrimination that Tennessee v. Lane established occurs in state court proceedings. Third, the Article I power to regulate the judiciary through legislation governing its administrative functions: the IDAT governs the administrative accommodation function of the courts, not their adjudicative function, and is therefore not a separation-of-powers concern in the same way that legislation directed at case outcomes would be.

The CRPD ratification argument provides additional legislative impetus. As Part IX established, the Senate voted 61-38 to ratify a treaty whose Article 13 requires effective access to justice through procedural accommodations. The IDAT is the institutional mechanism through which Article 13's effective access guarantee is implemented domestically — not as a new treaty obligation, but as the enforcement infrastructure for the statutory obligations that the Senate's own committee found already meet the treaty's standard.

23.7.2 The Model Legislation

The IDAT requires enactment of a single statutory instrument: the Independent Disability Access to Justice Act (IDAJA). The Act's core provisions are:

34. Establishment of regional IDAT panels for each federal circuit, with the composition specified in § 23.2.1.
35. The proactive assessment mandate: every case filing triggers IDAT intake review; IDAT assessment is offered to all disabled litigants proactively.
36. The binding determination authority: IDAT Accommodation Determinations are binding on courts within 10 business days of issuance; courts may object only on fundamental alteration or undue burden grounds, subject to IDAT panel review.
37. The non-interference provision: no court may sanction a litigant for conduct within the scope of an IDAT Accommodation Determination.
38. The automatic stay provision: any proceeding in which an IDAT determination is pending is automatically stayed until the determination is issued and implemented or the IDAT's objection process is complete.
39. The database mandate: the IDAT maintains the public database of accommodation requests, determinations, court compliance, and outcomes as specified in § 23.4.

40. The international reporting mandate: the IDAT submits annual reports to the CAT Committee, CRPD Committee, and Special Rapporteur as specified in Part XIX § 19.7.
41. The anti-retaliation provision: adverse judicial action against a litigant whose accommodation is IDAT-approved is presumptively retaliatory and subject to the enforcement mechanisms of ADA § 12203.
42. Employment provisions: IDAT members are employed by and answerable to the Independent Judicial Disability Rights Commission (from Part XIX's preferred employment model) on the same terms as specified for the ADA Coordinator; the IDAT provides the institutional structure for the accommodation function.

23.7.3 The IDAT's Institutional Home: The Article I Commission Model

The question of the IDAT's institutional home is among the most structurally determinative design choices in the IDAJA. The choice of institutional location must satisfy two competing requirements: the IDAT must be sufficiently independent of the federal judiciary to avoid the structural capture and accommodation paradox that characterise the embedded ADA Coordinator model; and it must have sufficient constitutional authority and political durability to issue binding determinations that Article III courts are required to implement.

Three models satisfy the independence requirement to varying degrees. An executive branch agency (Model 1) provides statutory authority and budgetary independence from the judiciary but creates vulnerability to executive administration hostility and does not resolve the potential for presidential direction to undermine accommodation determinations in ways that serve political rather than rights-protection objectives. A purely advisory body (Model 2) lacks enforcement authority and is therefore inadequate to break the accommodation paradox. The constitutionally superior model is the Article I Commission — an independent body established by Congress under its Article I powers, with protected tenure, statutory mandate, and independence from both the Executive and the Judiciary.

The Article I Commission: Constitutional Authority and Independence Architecture

An Article I Commission established under Congress's Section 5 Fourteenth Amendment enforcement power and its Article I power to regulate the administrative conditions of federal courts combines three features that neither the executive agency nor the judicial branch model can provide: (1) INDEPENDENCE FROM THE JUDICIARY: Article I Commissions are not Article III courts and are not subject to the administrative hierarchy of the federal judiciary. The IDAT's determinations are issued as administrative compliance obligations, not as judicial rulings, which means they are not subject to internal judicial review before implementation. (2) CONSTITUTIONAL DURABILITY: An Article I Commission established under Section 5 and the Define and Punish Clause has the same constitutional foundation as the EEOC, the FTC, and other independent enforcement bodies. Its mandate cannot be extinguished by executive order or judicial administration policy. (3) ENFORCEMENT ARCHITECTURE: Article I Commissions have been upheld by the Supreme Court as valid exercises of congressional power to create independent enforcement mechanisms for constitutional rights. The precedents of Humphrey's Executor, Mistretta v. United States, and Morrison v. Olson establish the constitutional viability of the independent commission structure for exactly the kind of enforcement function the IDAT performs.

The Article I Commission model also resolves an important structural question about the IDAT's relationship to the judicial conduct system. An executive branch IDAT would face the objection that executive interference with federal court administration raises separation of powers concerns. An Article I Commission does not face this objection, because it represents Congress's own regulation of the administrative (as opposed to adjudicative) functions of the courts — a

regulation that Congress has always exercised through the Federal Rules of Civil Procedure, the Judicial Conduct and Disability Act, and the IDAT's own statutory foundation.

23.7.4 The Veteran Argument: Service-Connected Disability and the IDAJA's Political Foundation

The IDAJA's passage through Congress requires a political constituency of sufficient breadth to overcome institutional resistance from the federal judiciary and the bar associations whose interests align with the status quo. The disability rights community, while powerful, has not been sufficient to secure CRPD ratification across multiple congressional sessions. A coalition that adds the veterans' advocacy community to the disability rights foundation transforms the IDAJA's political arithmetic in ways that no other advocacy combination achieves.

The case for the IDAJA as veterans' legislation is not a political strategy that wraps a disability rights argument in more palatable packaging. It is a substantive legal and empirical argument about the largest identified population of disabled litigants in the federal court system. Veterans with service-connected disabilities — traumatic brain injury (TBI) from improvised explosive device exposure, post-traumatic stress disorder from combat operations, spinal cord injuries, and progressive neurological conditions — are litigants in precisely the proceedings where the jurisdictional custody CIDT analysis of Part XXI most forcefully applies. VA benefits appeals, Social Security disability determinations, family court proceedings affecting military benefits and custody of children of service members, and civil litigation arising from service-connected conditions are all proceedings in which a veteran's documented service-connected disability is directly relevant to their litigation capacity — and in which courts routinely apply the snapshot capacity inference and the fundamental alteration formula without individualized assessment of the veteran's specific functional limitations.

Service-Connected Disability as the Paradigm Case for the Jurisdictional Custody CIDT Analysis

The functional impairment profile of service-connected TBI and combat PTSD is the paradigm case — not an edge case — for the jurisdictional custody CIDT analysis. The specific impairments documented in veterans' neuropsychological evaluations are precisely the impairments that the procedural architecture of exclusion in Part XXVI identified as making standard legal procedure specifically impossible for the most disabled litigants: PROCESSING SPEED: TBI consistently produces processing speed reduction at severe levels. A veteran with documented moderate-to-severe TBI whose processing speed is at the 1st-5th percentile faces the same procedural deadline multiplication problem documented in the Hazari record: tasks that take 30 minutes for a non-disabled person require hours of sustained effort, hours that the procedural deadline system does not provide. PTSD HYPERVIGILANCE: Combat PTSD produces hypervigilance responses to perceived threat stimuli. Adversarial legal proceedings are — by design — environments of structured conflict, cross-examination, and adversarial pressure. For a combat PTSD sufferer, a deposition, a hearing, or even the receipt of an adverse motion triggers the same autonomic threat response that kept the veteran alive in combat. This is not metaphor; it is clinical description. The physiological stress response that legal proceedings trigger in combat PTSD patients is the same mechanism, at the same intensity, as the combat-stress response the condition was acquired by enduring. EXECUTIVE FUNCTION IMPAIRMENT: Both TBI and PTSD produce executive function deficits that directly impair legal participation: difficulty planning and sequencing complex multi-step tasks under pressure; difficulty inhibiting reactive responses to threatening stimuli; difficulty maintaining focus on long documents requiring sustained attention. These are the precise capacities that complex federal court filings require. A court that compels a TBI/PTSD veteran to participate in adversarial proceedings without accommodation, after receiving the VA's own documentation of these specific impairments, and that characterises the veteran's resulting filing behavior as 'prolific,' 'prolix,' or evidence of capacity rather than disability, is committing the same jurisdictional custody CIDT that

the Hazari and Minkowski records document. The veteran population is the largest, most specifically documented, and most politically visible subset of that analysis.

The VA and SSA systems are also the most powerful practical refutation of the fundamental alteration defense that courts deploy against accommodation requests. Both the Veterans Administration adjudication system and the Social Security Administration's disability determination system process millions of disability claims annually using individualized functional assessment, ALJ hearings with accommodation protocols, and an extensive body of precedent on functional limitation assessment. These systems demonstrate that individualized medical assessment in formal adjudication is administratively feasible, economically manageable, legally required, and constitutionally unproblematic. A court that invokes 'fundamental alteration' to deny accommodation while the federal government's own administrative adjudication systems routinely provide it is not identifying a genuine impossibility. It is asserting a preference for its own administrative convenience over a disabled litigant's constitutional rights.

The Section 5 legislative record that Tennessee v. Lane requires Congress to compile for IDAJA enactment is materially strengthened by veteran-specific data. The VA's own records of service members unable to participate in state court proceedings due to service-connected TBI, PTSD, and physical disability without accommodation are not merely illustrative anecdotes. They are a documented, quantified, and politically credible subset of the pattern-or-practice record. The 61-senator CRPD majority included senators whose primary disability rights commitment is to veterans; the IDAJA's veteran dimension converts those senators' political commitment into specific legislative support for exactly the enforcement infrastructure that the no-new-legislation finding described as already required.

The Veteran Argument: Political, Empirical, and Doctrinal Dimensions

POLITICAL: Veterans' service organisations command bipartisan congressional support across administrations and legislative configurations. The IDAJA's veteran dimension creates a political coalition that disability rights advocacy alone cannot assemble, and that the 61-senator CRPD majority demonstrates was achievable as recently as 2012. Every major veterans' service organisation — the American Legion, the VFW, DAV, and others — has existing disability rights mandates in their organisational constitutions; the IDAJA implements those mandates in the judicial context. EMPIRICAL: Service-connected disability rates in the VA system provide exactly the quantitative aggregate data that Part XXVI identifies as missing from the systemic discrimination claim. The VA's Annual Benefits Report documents the prevalence and functional severity of service-connected TBI, PTSD, and physical disabilities among the veteran population engaged in litigation. These figures translate directly into an estimate of the disabled veteran litigant population that courts are failing to accommodate. DOCTRINAL: The VA's individualized functional assessment methodology is the gold standard for applying medical evidence to legal standards in the disability context. The IDAT's assessment protocol is modelled on the same methodology. Congressional enactment of the IDAJA is therefore the extension of existing federal adjudicative practice to a new institutional context — not the creation of a novel and untested administrative mechanism.

23.7.5 The 90-Day Anti-Retaliation Presumption

The IDAJA's anti-retaliation provision must be strengthened beyond the general presumption that adverse judicial action against a litigant with IDAT-approved accommodation is presumptively retaliatory. The thesis's within-case remedies analysis in Part XXV identifies the temporal correlation between protected activity and adverse judicial action as probative of retaliation under ADA § 12203, but does not formalise a specific presumption period. Gemini's IDAJA draft identifies a 90-day rebuttable presumption as the specific legislative mechanism —

any adverse judicial action taken within 90 days of an IDAT filing is rebuttably presumed to be retaliatory, shifting the burden to the court to demonstrate an independent non-discriminatory basis for the action.

The 90-day period is the correct interval for three specific reasons. First, it matches the EEOC's standard period for identifying temporal proximity as evidence of retaliation in employment discrimination cases — a standard that federal courts have consistently recognised as legally significant. Second, it covers the typical period during which an accommodation dispute is most actively contested and during which adverse judicial actions are most likely to be generated by the court's institutional interest in defeating the challenge. Third, it is long enough to capture the full spectrum of adverse actions that the vexatious labeling and sanction mechanisms produce — which the Part XXIV avoidance mechanism analysis shows typically follow within weeks or months of a formal accommodation challenge.

The 90-Day Rebuttable Presumption: IDAJA Statutory Language

SECTION 6(b) — ANTI-RETALIATION: Any adverse judicial action, including but not limited to: the imposition of monetary sanctions; an order of dismissal or default; the characterization of filing activity as vexatious, abusive, or sanctionable; or the issuance of a pre-filing order or pre-filing restriction — taken against a litigant who has filed an IDAT intake form, cooperated with an IDAT assessment, or received an IDAT Accommodation Determination, within 90 days of the relevant IDAT activity, shall be rebuttably presumed to constitute unlawful retaliation under 42 U.S.C. § 12203 and under this Act. The presumption may be rebutted only by clear and convincing evidence that: (a) the adverse action was based entirely on conduct that predates the IDAT activity and that was identified as a basis for adverse action before the IDAT activity occurred; and (b) the adverse action would have been taken in identical form and on the identical timeline in the absence of the IDAT activity. The burden of establishing this rebuttal rests entirely with the court or judicial officer taking the adverse action.

§ 23.8 Critical Assessment: The IDAT Model's Strengths and Its Remaining Challenges

23.8.1 What the IDAT Resolves

The IDAT model resolves every structural deficit identified in § 23.1: the interdisciplinary composition addresses the single-assessor limitation; the continuous monitoring protocol addresses the one-time assessment deficit; the proactive mandate addresses the reactive model's self-defeating character; the quality database addresses the absence of institutional learning; and the binding determination with outcome measurement addresses the accountability deficit. It also addresses the accommodation paradox's mechanism by removing the court's discretion over accommodation decisions.

23.8.2 What the IDAT Cannot Resolve Without the External Framework

The IDAT operates within the domestic legal framework. It cannot function as the primary accountability mechanism for CIDT that has already occurred — it is a prevention and quality assurance institution, not an accountability institution. For cases in which CIDT has already been inflicted — the Hazari and Minkowski cases, and the cases of others documented in the IAJ's investigations — the IDAT's proactive model arrives too late. The external accountability mechanisms — DOJ enforcement, congressional intervention, international treaty body proceedings, IAJ investigations — remain the necessary complement to the IDAT's preventive function.

Additionally, the IDAT's authority depends on congressional enactment and funding. A Congress hostile to disability rights, or a political administration that defunds the IDAT's parent Commission, can render the IDAT ineffective without formal abolition. The treaty-based obligations analyzed in Parts I through IX — and the international reporting function analyzed in Part XIX — provide the external pressures that create political accountability for maintaining the IDAT's operational integrity against political erosion.

The IDAT as the Institutional Synthesis of the Thesis's Reform Agenda

The Independent Disability Access Tribunal synthesizes every reform element that the thesis has developed across its the preceding Parts: the ADA Title II mandatory accommodation obligation (Part II) becomes operational through the IDAT's binding determination authority; the CRPD Article 13 effective access guarantee (Part III) becomes operational through the proactive assessment mandate; the Istanbul Protocol's prevention requirement (Part XVII) becomes operational through the continuous monitoring function; the accommodation paradox resolution (Part XVIII) is achieved by removing accommodation from the court's discretion; the psychological harm equivalence principle (Part XXII) is built into the tribunal's composition through the required psychiatrist/psychologist panel member; the systemic discrimination documentation function (Part X) is systematized through the database; the international reporting obligation (Part XIX) is institutionalized through the IDAT's annual treaty body reports; and the IAJ's independent investigation function (Part XVII) is formalized through the IDAT-IAJ complementary relationship. The IDAT is not one reform among many. It is the institution that makes all the other reforms operational.

23.X The Seventh Amendment Neutral Arbiter: The Constitutional Compulsion Argument

The IDAT proposal of Part XXIII is grounded in the ADA's structural requirements and CRPD Article 13. The Hazari SCOTUS writ (No. 25-3879, Reason VI and Appendix H, § 6) advances a constitutionally prior argument: the Seventh Amendment independently requires that contested disability accommodation disputes in federal court be resolved by a neutral arbiter. The argument proceeds in three steps.

First, the court deciding a disability accommodation request is the party with the direct institutional interest in the outcome. Docket management pressure, case throughput metrics, and institutional resistance to structural reform all create systematic incentives toward denial. The judge whose performance metrics reward case resolution is not a neutral arbiter of a request that would slow resolution. Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), held that the Due Process Clause prohibits adjudication by a decision-maker with a direct and substantial interest in the outcome. The institutional interest in accommodation denial is constitutionally cognizable under Caperton's Due Process principle — though it is systemic and institutional rather than personal and financial — and it affects every judge in the system rather than only one.

Second, disability discrimination claims sounding in law carry a Seventh Amendment right to jury trial. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989), established the framework for determining when the Seventh Amendment applies to statutory claims. An ADA Title II claim for denial of disability accommodation in a judicial proceeding — seeking damages and declaratory relief — sounds in law under the Granfinanciera analysis. When that claim is contested and the contested factual questions include whether the disability substantially limits a major life activity and whether the accommodation requested is reasonable, the Seventh Amendment supplies an independent constitutional basis for neutral fact-finding: a

jury empaneled within the litigation at bar, not the court that is the conflicted party whose institutional interests the accommodation request threatens.

Third, the thesis argues that combining the Caperton institutional-conflict principle with the Granfinanciera Seventh Amendment framework yields a serious constitutional objection to the current accommodation determination process as applied to contested disputes: a court with a direct institutional interest in the outcome of a disability accommodation request cannot plausibly satisfy the Caperton neutrality requirement, and the Granfinanciera framework supports the thesis's argument that contested legal claims — including ADA Title II accommodation claims for damages — carry a Seventh Amendment jury-trial right. Read together, these principles support the thesis's proposed constitutional extension: that contested disability accommodation disputes should be resolved by a neutral factfinder, not by the institutionally conflicted court. The IDAT proposal of Part XXIII implements this constitutional argument through a legislative vehicle. The thesis argues, more boldly, that the constitutional materials for requiring a neutral factfinder may already exist without legislation — though no court has yet adopted this theory, and the thesis presents it as a serious proposed constitutional extension, not as currently settled doctrine. No court has addressed this argument in this form. The Hazari SCOTUS writ is the first petition to present it.

PART XXIV

The Jurisprudence of Avoidance: Domestic Law's Unresolved Questions, Judicial Resistance, and the Status Quo as Evidence of the Problem

The IFP Standard Applied to a Fee-Paying Appellant: §1915(e)(2) and the Wrong Legal Framework

DE-22 in appeal 25-5649 (Petition for Rehearing En Banc, February 2026) identifies a structural procedural error in the January 29, 2026 dismissal: 'The frivolousness standard under 28 U.S.C. § 1915(e)(2) applies to litigants proceeding in forma pauperis. Appellant paid the full $605 filing fee for this appeal.' The Order to Show Cause (Docket Entry 15) was issued October 30, 2025, after the fee was received by the court. The fee payment itself was documented through USPS tracking showing receipt on October 23, 2025, though the Clerk did not acknowledge receipt for approximately three weeks. Dismissal of a fee-paying appeal under the IFP frivolousness standard constitutes application of the wrong legal framework.

The 24-3353 Dismissal and the Unresolved Question: Must Accommodation Denials Be Immediately Appealable?

The rehearing petition in 24-3353 (DE-5, filed July 2, 2024) articulates what it frames as the thesis's central unresolved question of appellate jurisdiction: 'THE DENIAL OR FAILURE OF DISABILITY ACCOMMODATION OR SAFE HARBOR IN ANY COURT MUST BE IMMEDIATELY APPEALABLE. AT NO TIME MUST JUDICIAL ABUSE OF DISCRETION IN GRANTING DISABILITY ACCOMMODATION OR SAFE HARBOR BE CONSIDERED AS LESS THAN AN ACTIONABLE INTERLOCUTORY ORDER, OR AN INJUNCTION WHERE THE LOWER COURT IS THE PARTY TO BE ENJOINED, AND THE HARM TO BE MITIGATED IS SERIOUS AND IRREPARABLE, WITH THE PRESUMPTION THAT THE ACCOMMODATION CONTROLS THE LITIGATION.'

The 24-3353 dismissal under Branson v. City of Los Angeles, 912 F.2d 334 (9th Cir. 1990) — 'denial of reconsideration of non-appealable order is itself not appealable' — applied the non-finality doctrine to a denial of accommodation. Under Branson, the April 16, 2024 JSW order (denying reconsideration of a non-final order) was not reviewable regardless of its content. The disability accommodation dimension did not alter the jurisdictional analysis. DE-5's argument — that accommodation denial must be treated as an injunction for purposes of appellate jurisdiction — is precisely the unresolved question that Part XXIV identifies as the accommodation paradox's jurisdictional dimension: the harm is immediate and ongoing, but no appellate path exists until final judgment, and by that time the harm has already been sustained.

DE-22 also documents the January 6/January 7 procedural sequence in detail. On January 6, a full briefing schedule was issued under DE-19, establishing a February 6, 2026 opening brief deadline and discharging the October 30 order — apparently treating the appeal as having satisfied all conditions. This order was vacated the next day, January 7, as 'issued in error.' The rehearing petition asks: 'Was the January 6 order a preview of the January 29 dismissal, issued prematurely?' and 'Was the clerk's office used as a mechanism to issue orders that would otherwise require judicial signature — potentially circumventing the disqualification and injunction motions?' DE-22 also documents the 70-day timeline: Hazari named Silverman and Thomas as defendants in ECF-138 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-

BLF, N.D. Cal.) (November 20, 2025), then those same judges signed the January 29, 2026 frivolousness dismissal — 70 days later.

The preceding twenty-three Parts of this thesis have built a comprehensive legal architecture for addressing disability rights in judicial proceedings — an architecture grounded in the ADA, the Rehabilitation Act, the Constitution, international human rights law, and the structural logic of the accommodation paradox. That architecture is not speculative. It is derived from statutes Congress enacted, constitutional provisions the courts are sworn to apply, and treaty obligations the United States has assumed. The thesis does not ask the legal system to do something foreign to it. It asks the legal system to do what it said it would do.

And yet it has not done so. This Part documents why — precisely, specifically, and without euphemism. It takes the most sophisticated version of the legal system's resistance — the objections that a well-informed legal defender of the status quo would make, drawn from an adversarial analysis conducted by advanced legal AI trained on current doctrine — and treats those objections not as reasons to soften the thesis but as a taxonomy of the mechanisms through which the legal order has protected itself from questions it cannot answer without self-implication. The objections are real. The doctrine they describe is real. And both the objections and the doctrine they rest on are themselves evidence of the structural failure this thesis is designed to expose and remedy.

The chapter proceeds as follows. First, it identifies the notable questions of law that the thesis raises but that current domestic jurisprudence leaves unresolved — not because they are unanswerable, but because answering them would require courts to acknowledge what courts have done and continue to do. Second, it documents the specific mechanisms through which the legal order avoids these questions: doctrinal hedging, jurisdictional maneuvering, silence, and the weaponization of existing law's gaps against the very litigants those gaps harm. Third, it identifies what the accumulated avoidance itself reveals: not a series of independent jurisprudential choices, but a coherent institutional pattern of self-protection that the seven systemic markers of Part X predicted and that the Hazari and Minkowski records confirm. Fourth, it argues that the jurisprudence of avoidance is not a neutral feature of legal development but is itself a human rights violation — a state actor's systematic use of legal formalism to insulate its own CIDT from accountability.

The Central Claim of This Part

When a legal system's most sophisticated defense of current doctrine produces, as its primary arguments: 'this question is unresolved,' 'this extension has not yet been accepted,' 'this remedy is contested,' and 'this standard does not yet govern' — those arguments are not a refutation of the thesis. They are a description of the problem. The questions are unresolved because courts will not resolve them. The extensions have not been accepted because courts will not accept them. The remedies are contested because courts contest their own accountability. The standard does not yet govern because the institution that must apply it is the institution that benefits from its absence. The jurisprudence of avoidance is the accommodation paradox at the doctrinal level: the court system uses its control over legal development to ensure that the questions whose resolution would require it to acknowledge its own violations remain perpetually 'novel,' 'unsettled,' and 'contested.'

§ 24.1 The Unresolved Questions: A Catalogue of Judicial Silence

The following questions are not unresolved because they are difficult. They are unresolved because their resolution would require a judicial institution to hold itself accountable. Each question has a legally correct answer that follows directly from the statutes, Constitution, and treaty obligations already in force. Each has been presented to courts in the Hazari and Minkowski records and in the writs and petitions that constitute the most comprehensive domestic disability rights litigation record in recent history. Each has been met with silence, procedural dismissal, or the doctrinal hedge that produces the appearance of engagement while ensuring no answer is given.

24.1.1 The § 504 Federal Court Coverage Question

The question: Do federal courts, as institutions that receive and administer federal financial assistance, qualify as covered entities under § 504 of the Rehabilitation Act, making them subject to its non-discrimination requirements in their judicial proceedings?

Current Doctrinal Status

Unresolved. The statutory text covers programs receiving federal financial assistance and programs conducted by Executive agencies or USPS. The statute does not enumerate Article III courts. No Supreme Court decision has squarely held that federal courts are or are not § 504 recipients. Lower courts have treated the question as either avoided (disposing of cases on other grounds) or assumed (applying § 504 analysis without examining the coverage question carefully). The silence is not accidental.

What the Law Demands

Section 504's text, structure, and purpose require that federal courts be covered. The federal judiciary receives substantial federal financial assistance through the annual judicial branch appropriations that Congress enacts. The Civil Rights Restoration Act of 1987 confirmed that 'program or activity' means all operations of a recipient entity. To hold that the institution that enforces civil rights law against every other recipient of federal financial assistance is itself exempt from that law produces an absurdity that no interpretive canon supports. The question is unresolved not because the answer is unclear but because courts have chosen not to answer it. That choice is itself a form of institutional self-protection.

The Hazari record is the most direct available evidence that courts treat the coverage question as unreachable from inside the system: nine Ninth Circuit appeals, federal district court proceedings before multiple judges, and more than twenty SCOTUS writ petitions — none of which produced a court willing to resolve whether the court system that was causing the documented harm was obligated by law to prevent it. The question that would require courts to acknowledge their own obligations remained, by judicial choice, unresolved.

24.1.2 The Youngberg Extension to Compulsory Litigation

The question: Does the constitutional principle established in Youngberg v. Romeo — that the state's exercise of coercive institutional authority over a person generates heightened obligations toward that person's physical and psychological wellbeing — apply when courts exercise compulsory jurisdiction over disabled litigants whose documented medical conditions make that compulsion foreseeably harmful?

Current Doctrinal Status

Unresolved. Youngberg arose in the context of physical institutional custody in a state facility for persons with intellectual disabilities. Its application to ordinary civil litigation has not been accepted by any federal appellate court. When courts describe the Youngberg extension as 'merely analogical,' they are accurately describing their own refusal to accept it — not demonstrating that the extension is logically unsound or constitutionally unjustified.

What the Law Demands

The constitutional principle Youngberg embodies does not depend on the form of the state's coercive authority. It depends on the fact of that authority: that the state has placed a person in a position from which they cannot withdraw without catastrophic loss, and that the state has specific knowledge that its exercise of authority is causing that person harm. Both elements are present in jurisdictional custody with equal force as in institutional custody. A disabled litigant compelled by threat of contempt, default, and dismissal to participate in proceedings that their treating physicians have documented will cause neurological degeneration, immune collapse, or psychiatric hospitalization is not materially different, in the constitutionally relevant sense, from a person confined in a state institution. The refusal to accept this extension is a choice to treat legal compulsion as constitutionally invisible — a choice that protects the court at the cost of the disabled litigant whose life it is destroying.

24.1.3 The Ninth Amendment as a Substantive Disability Rights Source

The question: Do disability accommodation rights, as universally recognized fundamental human rights — ratified by 191 states, endorsed by 61 U.S. senators, and grounded in the inherent dignity of personhood — constitute rights 'retained by the people' within the meaning of the Ninth Amendment, independently of their textual specification in the ADA or the Rehabilitation Act?

Current Doctrinal Status

Unresolved. The Ninth Amendment has been treated by federal courts primarily as an interpretive canon rather than a substantive rights source. No federal appellate court has held that disability accommodation rights are Ninth Amendment rights. Courts that dismiss Ninth Amendment arguments typically do so without engaging the question whether the right at issue is the kind of fundamental right the Ninth Amendment was designed to protect.

What the Law Demands

The Ninth Amendment means what it says: the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people. A right universally recognized as fundamental — recognized by every major international human rights instrument, endorsed by a supermajority of the world's states, and affirmed as consistent with American values by a majority of the United States Senate — is not the kind of right that the Ninth Amendment was designed to leave unprotected. The judicial reluctance to engage the Ninth Amendment as a substantive source is a feature of the same defensive jurisprudence this Part documents: if disability accommodation rights are Ninth Amendment rights, then courts that deny them are violating the Constitution directly, not merely a statute. That conclusion is one the legal system is structurally motivated to avoid.

24.1.4 The Pulliam Restriction and the 1996 Amendment

The question: When the 1996 amendment to 42 U.S.C. § 1983 restricted injunctive relief against judicial officers acting in their judicial capacity, did Congress create a protected zone of impunity within which courts may systematically violate the ADA and the Constitution without being subject to the direct prospective relief that Pulliam v. Allen originally recognized as available?

Current Doctrinal Status

The 1996 amendment provides that in an action under § 1983 against a judicial officer for an act or omission taken in a judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. This restriction is real, enacted by Congress, and applied by courts. Defenders of the current system cite it as a categorical limitation on injunctive relief against judges.

What the Law Demands

The 1996 amendment addresses individual judicial officers in § 1983 actions. It does not address: (a) institutional defendants — the court system as an entity, rather than an individual judicial officer; (b) ADA Title II institutional liability claims, which provide a distinct statutory vehicle not dependent on § 1983; (c) Ex parte Young official-capacity prospective relief against state officials for ongoing constitutional violations; (d) the constitutional avoidance argument that an amendment creating impunity for constitutional violations by judicial actors raises Fourteenth Amendment concerns that the amendment itself cannot resolve. The thesis does not rely on direct § 1983 injunctive relief against individual judges as its primary channel. It relies on institutional liability, official-capacity claims, and the full spectrum of prospective remedies that the 1996 amendment did not and could not eliminate without itself becoming unconstitutional. The restriction is a doctrinal obstacle; it is not a constitutional permission for courts to discriminate against disabled litigants without remedy.

24.1.5 The CRPD and the Self-Executing Question

The question: When the Medellin v. Texas framework is properly applied to CRPD obligations — proceeding through all seven steps of the required analysis: VCLT Article 18 object-and-purpose obligations; Charming Betsy statutory interpretation; Senate legislative history; constitutional avoidance; and customary international law — what is the correct domestic legal interpretation of the ADA's and Rehabilitation Act's disability accommodation obligations in judicial proceedings?

Current Doctrinal Status

Courts, when confronted with CRPD arguments, consistently cite Medellin for the proposition that the CRPD is non-self-executing and therefore has no domestic legal relevance. This is not a Medellin-compliant analysis. Medellin held that non-self-execution bars direct treaty enforcement as an independent cause of action. It did not hold that non-self-execution eliminates the treaty's function as a Charming Betsy interpretive authority, its status as legislative history of domestic statutes, its role in constitutional avoidance analysis, or its significance as evidence of customary international law norms. Courts that cite Medellin to end treaty analysis at step two of a seven-step framework are not applying Medellin; they are using Medellin as a procedural formula to avoid engaging the legal analysis.

What the Law Demands

Every domestic court in which Hazari raised CRPD arguments — across eight Ninth Circuit proceedings, multiple district court orders, and more than twenty SCOTUS writs — terminated the analysis at non-self-execution without performing the remaining five analytical steps that Medellin itself requires. The SCOTUS did not grant certiorari to engage the question. The pattern is not random judicial error. It is the accommodation paradox operating at the doctrinal level: the court system uses its control over treaty interpretation to ensure that an interpretive framework that would require courts to acknowledge their own treaty violations is never applied. The formula 'non-self-executing' has become the legal equivalent of the accommodation paradox's Path B: it destroys the argument before it can be heard on its merits.

24.1.6 The Vexatious Designation and Disability Causation

The question: When a court designates a disabled litigant as vexatious based on a pattern of prolific, repetitive, or erratic filings, and that filing pattern is causally attributable in whole or in part to the disability that the court has repeatedly refused to accommodate, does the vexatious designation violate the ADA, the Rehabilitation Act, the First Amendment right of petition, and the due process guarantee of meaningful access to courts?

Current Doctrinal Status

Unresolved as a matter of Supreme Court precedent. Lower courts applying vexatious litigant doctrine to disabled persons generally do not conduct a disability causation analysis before imposing pre-filing restrictions. The California state court vexatious designation of Hazari (2021) and the parallel California court designation of Minkowski (2024) both proceeded without individualized assessment of whether the filing behavior that generated the designation was causally attributable to unaccommodated disability. Both designations were then used in subsequent proceedings to discredit the litigant's disability claims.

What the Law Demands

A legal system that denies disability accommodation, then characterizes the filing behavior generated by unaccommodated disability as abuse, then uses that characterization to permanently restrict court access, and then cites the restricted litigant's advocacy for their own rights as further evidence of vexatiousness — is not applying the vexatious litigant doctrine. It is weaponizing the vexatious litigant doctrine as a self-reinforcing exclusion mechanism that converts disability into permanent juridical non-personhood. The question of whether this violates the ADA, the Constitution, and CRPD Article 13 has a clear answer. The reason it remains unresolved is that resolving it would require courts to acknowledge that they have been using the vexatious label as an instrument of disability discrimination.

24.1.7 The Congressional Omission of Federal Courts from Title II — and Why Omission Cannot Mean Exemption

The question: Why did Congress not include federal courts in ADA Title II's explicit coverage definition? Does that omission mean federal courts are exempt from the ADA's substantive non-discrimination mandate? And if not, on what legal basis are federal courts required to comply with it?

Why Congress Omitted Federal Courts: The Drafting History

ADA Title II defines 'public entity' as 'any State or local government' and 'any department, agency, special purpose district, or other instrumentality of a State or States or local government.' Federal courts are not state or local governments. Section 504 of the Rehabilitation Act separately covers programs receiving federal financial assistance and programs conducted by Executive agencies or the Postal Service, but does not enumerate Article III courts. The legislative history of the ADA shows that Congress was primarily focused on the documented discrimination by state and local governments that the ADA was enacted to remedy under Section 5 of the Fourteenth Amendment. Federal entities — including the federal judiciary — were addressed through § 504's recipient and executive-program coverage, not through the Title II public entity definition. Whether the omission was deliberate (Congress trusted § 504 to cover federal courts as recipients) or inadvertent (Congress focused on state actors and assumed federal compliance) is itself unresolved. What is clear is that neither the text nor the legislative history contains a statement that Congress intended to exempt federal courts from the ADA's substantive mandate.

The omission has produced the doctrinal vulnerability that defenders of the status quo exploit: the argument that because federal courts are not expressly named as covered entities under Title II, the ADA does not require them to provide disability accommodation. This argument has three fatal defects, each of which operates independently and is reinforced by the others.

Fatal Defect 1: The Enforcer Consistency Principle

When Congress assigned Article III courts the function of enforcing ADA Title II against state judiciaries under Tennessee v. Lane, it implicitly required that federal courts themselves comply with the standard they enforce. This is not merely a moral consistency argument; it is a structural statutory interpretation principle. A remedial scheme that makes federal courts the exclusive enforcers of disability rights in state courts while exempting federal courts from those same rights is structurally incoherent. Congress cannot be understood to have intended a scheme in which the guardian of the right is exempt from the right's application to itself. The ADA's enforcement architecture, by vesting jurisdiction in Article III courts to remedy state judicial disability discrimination, is itself evidence that Congress expected federal courts to embody the standard they enforce. A court that denies disability accommodation while ordering state courts to provide it has inverted the structural logic of the enforcement scheme that gives it jurisdiction to act.

Fatal Defect 2: The Federal Unity Principle — The Government Cannot Be Divided Against Itself

When Congress enacts a comprehensive mandate to eliminate disability discrimination throughout the governmental apparatus, the federal government cannot be read as simultaneously mandating and exempting itself from that mandate. This principle derives from Bolling v. Sharpe, 347 U.S. 497 (1954), in which the Supreme Court held that the Fifth Amendment imposes equal protection obligations on the federal government because 'it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government' than on the states. The same logic applies here: it is unthinkable that the same Congress that comprehensively prohibited disability discrimination throughout state and local government, private employment, and public accommodations intended that the branch responsible for adjudicating those prohibitions should itself be exempt. The ADA's comprehensive purpose — stated in its findings and purposes section as the elimination of discrimination against individuals with disabilities — cannot coexist with a reading that leaves the federal judiciary as the one institution in American governance from which no disabled person may demand equal treatment. The omission, on this reading, is a drafting oversight subject to purposive correction, not a deliberate exemption whose absence of textual expression is somehow consistent with the ADA's foundational mandate.

Fatal Defect 3: The CRPD Harmonisation Principle — The No-New-Legislation Finding Forecloses the Exemption

The Senate Foreign Relations Committee's finding that existing U.S. law 'meets or exceeds' the requirements of the CRPD forecloses the omission-means-exemption reading. CRPD Article 13 requires effective access to justice for persons with disabilities in all judicial proceedings — without distinguishing between state and federal courts, and without admitting of any reading that exempts any judicial institution from its scope. If existing U.S. law meets the CRPD standard, as Congress declared, then existing U.S. law must provide for disability accommodation in federal judicial proceedings. The Senate cannot simultaneously declare that existing law meets Article 13 and have omitted federal courts from coverage, because Article 13 covers federal courts. The no-new-legislation finding is therefore self-applying evidence that the ADA and § 504 already cover federal courts — not because the text is clear, but because the congressional declaration of equivalence requires that result. Under the Charming Betsy canon, domestic law must be read consistently with this international standard where possible; reading the ADA to exempt federal courts is not consistent with a standard to which Congress has declared equivalence.

The three fatal defects operate cumulatively, not alternatively. Any one of them would suffice to defeat the omission-means-exemption reading. Together, they establish that the omission of federal courts from Title II's express coverage definition is an artifact of the statute's state-focused drafting history, not evidence of a congressional intent to create a zone of federal judicial impunity from disability discrimination law. The legal system's treatment of the omission as though it were a deliberate exemption is itself one of the most consequential instances of the jurisprudence of avoidance documented in this Part: courts use the silence of a statute to insulate themselves from its substantive mandate, converting Congress's drafting focus into a judicial self-exemption that Congress never declared and cannot have intended.

§ 24.2 The Mechanisms of Avoidance: How the Legal Order Protects Itself

The unresolved questions in § 24.1 share a structure. Each question, if answered correctly, would require a court to acknowledge either that it violated the law by its own conduct, that courts as a class are subject to legal obligations courts have treated as inapplicable to themselves, or that the legal framework courts have built to manage disability claims is structurally inadequate to discharge the obligations that disability law imposes. The questions are not avoided at random. They are avoided through specific, identifiable mechanisms that this Part names and documents.

24.2.1 Mechanism 1: The Terminal Non-Self-Execution Formula

The most pervasive mechanism of doctrinal avoidance in disability rights cases involving international law is the terminal citation of Medellin v. Texas as though it answers every treaty argument. The formula operates as follows: a litigant raises a CRPD, UNCAT, or ICCPR argument; the court cites Medellin for the proposition that the treaty is non-self-executing; the court dismisses the argument without engaging the Charming Betsy analysis, the Senate legislative history, the constitutional avoidance doctrine, or the customary international law dimensions. The formula is legally incorrect because Medellin does not authorize this truncation. But it is institutionally functional because it converts a seven-step analytical obligation into a one-step dismissal that is formatted as engagement while delivering non-engagement.

The Hazari record documents this mechanism across eight Ninth Circuit proceedings and twenty-plus SCOTUS writs. Not one court performed the Medellin-compliant seven-step analysis. The

SCOTUS's refusal to grant certiorari to perform that analysis is, in the specific context of a more-than-eight-year record presenting the analysis repeatedly, not a neutral exercise of discretion. It is an institutional choice to allow the defective lower-court analysis to stand, which is functionally equivalent to an institutional endorsement of the terminal formula.

Resistance Mechanism 1: Terminal Non-Self-Execution

DESCRIPTION: Citing Medellin v. Texas as a terminal answer to every treaty argument, performing no analysis beyond the self-execution finding. LEGAL DEFECT: Medellin explicitly preserves five additional analytical steps after the self-execution determination. A court that stops at step two has not applied Medellin; it has weaponized Medellin's holding while ignoring its framework. INSTITUTIONAL FUNCTION: Converts a seven-step legal obligation into a single-step dismissal. Ensures that a treaty framework that would require courts to acknowledge their own treaty violations is never applied. EVIDENCE IN RECORD: Hazari record, 8 Ninth Circuit proceedings, 20+ SCOTUS writs — none produced a Medellin-compliant analysis. SCOTUS refused certiorari on every writ raising this analysis.

24.2.2 Mechanism 2: The Snapshot Capacity Inference

The snapshot capacity inference is the domestic doctrinal equivalent of what the IAJ's structural analysis calls the 'Legibility Default': if a litigant filed a document, appeared at a hearing, or communicated with the court, courts infer that the litigant has full functional capacity to continue meeting standard procedural demands. The inference is legally invalid under the ADAAA's episodic disability provisions, the Tudor v. Whitehall standard, and the basic principle that disability law requires individualized assessment rather than categorical inference. But it is persistently applied in the Hazari record ('demonstrated ability to participate'; 'rapid, prolix filings') and in the Minkowski record (the 'shopping in San Jose' fabrication; the capacity inferred from an appearance at a single hearing while severely medicated).

The snapshot inference is legally indistinguishable from the stereotyping that Cleburne identified as the paradigm of irrational-prejudice-based disability discrimination. A court that infers full capacity from isolated performance is substituting assumption for individualized assessment — which is precisely the conduct the ADA was designed to prevent. That courts have been doing this systematically and persistently does not make it legally acceptable; it makes it systematic and persistent discrimination.

Resistance Mechanism 2: Snapshot Capacity Inference

DESCRIPTION: Inferring full litigation capacity from isolated performance events — a single filed document, a brief appearance, a communication with the court — without individualized assessment of present functional capacity. LEGAL DEFECT: The ADAAA's episodic disability provisions expressly require that disability be assessed in its active state, not by reference to isolated non-symptomatic periods. Snapshot reasoning violates the individualized assessment standard. INSTITUTIONAL FUNCTION: Allows denial of accommodation without engaging medical evidence. Converts disability manifestations into evidence of capacity rather than evidence of need. Insulates accommodation denials from review by creating a formal record of litigant 'functioning' that obscures the underlying impairment. EVIDENCE IN RECORD: ECF-87 ('rapid, prolix filings' as proof of capacity); ECF-139 ('demonstrated ability to prosecute'); Minkowski 'shopping' fabrication; repeated denial of accommodation despite physician documentation.

The Freeman Disqualification Denial (ECF-98): The Complete Circular Logic of Compelled Output

ECF-98 (April 14, 2025) is the most analytically compressed statement of the circular logic at the heart of the accommodation denial mechanism. Freeman denies disqualification on the ground that 'Plaintiff was able to file a second 125-page brief within two days' after a filing error was identified. The filing error (in ECF-96) and the corrected refiling (ECF-97) were forced by the court's own notice that the filing was defective. The ability to respond to a court-generated deficiency notice within two days was then cited as evidence of ability to litigate without accommodation.

The full logical chain in ECF-98: (1) Court identifies filing error in ECF-96; (2) Court directs Plaintiff to refile; (3) Plaintiff refiles as ECF-97 within two days; (4) Court uses the refiling as evidence of litigation ability; (5) Court denies disqualification on this basis. Steps 1 and 2 are court actions. Step 3 is the litigant's response to a court compulsion. Steps 4 and 5 treat the compelled response as voluntary evidence of capacity. This is the snapshot inference at its most concentrated: the court compels an act, the act occurs, the court uses the occurrence as evidence against the compelled party's claims.

24.2.3 Mechanism 3: The Fundamental Alteration Formula

Courts that do not wish to engage the merits of a disability accommodation request routinely invoke the 'fundamental alteration' defense of ADA Title II and California Rules of Court, Rule 1.100 without the specific findings that the defense legally requires. The fundamental alteration defense is available only upon a showing that the specific requested modification would fundamentally alter the nature of the specific service or proceeding. It is not available as a general-purpose formula to deny all time-based accommodations on the grounds that any extension to any deadline in any case fundamentally alters the court's general operations. Yet the California Sixth District Court of Appeal applied this formula identically to four separate accommodation requests in the Minkowski record — using language so uniform that it constitutes direct evidence of a pre-formed institutional policy rather than individualized legal analysis.

The formula's repeated deployment as a template — without identifying what specific alteration would result from the specific accommodation in the specific proceeding — is the 'Record-Making and Plausible Neutrality' mechanism the IAJ identified: producing official records that appear to engage the legal standard while systematically avoiding its substance. It is discrimination wearing the procedural form of legal analysis.

Resistance Mechanism 3: Fundamental Alteration as Template Denial

DESCRIPTION: Applying the 'fundamental alteration' defense as a pre-formed formula to deny all time-based accommodations, without identifying the specific alteration that the specific requested modification in the specific proceeding would produce. LEGAL DEFECT: The defense requires particularized findings, not a general formula. A denial that says only 'time-based accommodations would fundamentally alter the nature of court proceedings' does not comply with the legal standard for the defense. INSTITUTIONAL FUNCTION: Provides the appearance of legal engagement while ensuring denial without analysis. Produces official records that withstand superficial review while systematically excluding disabled litigants. EVIDENCE IN RECORD: California Sixth District Court of Appeal, November 19, 2025; December 17, 2025; March 3, 2025 — identical formula language applied to three separate accommodation requests in the Minkowski case.

24.2.4 Mechanism 4: Vexatious Labeling as Disability Conversion

The vexatious litigant designation is the legal order's most powerful tool for converting a pattern of disability discrimination into a permanent juridical disability of a different kind: the designation of the person as an abuser of the legal system. Once a court has designated a litigant

as vexatious, every subsequent filing is presumptively frivolous, every subsequent accommodation request is presumptively strategic, and every subsequent expression of the litigant's documented suffering is presumptively performative. The designation accomplishes, through a single judicial act, what years of systematic accommodation denial were building toward: the total disqualification of the litigant's legal personhood within the system that caused their harm.

The mechanism's genius, from an institutional self-protection standpoint, is that it inverts the causal arrow. The system that denied accommodation generates the filing behavior; the filing behavior generates the vexatious designation; the vexatious designation justifies further denial of accommodation and access; and the litigant's continued advocacy for their rights generates additional evidence of vexatiousness. The cycle is self-sealing. In the Hazari record, the state court vexatious designation was deployed in federal proceedings to characterize disability advocacy as harassment. In the Minkowski record, the vexatious designation was obtained during a period when the litigant was in residential psychiatric treatment — unable to respond to the motion because the court had denied the accommodation that would have enabled response.

Resistance Mechanism 4: Vexatious Designation as Institutional Self-Sealing

DESCRIPTION: Using the vexatious litigant designation to convert a pattern of disability-caused filing behavior (generated by unaccommodated disability and systematic denial) into a legal finding of abuse, which then forecloses all further accommodation requests, discredits all medical evidence, and permanently restricts the litigant's access to the courts that caused the harm. LEGAL DEFECT: A vexatious designation imposed without individualized disability causation analysis violates the ADA's individualized assessment requirement, the anti-stereotyping principle of Cleburne, and the access-to-courts doctrine. INSTITUTIONAL FUNCTION: Converts the institutional pattern of disability discrimination into an official finding that the victim is the abuser. Makes the victim's continued advocacy into evidence against them. Forecloses all domestic challenge to the discrimination by permanently restricting the tools needed to mount that challenge. EVIDENCE IN RECORD: California state court vexatious designation of Hazari (August 2021) deployed in federal proceedings; California trial court vexatious designation of Minkowski (June 25, 2024) obtained while Minkowski was in residential psychiatric treatment.

24.2.5 Mechanism 5: SCOTUS Silence as Terminal Endorsement

When the Supreme Court of the United States declines to grant certiorari, it does not issue a ruling on the merits. Courts and commentators routinely note that cert denial is not a legal holding. In ordinary individual cases, this is true. In a case where the same fundamental questions of disability rights, treaty compliance, ADA institutional liability, accommodation paradox, and jurisdictional custody CIDT have been presented to the Court across more than twenty writs over a decade, the denial of certiorari is no longer a neutral exercise of discretionary docket management. It is an institutional choice to allow a decade-long pattern of documented CIDT to continue without supreme court engagement.

The SCOTUS's simultaneous obstruction of Minkowski's writs — one delayed six months through a technical deficiency that the Court did not address in the manner its own rules require, and one that the Clerk's office 'lost' without acknowledgement — compounds the doctrinal silence with administrative obstruction. The highest court in the country, whose function is to resolve significant unresolved questions of federal law, has received through two independent cases a comprehensive multi-victim record of court-caused disability CIDT, presented through Istanbul Protocol-compliant investigation, raising specific questions of treaty compliance, constitutional doctrine, and ADA institutional liability that the Court has never addressed. The silence is not neutral. It is the accommodation paradox operating at its highest institutional level: the court that

could break the paradox by resolving the accommodation question has ensured, through two decades of cert denial and administrative obstruction, that the paradox remains closed.

Resistance Mechanism 5: Supreme Court Silence as Systemic Endorsement

DESCRIPTION: Persistent refusal to grant certiorari on fundamental questions of disability rights, ADA institutional liability, treaty compliance, and court-caused CIDT across twenty-plus writs over a decade, combined with administrative obstruction of writs in at least two cases. LEGAL DEFECT: The Court's statutory function under 28 U.S.C. § 1254 includes resolution of important federal questions. A pattern spanning more than eight years of conflicting lower court approaches to fundamental disability rights questions, combined with a documented record of CIDT against disabled litigants, satisfies the criteria for certiorari that the Court's own rules articulate. INSTITUTIONAL FUNCTION: Converts doctrinal silence into a de facto permission for lower courts to continue the violations. Ensures that the questions whose resolution would require acknowledgment of court-caused CIDT remain perpetually 'unresolved.' EVIDENCE IN RECORD: Hazari — 20+ SCOTUS writs, zero cert grants, zero Medellin-compliant analysis. Minkowski — first writ delayed 6 months; second writ 'lost' by Clerk's office (December 27, 2025 letter to Laurie Wood).

24.2.6 Mechanism 6: The Deliberate Omission Fiction

The sixth and most structurally significant mechanism of doctrinal avoidance is the treatment of the ADA's omission of federal courts from Title II's explicit coverage definition as though it were a deliberate congressional exemption. This fictional construct operates by converting a drafting feature — Congress's focus on state and local governmental actors in Title II because those were the actors whose discrimination Section 5 of the Fourteenth Amendment authorized Congress to address — into an affirmative exemption that no provision of the ADA's text creates and no provision of the ADA's legislative history supports.

The fiction is particularly insidious because it exploits the ADA's own architecture against disabled federal court litigants. Title II was designed as a Section 5 prophylactic measure addressing state discrimination; it could not easily be extended to federal actors through the same constitutional mechanism. Section 504 was designed to address federal recipients of financial assistance and executive-branch programs. Article III courts were left in a doctrinal gap between the two statutory mechanisms — not because Congress intended them to be exempt, but because the constitutional architecture that drove the two statutory approaches did not neatly encompass the third branch. Courts have exploited this gap by reading it as though it were an exemption.

Resistance Mechanism 6: The Deliberate Omission Fiction

DESCRIPTION: Treating the ADA's structural omission of federal courts from Title II's explicit coverage as a deliberate congressional exemption from the substantive non-discrimination mandate, rather than as a drafting artifact produced by the constitutional architecture of Section 5 and the specific focus of Title II on state and local governmental actors. LEGAL DEFECT: No provision of the ADA's text declares an exemption for federal courts. No provision of the ADA's legislative history expresses a congressional intent to exempt the federal judiciary. The Bolling v. Sharpe federal unity principle, the enforcer consistency principle, and the CRPD no-new-legislation harmonization principle all independently preclude the exemption reading. INSTITUTIONAL FUNCTION: Creates a doctrinal gap that insulates the federal judiciary from the substantive mandate Congress intended to apply comprehensively. Converts a structural artifact into an affirmative permission for federal courts to discriminate against disabled litigants. Ensures that the institution responsible for enforcing anti-discrimination law is itself immune from it. EVIDENCE IN RECORD: Not one federal court in the Hazari record, across eight Ninth Circuit proceedings and twenty-plus SCOTUS writs, acknowledged the enforcer consistency argument or the federal unity principle. The SCOTUS's

refusal to grant certiorari has allowed the deliberate omission fiction to stand as the operative doctrinal assumption in every federal circuit.

24.2.7 Mechanism 7: The Pro Se Liberal Construction Doctrine as a Suppressed Compounded Obligation

Federal courts are required, under Haines v. Kerner, 404 U.S. 519 (1972), and Erickson v. Pardus, 551 U.S. 89 (2007), to construe pro se filings liberally and to hold them to a less stringent standard than formal pleadings drafted by counsel. This obligation is longstanding, well-established, and uniformly acknowledged. What has never been adequately developed in the case law or in disability rights scholarship is the specific interaction between the pro se liberal construction obligation and the disability accommodation obligation that operates simultaneously for a pro se disabled litigant.

A pro se disabled litigant is entitled to two simultaneous protections: the liberal construction of their filings as pro se submissions, and the individualized accommodation of their disability as a disabled person. These two obligations are not simply additive. They are multiplicative in their interaction: a filing that falls short of the formal pleading standard, that contains organisational deficiencies attributable to the cognitive impairments documented in the medical record, and that raises legal arguments in a non-standard format attributable to the processing speed limitations that prevent careful editing and revision is simultaneously entitled to liberal pro se construction and to accommodation of the disability that produced its specific characteristics.

The Pro Se/Disability Compounded Obligation: How Courts Evade Both Simultaneously

Current judicial practice systematically evades both obligations through a single manoeuvre: characterising the disability-caused deficiencies in a pro se filing as evidence against the disability claim. A filing that is 'prolific' is characterised as proving litigation capacity (snapshot inference). A filing that is repetitive is characterised as abusive (vexatious designation basis). A filing that is disorganised is characterised as lacking merit (merits dismissal without liberal construction). Each of these characterisations denies both the pro se construction that the filing's informal character requires and the disability accommodation that the filing's specific deficiency pattern documents. The dual obligation requires instead: (1) liberal construction of what the filing is attempting to argue; (2) recognition that the filing's specific characteristics — volume, repetition, disorganisation — are functional manifestations of the documented disability, not evidence against it; and (3) individualized assessment of whether, with appropriate accommodation, the filing's legal arguments have sufficient merit to survive. A court that dismisses a pro se disabled litigant's filing without performing these three analytical steps has violated two independent legal obligations simultaneously — the pro se doctrine and the ADA — with a single act of non-engagement. EVIDENCE IN RECORD: The characterisation of Hazari's filings as 'rapid, prolix' violates both obligations simultaneously: the pro se doctrine required liberal construction of what the filings were arguing; the ADA required recognition that the filing pattern was a disability manifestation. Neither analysis was performed. The characterisation of Minkowski's filings as indicative of litigation capacity violates both obligations: the pro se doctrine required liberal construction of what the filings were attempting; the ADA required recognition that their characteristics reflected the cognitive profile of PTSD, ADHD, and depression rather than demonstrated capacity.

The pro se/disability compounded obligation is also the correct doctrinal framework for the vexatious litigant designation analysis in Part XIII. A vexatious designation imposed on a pro se disabled litigant without performing the compounded liberal construction/disability causation analysis violates both the pro se doctrine and the ADA, and the violation of each obligation independently provides a basis for challenging the designation. The interaction also strengthens

the Senate legislative record that Section 5 IDAJA enactment requires: Congress's own findings in the ADA legislative history specifically address the problem of disability-based dismissal of pro se disabled litigants' claims — a finding that Tennessee v. Lane confirms falls within Congress's Section 5 enforcement authority.

§ 24.3 The Resistance Pattern as Evidence of Structural Capture

The five mechanisms documented in § 24.2 do not operate independently. They operate as a coordinated institutional system that produces predictable outcomes: disabled litigants are denied accommodation, characterized as non-compliant, sanctioned for disability-caused behavior, labeled as vexatious, and permanently excluded from the courts that caused their harm — while every channel through which the harm might be challenged is foreclosed by one or more of the five mechanisms. The coordination does not require conspiracy. It requires only institutional culture, shared interpretive defaults, and structural incentives that make self-protection the path of least resistance for every individual actor in the system.

What the adversarial analysis of the thesis — the most sophisticated version of the legal order's defense of current doctrine — reveals is precisely this coordination. When the defense of current doctrine produces, as its strongest arguments, a list of questions that the legal system has 'not yet resolved' and standards that the system has 'not yet accepted,' the defense is simultaneously the most powerful evidence for the thesis. A legal system that has had twenty years of sophisticated litigation raising fundamental disability rights questions, and that has resolved none of them, is not a legal system that is developing thoughtfully in this area. It is a legal system that has decided, institutionally, not to develop.

Unresolved Question	Doctrinal Status	Avoidance Mechanism	What the Resistance Reveals
§ 504 federal court coverage	Contested; no definitive Supreme Court holding	SCOTUS silence; lower courts avoid on other grounds	Courts will not hold themselves to the anti-discrimination standard they enforce against every other § 504 recipient
Youngberg extension to litigation compulsion	Not yet accepted in litigation context	Snapshot inference; fundamental alteration formula	Courts will not acknowledge that compulsory litigation participation constitutes coercive authority that generates constitutional care obligations
Ninth Amendment disability rights	Treated as interpretive, not substantive	SCOTUS silence; lower courts dismiss without Ninth Amendment analysis	Courts will not acknowledge that disability accommodation is a retained right because doing so would make denial a direct constitutional violation
Medellin seven-step analysis	Steps 3-7 never performed in disability accommodation cases	Terminal non-self-execution formula	Courts will not perform the full Medellin analysis because steps 3-7 would require acknowledging treaty compliance failures
Vexatious designation and disability causation	No ADA causation overlay required by current doctrine	Fundamental alteration formula; plausible neutrality	Courts will not analyze whether the behavior they label vexatious was caused by the discrimination they committed

Unresolved Question	Doctrinal Status	Avoidance Mechanism	What the Resistance Reveals
SCOTUS cert on court-caused CIDT	Not granted across two decades	Administrative obstruction; cert denial	SCOTUS will not resolve questions whose resolution would require acknowledging that the court system inflicts CIDT on disabled litigants
Pulliam and the 1996 amendment	Amendment cited as categorical bar	Terminal statutory citation; no institutional liability alternative developed	Courts read the 1996 amendment as broadly as possible to maximize their immunity from prospective relief
CRPD and customary international law	No court has applied CRPD as Charming Betsy authority in disability accommodation case	Terminal non-self-execution; no customary law analysis	Courts will not use international standards to scrutinize their own accommodation failures

§ 24.4 The Avoidance Pattern as a Human Rights Violation

The jurisprudence of avoidance is not a neutral feature of legal development in which courts are simply proceeding methodically. It is an institutional pattern with specific human consequences: disabled litigants are harmed; their harms are documented; they seek legal remedy; the legal system uses its control over doctrinal development to ensure that the remedy channels remain structurally unavailable; and the harm continues. This is not bad luck. It is a design.

The UNCAT Article 16 prohibition on cruel, inhuman or degrading treatment by state actors encompasses the deliberate structuring of institutional processes to ensure that documented harm continues without remedy. The five avoidance mechanisms are not merely doctrinal errors; they are the operational architecture through which the court system's CIDT is insulated from accountability. When a court applies the terminal non-self-execution formula to dispose of a UNCAT argument without performing the required analysis, it is not making a legal error. It is performing a protective institutional act that ensures the treaty framework that would hold it accountable is never applied. That act, when performed with knowledge of the harm the formula perpetuates, is itself a form of the deliberate infliction of suffering that UNCAT Article 16 prohibits.

The same analysis applies to each of the five mechanisms. The snapshot inference denies accommodation with knowledge of the harm denial causes. The fundamental alteration formula produces official records of legal engagement while ensuring that the accommodation is denied. The vexatious designation converts the victim's self-advocacy into evidence against them. SCOTUS silence allows documented CIDT to continue without supreme court intervention. Together, they constitute what the IAJ has identified in both the Hazari and Minkowski investigations as the systematic institutional intent that the Istanbul Protocol requires for an Article 1 torture determination — not individual malice, but institutional persistence in harm-causing conduct after specific, documented notice that the conduct causes harm.

The Central Conclusion of Part XXIV

§ 24.5 The Three Principles of Federal Court Coverage and Their CRPD Harmonisation

The three arguments for mandatory federal court coverage of the ADA's substantive non-discrimination mandate — the enforcer consistency principle, the federal unity principle, and the CRPD harmonisation principle — are not supplementary to the thesis's legal architecture. They are the thesis's most direct answer to the single most important doctrinal question that the jurisprudence of avoidance has kept unresolved: whether federal courts are legally required to provide disability accommodation in their own proceedings. That question has been treated as open for two decades of disability rights litigation, across the full hierarchy of the federal court system, without any court providing a definitive answer. This Part provides the answer.

24.5.1 The Enforcer Consistency Principle

A court that violates the ADA in conducting its own proceedings cannot exercise the judicial authority Congress conferred upon it to enforce the ADA against others. This is not a moral proposition. It is a structural legal principle derived from three converging doctrines.

First, the clean hands doctrine. Federal courts are courts of equity, and their power to grant equitable relief — including injunctions requiring state courts to provide disability accommodation under Tennessee v. Lane — is subject to equitable principles. The clean hands doctrine provides that a party seeking equitable relief must not itself be in violation of the legal obligation the relief is designed to enforce. A federal court that denies disability accommodation to its own disabled litigants while ordering state courts to provide it is exercising equitable jurisdiction without clean hands, not toward the opposing party but toward the class of persons whose rights the equitable remedy is designed to protect. The structural incoherence this creates is not a minor technical defect. It is a fundamental corruption of the equitable jurisdiction that Tennessee v. Lane's entire enforcement architecture rests upon.

Second, the institutional legitimacy basis of Tennessee v. Lane. The Lane Court held that Congress had sufficient evidence of state judicial discrimination against disabled persons to justify Section 5 prophylactic legislation. That holding implicitly rests on the premise that federal courts, as the enforcers of the disability rights mandate, are neutral and rights-respecting institutions — the corrective alternative to the discriminating state courts. When a federal court replicates the disability discrimination that Lane was designed to remedy, it retroactively undermines the premise of its own enforcement jurisdiction. The court that discriminates against a disabled litigant while adjudicating disability discrimination claims has made itself indistinguishable from the state actor Lane authorized Congress to regulate.

Third, the Ex parte Young structural logic. The Ex parte Young doctrine enables federal courts to compel state officials to comply with federal law through official-capacity prospective relief, premised on the principle that federal courts embody the federal law whose compliance they enforce. A federal court that itself violates federal disability law cannot coherently invoke Ex parte Young to compel a state court's compliance with the same law. The structural premise of the doctrine — that federal courts are the guardians of federal rights — is falsified by the federal court's own discriminatory conduct.

The Enforcer Consistency Principle: Stated

A federal court's statutory authority to enforce ADA Title II against state courts, conferred by Tennessee v. Lane and the statute's jurisdictional provisions, carries with it the implied obligation to comply with the substantive standard being enforced. This implication follows from: the equitable clean hands doctrine; the institutional legitimacy basis of the enforcement jurisdiction itself; and the structural logic of Ex parte Young. A federal court that denies disability accommodation to its own disabled litigants while exercising jurisdiction to compel state court accommodation has nullified the institutional premise of its enforcement authority. Congress is presumed not to have intended a remedial scheme with this structure. The ADA's enforcement architecture therefore requires federal court compliance as a matter of implied statutory obligation, independently of Title II's express coverage definition.

24.5.2 The Federal Unity Principle

The Federal Unity Principle holds that when Congress enacts a comprehensive mandate to eliminate disability discrimination throughout the governmental apparatus, the mandate applies to the entire federal government, including the judicial branch, because the federal government cannot be divided against itself on a matter of fundamental rights. This principle is grounded in Bolling v. Sharpe's constitutional logic, the Supremacy Clause's structural implications, and the anti-evasion doctrine.

The Bolling v. Sharpe foundation. In Bolling, the Supreme Court held that the Fifth Amendment imposes equal protection obligations on the federal government — despite the absence of an Equal Protection Clause in the Fifth Amendment — because it would be unthinkable that the same Constitution would allow the federal government to do what it prohibits states from doing. The ADA presents an identical structure: Congress prohibited disability discrimination by state and local governments, private employers, and public accommodations throughout the country. It would be unthinkable — using Bolling's own language — that the same Congress intended that the federal judiciary, the institution responsible for adjudicating those prohibitions, should itself be exempt from them. The absence of an express coverage provision for federal courts no more establishes a federal judicial exemption than the absence of an Equal Protection Clause in the Fifth Amendment established a federal government exemption from equal protection. Bolling's structural logic requires the same corrective reading here.

The Supremacy Clause implication. The Supremacy Clause establishes federal law as supreme over all state actors. The structural principle it embodies is that the federal government speaks with one voice on matters of fundamental rights. A federal government that simultaneously prohibits disability discrimination through three comprehensive statutes while exempting its own judicial branch from those statutes is not speaking with one voice. It is establishing a hierarchy in which Congress and the executive branch are bound by the anti-discrimination mandate while the judicial branch is above it. No constitutional provision authorises that hierarchy, and the Supremacy Clause's structural logic precludes it.

The anti-evasion principle. A statutory mandate cannot be nullified by the branch it is designed to constrain. If the ADA's mandate to end disability discrimination applies throughout the federal governmental apparatus, the judicial branch cannot construct an exemption for itself through the exploitation of a drafting gap. The anti-evasion principle is the constitutional backstop against institutional self-exemption: just as courts cannot expand their own jurisdiction through interpretation, they cannot contract their own obligations through the same mechanism.

The Federal Unity Principle: Stated

When Congress enacts a comprehensive mandate to eliminate disability discrimination throughout the governmental apparatus, the mandate applies to the entire federal government, including the judicial branch, because: (a) Bolling v. Sharpe's logic requires that the federal government not be exempt from obligations it imposes on state governments; (b) the Supremacy Clause's structural implication is that the federal government speaks with one voice on fundamental rights; and (c) the anti-evasion principle prevents the judicial branch from exploiting a drafting gap to construct an institutional exemption that no statutory provision creates. The ADA's omission of federal courts from Title II's express coverage definition is, under the Federal Unity Principle, a drafting artifact subject to corrective construction — not an affirmative exemption whose absence of textual expression is somehow consistent with the ADA's foundational mandate to end disability discrimination comprehensively.

24.5.3 The CRPD Harmonisation Principle and the No-New-Legislation Self-Application

The CRPD Harmonisation Principle operates through two independent pathways. The first is the Charming Betsy canon: domestic statutes must be interpreted consistently with international obligations where possible. CRPD Article 13 requires effective access to justice for persons with disabilities in all judicial proceedings without distinction between state and federal courts. The ADA must be read consistently with this standard; a reading that exempts federal courts from the accommodation requirement is inconsistent with Article 13 and therefore disfavoured under the Charming Betsy canon. The second pathway is the no-new-legislation self-application principle, which is specific to this thesis's legal architecture and is its most powerful harmonisation argument.

The Senate Foreign Relations Committee found, in Executive Reports 112-6 and 113-12, that existing U.S. law 'meets or exceeds' the requirements of the CRPD. This finding was endorsed by a majority of the full Senate — 61 senators voted for ratification of a treaty whose Article 13 requires disability accommodation in all judicial proceedings. The finding and the vote together constitute authoritative congressional evidence about what existing domestic law already requires. That evidence has a specific and inescapable implication: if existing law meets the CRPD standard, and the CRPD standard requires accommodation in federal judicial proceedings, then existing law must provide for accommodation in federal judicial proceedings.

This is the no-new-legislation argument applied in its most powerful form. The Senate was not told that existing law meets Article 13 only for state courts. It was told that existing law meets Article 13 comprehensively — the same comprehensive Article 13 that covers all judicial proceedings. A domestic interpretation that exempts federal courts from accommodation requirements is inconsistent with the congressional declaration that existing law meets the comprehensive standard, and is therefore incorrect as a matter of statutory interpretation. The deliberate omission fiction — which reads the ADA's structural omission of federal courts as an affirmative exemption — is precisely the kind of artificially cramped statutory interpretation that the no-new-legislation finding forecloses.

CRPD Harmonisation: The Three-Step Argument

STEP 1 — CRPD Article 13 requires effective access to justice for all persons with disabilities in all judicial proceedings. This is unambiguous treaty text with no exception for federal courts. STEP 2 — The Senate Foreign Relations Committee found that existing U.S. law meets the CRPD standard, including Article 13. This finding was endorsed by 61 senators. It is authoritative congressional evidence about the scope of existing domestic disability law. STEP 3 — If existing law meets Article 13 (step 2), and Article 13 requires accommodation in federal judicial proceedings (step 1), then

existing law must provide for accommodation in federal judicial proceedings (conclusion). Any domestic interpretation that exempts federal courts is inconsistent with the congressional declaration of equivalence and is therefore incorrect. The Charming Betsy canon reinforces this: if the ADA's text is ambiguous on federal court coverage, it must be read consistently with the international obligation to which Congress has declared equivalence. The reading that covers federal courts is the reading consistent with that obligation. It is therefore the correct reading.

24.5.4 How the Three Principles Respond to the Deliberate Omission Counter-Argument

The strongest counter-argument to mandatory federal court coverage is the deliberate omission argument: Congress knew how to include federal entities when it wanted to (§ 504 covers Executive agencies), and its omission of federal courts from both Title II and § 504's executive agency coverage reflects a deliberate choice not to regulate the internal proceedings of the third branch.

The enforcer consistency principle defeats this counter-argument by showing that even if the omission were deliberate with respect to express statutory coverage, the enforcement architecture created by Tennessee v. Lane independently requires federal court compliance. A deliberate decision not to cover federal courts through Title II's express mechanism does not override the implied obligation that flows from Congress's assignment of ADA enforcement jurisdiction to those same courts. The implied obligation is more recent (Tennessee v. Lane, 2004) than the original drafting omission (1990), and must be read in light of the full statutory scheme as it has developed.

The federal unity principle defeats the counter-argument by showing that a deliberate exemption of the kind the counter-argument posits would be unconstitutional under Bolling v. Sharpe. Congress cannot deliberately exempt the federal judiciary from a substantive non-discrimination mandate and then send that judiciary into the states to enforce the same mandate. The structure that the counter-argument would create — federal courts exempt from federal anti-discrimination law, enforcing that law against everyone else — is constitutionally untenable. The more plausible reading of any deliberate omission is that Congress trusted existing constitutional and statutory mechanisms to require federal court compliance, not that Congress intended federal courts to be permanently exempt.

The CRPD harmonisation principle defeats the counter-argument by showing that even a deliberate 1990 drafting omission was superseded by the 2012 congressional declaration that existing law meets the CRPD standard. Whether the omission was deliberate in 1990, the 2012 Senate finding that existing law comprehensively meets Article 13 constitutes a subsequent authoritative congressional interpretation that is inconsistent with the exemption reading. Under the later-in-time principle of statutory interpretation, the 2012 finding prevails over any deliberate 1990 omission as evidence of congressional intent.

The Three Principles in Combination: The Complete Legal Case for Federal Court Coverage

ENFORCER CONSISTENCY: A federal court cannot enforce ADA Title II against state courts while itself denying accommodation. The enforcement architecture of Tennessee v. Lane implies federal court compliance as a structural necessity. FEDERAL UNITY: Congress cannot be understood to have comprehensively prohibited disability discrimination throughout the governmental apparatus while exempting the judicial branch. Bolling v. Sharpe, the Supremacy Clause, and the anti-evasion principle all preclude that reading. CRPD HARMONISATION: The Senate's no-new-legislation finding that existing law meets Article 13 (all judicial proceedings) forecloses any domestic

> interpretation that exempts federal courts from accommodation requirements. The Charming Betsy canon requires the consistent reading where the statute is ambiguous. COMBINED EFFECT: Federal courts are legally required to provide disability accommodation in their proceedings. This obligation follows from the ADA's enforcement architecture, from the constitutional unity principle, and from the congressional declaration of CRPD equivalence. The omission of federal courts from Title II's express coverage definition is a drafting artifact, not a deliberate exemption. The legal system's treatment of it as an exemption is itself an instance of the jurisprudence of avoidance — using statutory silence to insulate the judiciary from the substantive mandate it enforces against everyone else.

The unresolved questions that constitute the current state of domestic disability law in the judicial context are not unresolved because they are genuinely difficult. They are unresolved because their resolution would require the judicial system to acknowledge what it has done and continues to do to disabled litigants. The doctrinal hedges, the terminal formulas, the procedural dismissals, and the sustained silence of the nation's highest court are not a neutral feature of legal development. They are the jurisprudence of avoidance — a coherent institutional pattern of self-protection that the accommodation paradox predicts, that the systemic discrimination markers of Part X document, and that the dual independent IAJ investigations of Hazari and Minkowski confirm. The jurisprudence of avoidance is itself the evidence that the thesis requires no further concession to the status quo. The status quo, in this domain, is the violation. The thesis does not accommodate itself to the violation. It demands that the violation end.

PART XXV

Remedies Within the Litigation: What a Disabled Litigant Can Do Without Filing a Separate Lawsuit

The thesis has established, across Parts XIV, XVIII, and XXIV, the structural impossibility of challenging judicial disability discrimination through ordinary litigation channels: the accommodation paradox forecloses challenge within the court system; appellate review replicates rather than corrects the discrimination; writs of mandate are systematically denied by institutional policy; and the SCOTUS has declined to engage the legal analysis across two decades of writ practice. The question that this Part addresses is the one that matters most to the disabled litigant who is currently in a proceeding, currently experiencing discrimination, and currently being harmed by it: what can be done inside the existing case, right now, without filing a separate lawsuit, without waiting for appellate review that may never come, and without relying on the mechanisms that have already been shown to fail?

The answer requires careful, granular analysis of every procedural tool that the rules of civil and criminal procedure, the ADA, and the Constitution place in the hands of a litigant within an ongoing proceeding. Some of these tools are underused because their application in the disability accommodation context is not well understood. Some are effectively blocked by the same institutional avoidance mechanisms Part XXIV documented, but their deployment nonetheless creates an official record with legal consequences. Some, in combination, create a procedural architecture that the presiding judge cannot dismiss without either explicitly acknowledging the discrimination or creating reversible error. This Part develops each tool with precision, provides the substantive content that the legal arguments must contain, and then offers the integrated recommended strategy that best positions the disabled litigant to protect their rights and build the record on which external accountability mechanisms can act.

The Priority Rule

A disabled litigant who is being denied accommodation must pursue all available within-case remedies simultaneously, not sequentially. The system's design is to exhaust the litigant through serial denial: deny the accommodation request, wait for the litigant to file a motion, deny the motion, wait for the writ, deny the writ, wait for the appeal, deny the appeal. Each sequential step takes time during which the harm compounds. The correct strategy is to file all available within-case remedies in a coordinated single filing that creates multiple simultaneous obligations on the court and multiple simultaneous failure modes if the court denies them all without adequate legal justification. The record built by that coordinated filing is the foundation for every subsequent external accountability mechanism.

§ 25.1 Declaratory Relief Within the Proceeding

25.1.1 The Legal Basis and Function of Declaratory Relief

Declaratory relief under 28 U.S.C. § 2201 (the Declaratory Judgment Act) is available in cases of actual controversy within the court's jurisdiction. In the context of an ongoing proceeding, a disabled litigant can seek a declaration from the court that: (a) the court is a covered entity under the ADA, the Rehabilitation Act, and the Constitution; (b) the litigant's documented disability

requires specific accommodations as a matter of law; (c) the denial of those accommodations constitutes disability discrimination violating the ADA, the Rehabilitation Act, and the Constitution; and (d) the court is legally required to provide those accommodations.

The purpose of declaratory relief within the proceeding is not primarily to obtain the accommodation — though a declaration of legal obligation creates grounds for further enforcement. The primary purpose is to force the court to issue a ruling on the legal question of its own obligations, creating a ruling that can be challenged on appeal and that creates a record for international accountability bodies. A court that refuses to issue declaratory relief on the ground that it has no obligation to accommodate a documented disability has created a reviewable legal ruling — not a discretionary case management decision — that can be appealed, presented to a writ court, and submitted to the CAT Committee and CRPD Committee as evidence of the domestic legal system's formal denial of the right.

25.1.2 What the Declaratory Relief Motion Must Say

Core Declarations to Seek in a Motion for Declaratory Relief

DECLARATION 1 — COVERED ENTITY STATUS: This Court is a covered entity under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as a recipient of federal financial assistance and/or under the Enforcer Consistency Principle and the Federal Unity Principle established in [cite Part XXIV of this thesis]; and/or as a public entity within the meaning of ADA Title II, 42 U.S.C. § 12131, as interpreted by Tennessee v. Lane, 541 U.S. 509 (2004). DECLARATION 2 — DOCUMENTED DISABILITY: The moving party has a qualifying disability under the ADA and the Rehabilitation Act, as documented by the medical evidence submitted in [specific ECF citations], which establishes [specific diagnosis], [specific functional limitations affecting litigation activities], and [specific foreseeable harm from unaccommodated participation]. DECLARATION 3 — LEGAL OBLIGATION: This Court has a non-discretionary legal obligation, under the ADA, the Rehabilitation Act, 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments, to conduct an individualized assessment of the moving party's accommodation needs and to provide reasonable modifications that do not fundamentally alter the nature of the proceeding. DECLARATION 4 — VIOLATION: The Court's [specific denial order, cite by date and ECF number] constitutes disability discrimination in violation of [specific statutory and constitutional provisions], because it [specific legal deficiency: failed to conduct individualized assessment; applied formula language without analysis; denied on grounds not established by specific findings; etc.]. DECLARATION 5 — CONSTITUTIONAL DIMENSION: The Court's denial of disability accommodation to a litigant whose disability was specifically documented and whose foreseeable harm from unaccommodated participation was specifically established in the medical record violates the Fifth/Fourteenth Amendment's equal protection guarantee, the due process right of meaningful access to courts, and the constitutional care obligation recognized by analogy in Youngberg v. Romeo, 457 U.S. 307 (1982).

The motion for declaratory relief must attach the complete medical record, including all treating physician letters, neuropsychological evaluations, laboratory results, and any IAJ investigation findings, as exhibits. The motion must include a specific legal argument for each declaration sought, demonstrating through statutory text, case law, and constitutional analysis why the declaration is legally correct. The filing simultaneously creates an ADA § 12203 anti-retaliation record: any adverse action taken against the litigant after the filing of a declaratory relief motion seeking to establish the court's legal obligations is temporally correlated with protected activity, and that correlation is probative of retaliation.

Appellate Significance of Declaratory Relief Denial

A court's denial of a motion for declaratory relief is a reviewable legal ruling — not a discretionary case management decision. Unlike a routine accommodation request denial (which courts characterize as non-reviewable discretionary case management), a declaratory judgment motion requires the court to rule on the legal question of whether it has legal obligations under the ADA. If the court holds that it has no obligations, that legal holding is directly appealable as a question of law. If the court holds that it has obligations but that it has fulfilled them, the adequacy of its individualized assessment is a mixed question of law and fact subject to de novo review on the legal standard. The declaratory relief motion therefore converts the non-appealable accommodation denial into an appealable legal ruling on the court's statutory and constitutional obligations.

§ 25.2 Judicial Disqualification: The Recusal Motion

25.2.1 The Legal Basis for Disqualification in the Disability Context

Under 28 U.S.C. § 144, a federal judge shall recuse when a party files a timely and sufficient affidavit establishing that the judge has a personal bias or prejudice against the party. Under 28 U.S.C. § 455(a), a judge shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. Under § 455(b)(1), a judge must recuse when they have a personal bias or prejudice concerning a party. These provisions apply with particular force in the disability accommodation context because the structural bias analysis of Parts XIV and XXIV establishes that a judge who has repeatedly denied accommodation based on the same formula language — without individualized assessment, without engaging medical evidence, and with sanctions imposed for disability-caused conduct — has demonstrated a pattern of conduct from which a reasonable person would question the judge's impartiality on disability matters.

The disability accommodation context presents a specific form of § 455(a) bias that courts have not adequately analyzed: institutional interest bias. A judge who adjudicates whether their own court's accommodation policies comply with the ADA has an institutional interest in the outcome that is structurally analogous to the financial interest that required disqualification in Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009). The judge's interest is not financial but institutional: finding that the court's accommodation policy is adequate avoids administrative disruption, professional embarrassment, and systemic liability. Ward v. Monroeville's structural bias principle — that a decision-maker with an institutional interest in the outcome cannot adjudicate that outcome impartially — requires disqualification on these grounds independently of any finding of personal animus.

25.2.2 The Substance of the Disqualification Motion

What the Disqualification Motion Must Establish

GROUND 1 — PERSONAL BIAS PATTERN: The judge's conduct in the proceeding demonstrates a pattern of disability-insensitive adjudication that a reasonable person would interpret as bias against the moving party's disability-related advocacy. Specific evidence: (a) accommodation denials without individualized assessment; (b) adoption of opposing counsel's characterizations of the moving party's disability without independent medical analysis; (c) sanctions imposed for conduct causally attributable to unaccommodated disability; (d) vexatious designation obtained without disability causation analysis; (e) any statement characterizing the moving party's medical documentation as insufficient without identifying specific deficiencies in the documentation. GROUND 2 — STRUCTURAL INTEREST BIAS: The judge is adjudicating the adequacy of the court system's own accommodation policies and practices, in which the judge, as a member of the court system, has an institutional interest in a finding of adequacy. Under Ward v. Monroeville and Caperton, a decision-maker with a concrete institutional interest in the outcome of the adjudication

lacks the structural impartiality that due process requires. GROUND 3 — ACCOMMODATION PARADOX: Under the accommodation paradox established in [cite Part XVIII], the judge's adjudication of whether accommodation is required is logically identical to a substantive ruling on the merits of the discrimination claim. Because the judge cannot adjudicate the accommodation question without simultaneously deciding the discrimination question, disqualification is required to ensure that the discrimination question receives impartial adjudication. GROUND 4 — OATH VIOLATION: The judge's documented failure to comply with specific ADA and Rehabilitation Act requirements that the judge is sworn to uphold constitutes grounds for disqualification under the judicial oath analysis established in [cite Part XVI of this thesis].

25.2.3 The Critical Problem: Who Rules on the Disqualification?

The most significant structural problem with disqualification as a remedy is the self-adjudication rule: under both § 144 and § 455, the judge against whom recusal is sought is ordinarily the judge who rules on the recusal motion. This creates the precise institutional interest problem that the motion itself identifies: the judge who is alleged to have discriminated against the moving party rules on whether that judge's conduct demonstrates bias. The result — predictable from the Part XXIV avoidance pattern analysis — is denial with boilerplate language characterizing the disqualification motion as 'mere disagreement with a ruling' or 'dissatisfaction with judicial decisions.'

The structural self-interest pattern documented in the Hazari record — where judges adjudicate their own disqualification and sit on dismissal panels after being individually served with recusal motions — is not a local anomaly. The national investigative record confirms it as the operational norm of American judicial self-regulation.

Reuters and WSJ Confirm: Self-Policing Is the National Norm, Not the Hazari Exception

The "judges judging judges" structure documented in the Hazari record — where Judge Freeman adjudicated her own disqualification (ECF-98 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)) and Silverman sat on both dismissal panels after being individually served with disqualification motions — is not an anomaly. Reuters' 2020 investigation documented this as the standard architecture of American judicial accountability: "We have to recognize that oftentimes we have judges judging judges, and they're ultimately in control and judging their own," said Charles Gardner Geyh, Indiana University Law professor who studies judicial conduct. The WSJ's 2021 financial conflicts investigation confirmed the same for disqualification under 28 U.S.C. § 455: "there are not ways of compelling judges to disqualify themselves." Even the Chief Justice acknowledged "a serious problem of inadequate ethics training" without proposing external enforcement mechanisms. The GAO confirmed the federal structural design: investigations are referred back to the component from which they originated, with nothing prohibiting investigators from examining colleagues with whom they have close relationships. The Hazari record's three-panel pattern (Freeman self-adjudicates, Silverman adjudicates his own disqualification twice) is therefore not a unique pathology. It is the documented operational behavior of judicial accountability systems nationally, applied in the specific context of a disabled litigant's accommodation claim.

The Boilerplate Defense: How Courts Avoid Disqualification and Why It Must Be Challenged

The standard judicial response to a disqualification motion in a disability accommodation case is: 'A judge's adverse rulings, even if erroneous, do not constitute bias. Disagreement with a judge's legal conclusions is not grounds for recusal. The movant has not identified any extrajudicial source of bias.' This boilerplate has three specific defects that the moving party must identify and challenge on the record: DEFECT 1: The extrajudicial source rule. Liteky v. United States, 510 U.S. 540 (1994), held that bias appearing from within the proceedings can constitute grounds for recusal when it

> 'display[s] a deep-seated favoritism or antagonism that would make fair judgment impossible.' A pattern of accommodation denials without individualized assessment, combined with sanctions for disability-caused behavior and a vexatious designation without causation analysis, is exactly the kind of deep-seated antagonism that Liteky recognizes as sufficient for disqualification — even when it arises from within the proceedings. DEFECT 2: The structural bias exception. The boilerplate addresses personal bias but ignores structural institutional interest bias under Ward v. Monroeville. The 'mere disagreement with rulings' formula is legally inapt for a claim of institutional interest bias, which does not require personal animus and cannot be answered by denying personal animus. DEFECT 3: The appearance of impartiality standard. Section 455(a) requires recusal when impartiality 'might reasonably be questioned.' The standard is objective — what a reasonable person would conclude — not what the judge concludes about their own impartiality. A judge's denial of the recusal motion on the ground that the judge considers themselves impartial does not satisfy the objective standard.

The correct procedural response to a self-adjudicated denial of a disqualification motion is an immediate writ of mandamus to the appellate court — not as the primary relief mechanism (which the writ cannot provide given the systemic denial pattern) but as a means of creating a reviewable error record and engaging the appellate court's obligation to address the legal standards for recusal. The writ petition should specifically identify the three defects in the boilerplate denial and argue that the judge's application of the 'mere disagreement' formula to a structural interest bias claim constitutes legal error.

25.2.4 Who Should Rule: The Demand for an Independent Judge

The disabled litigant should explicitly request, within the disqualification motion, that the motion be assigned to a different judge for ruling. This request has three legal foundations. First, 28 U.S.C. § 144 specifically provides that upon filing of a sufficient affidavit, 'another judge shall be designated to hear such proceeding.' The provision contemplates assignment to a different judge as the appropriate mechanism — not self-adjudication — when a sufficient showing of bias is made. Second, the Ward v. Monroeville due process principle requires that adjudication of a disqualification motion by the very judge whose disqualification is sought is itself a due process violation when the judge has an institutional interest in the outcome of the motion. Third, the accommodation paradox applies directly to the disqualification motion itself: if the disqualifying judge's impartiality on the accommodation question is what is at issue, that judge's ruling on whether they are impartial is not a neutral adjudication — it is an interested party's assessment of their own conduct.

> **The Request for Independent Adjudication of Disqualification**
>
> The motion for judicial disqualification must include the following specific requests: (1) That the disqualification motion be assigned to a different judicial officer not in the same court system for ruling, pursuant to 28 U.S.C. § 144 and the due process requirements of Ward v. Monroeville; (2) That all proceedings in the case be stayed pending the ruling on disqualification; (3) That any ruling on the disqualification motion that is made by the challenged judge rather than by an independent judge be treated as legally defective and subject to de novo review on its merits by the appellate court. The request for independent adjudication creates a reviewable error when it is denied: if the challenged judge rules on their own disqualification despite the § 144 provision and the due process argument, that ruling is itself an exercise of authority that the moving party can challenge as ultra vires.

§ 25.3 Injunctive Relief Against the Presiding Judge in the Same Case

25.3.1 The Legal Question

Can a disabled litigant seek injunctive relief against the presiding judge within the same case, requiring the judge to provide accommodation, cease discriminatory conduct, or stay harmful proceedings? The answer is more nuanced than the boilerplate 'judicial immunity bars injunctive relief against judges' formula suggests. As established in Part VI, Pulliam v. Allen recognized injunctive relief against judges in their judicial capacity; the 1996 amendment to § 1983 restricted this channel by requiring either a violated declaratory decree or unavailability of declaratory relief. But there are channels to prospective injunctive-type relief within a proceeding that do not depend on § 1983's amended terms.

25.3.2 The ADA Title II Injunction Within the Proceeding

ADA Title II provides that 'the remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.' Section 794a authorizes injunctive relief for § 504 violations. In the context of ongoing litigation, this provides a statutory basis for seeking an order within the proceeding — directed to the court system as an institution rather than to the individual judge — requiring the implementation of accommodation protocols.

The institutional injunction is the appropriate vehicle. Rather than seeking an injunction against 'Judge X,' the disabled litigant seeks an order directed to 'the [District/Appellate] Court, through its Chief Judge and Clerk, requiring the implementation of the following accommodation protocols in the above-captioned proceeding.' This framing avoids the § 1983 restriction (which addresses individual judicial officers in their judicial capacity) and instead invokes institutional ADA liability, under which the institution — not the individual judge — bears the obligation and the remedy runs against the institution.

25.3.3 The Motion for Protective Order as an Injunctive Equivalent

Within any proceeding, a party may move for a protective order under FRCP 26(c) in the federal context or its state equivalents. While Rule 26(c) is formally a discovery protection mechanism, its underlying principle — that the court may limit the terms and conditions of participation to prevent annoyance, embarrassment, oppression, or undue burden or expense — applies with direct force to the disability accommodation context. A disabled litigant who can demonstrate that the current schedule, format, and pace of the proceeding constitutes undue burden by virtue of its documented medical consequences has a basis for a protective order that modifies the procedural demands of the case.

The motion for protective order in the disability accommodation context should be framed as: 'Pursuant to [FRCP 26(c) / state equivalent], the moving party moves for a protective order modifying the terms and conditions of their participation in this proceeding, on the grounds that the current schedule and procedural demands impose undue burden and foreseeable medical harm, as established by the medical evidence attached hereto, and that the modification requested constitutes the reasonable accommodation required by the ADA, the Rehabilitation Act, and the Constitution.' The protective order framing is significant because it invokes the court's own procedural machinery rather than a separate statutory action, making it harder for the court to characterize the request as an impermissible attack on judicial authority.

25.3.4 The Automatic Stay Demand

Every accommodation request and every motion for declaratory relief, disqualification, or protective order in the disability context should be accompanied by a demand for an automatic stay of all proceedings and deadlines pending resolution of the accommodation question. The legal basis is the ADA's anti-harm principle (a litigant cannot be required to forfeit rights during the period in which their right to accommodation is being adjudicated), the accommodation paradox's logic (unaccommodated proceedings during the pendency of an accommodation challenge destroy the challenge's subject matter), and Part XVIII's mandatory accommodation analysis (the defaulting position must be accommodation, not discrimination, during any period of ambiguity about obligations).

The Automatic Stay Demand: Why It Creates Legal Consequences Even When Denied

A court that refuses to stay proceedings during the pendency of an accommodation challenge is creating a specific and documentable legal error: it is requiring the disabled litigant to comply with procedural demands during the period when the court's own legal obligations regarding those demands are in dispute. If the accommodation is subsequently found to have been required, every deadline, sanction, and adverse ruling entered during the pendency of the challenge is tainted by the ADA violation that continued throughout. The automatic stay demand creates this record whether or not the stay is granted. If granted, it protects the litigant. If denied, it establishes that the court knowingly continued to impose harmful procedures while the question of its legal obligation to stop was pending, which is evidence of the deliberate infliction of harm that supports the UNCAT Article 16 intentionality element.

§ 25.4 The Judicial Conduct Complaint Within the Proceeding

Under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, any person may file a complaint alleging that a federal judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or has a mental or physical disability rendering the judge unable to discharge their duties. A complaint alleging systemic disability accommodation denial — with specific citation to the accommodation requests denied, the medical evidence ignored, and the formula language applied without individualized assessment — falls within both grounds: the conduct prejudices the administration of justice by rendering disabled litigants unable to access it, and the pattern of adjudication without engagement with medical evidence reflects a failure of the judicial function.

The judicial conduct complaint should be filed simultaneously with the within-case remedies, not sequentially. Its function within the overall strategy is threefold: first, it creates an official complaint record that the Judicial Council must acknowledge; second, it triggers a required inquiry, the outcome of which — whether the complaint is sustained or dismissed — creates a further record for DOJ referral and treaty body reporting; third, a dismissal of the conduct complaint by the circuit's chief judge (which the accommodation paradox predicts) is itself further evidence of the systemic impossibility that Part XIV documents, and that evidence belongs in the international accountability record.

The Judicial Conduct Complaint's Limitations

The judicial conduct process under 28 U.S.C. §§ 351-364 cannot be used to challenge a judge's legal rulings as such. The Judicial Conduct Rules explicitly state that a complaint is not appropriate for challenging the substance of a ruling. The correct framing therefore distinguishes between: (a) the conduct of the court's accommodation process (which is conduct subject to the Act: the failure to conduct individualized assessment, the application of formula denials, the fabrication of inconsistencies to deny accommodation, the failure to implement any accommodation protocol) and

(b) the merits of any particular accommodation decision (which is a ruling subject to appellate review, not conduct review). The complaint should focus entirely on the process — the absence of individualized assessment, the absence of medical expert consultation, the template language — rather than on the outcome of any specific ruling.

§ 25.5 The ADA Administrative Complaint

Under 28 C.F.R. Part 35, a person who believes they have been subjected to discrimination by a public entity under ADA Title II may file an administrative complaint with the Department of Justice or with any of the designated federal agencies with Title II enforcement authority. The complaint is filed with the agency, not with the court; it initiates an administrative investigation, not a judicial proceeding; and it is therefore not subject to the accommodation paradox, the appellate rubber-stamping pattern, or the judicial self-protection mechanisms documented in Part XXIV.

For state courts, the ADA administrative complaint is filed with the DOJ's Civil Rights Division, Disability Rights Section, or with the Department of Education (Office for Civil Rights) in cases involving judicial educational proceedings. The complaint should be filed simultaneously with the within-case remedies to create parallel tracks: while the within-case remedies build the record for appellate and international purposes, the administrative complaint triggers an independent federal investigation that operates outside the court system's control. The administrative complaint is particularly powerful when accompanied by the IAJ investigation findings, because the IAJ's Istanbul Protocol-compliant methodology satisfies the evidentiary standards the DOJ applies to pattern-or-practice investigations.

§ 25.6 The Official Record-Building Strategy

Because accommodation denials are routinely characterized as non-appealable case management decisions, and because writs of mandate are denied by institutional policy, the most important function of within-case remedies in many disability accommodation situations is not to obtain the accommodation — though that remains the primary goal — but to build the official record on which subsequent appellate, administrative, and international accountability mechanisms can act. A denial that is unexplained and undocumented in the official record is much harder to challenge than a denial that is documented, legally characterized, and specifically objected to on the official record. The following record-building steps are mandatory, not optional.

Record Element	How to Create It	Why It Matters
Medical causation declaration	File a sworn declaration from a treating physician specifically correlating the court's procedural demands with specific documented medical consequences	Creates the knowledge element: establishes that the court is on specific notice of specific harm from specific conduct — required for UNCAT Art. 16 intentionality finding
Individualized assessment demand	Before or simultaneously with every accommodation request, file a demand that the court conduct and document an individualized assessment before ruling	Converts a denial without individualized assessment into a documented violation of the ADA's mandatory process requirement; creates reviewable error
Formula language objection	Immediately upon receipt of any denial using formula language ('fundamental	Prevents waiver; creates specific appealable error; documents the

Record Element	How to Create It	Why It Matters
	alteration,' 'demonstrated ability,' 'untimeliness'), file a specific objection identifying the formula and its legal deficiency	pattern of template denial that the systemic discrimination analysis requires
Retaliation correlation	Immediately after any adverse ruling following protected activity (accommodation request, disqualification motion, conduct complaint), file a notice documenting the temporal correlation with protected activity	Creates the ADA § 12203 anti-retaliation record; shifts burden to court to demonstrate independent basis for adverse action
Harm update declaration	At each major case event (hearing, deadline, sanctions order), file an updated medical declaration documenting current condition and any deterioration since the last accommodation denial	Creates the treatment escalation timeline the Istanbul Protocol requires; documents the compounding nature of the harm
ADA Coordinator correspondence	File every accommodation request simultaneously with the court's designated ADA Coordinator (if any) and document any absence of response or identical formula denial	Documents the Coordinator's failure; in Minkowski, established the Coordinator as an active instrument of discrimination rather than a neutral administrative officer
Objection to every sanction	Specifically object to every sanction imposed for conduct causally attributable to unaccommodated disability, identifying the causal chain and demanding dismissal of the sanction on ADA grounds	Prevents waiver of the disability causation argument; creates specific error record for each sanction; documents the coercive financial pressure element of the CIDT analysis
Treaty body notice	Notify the court in writing, on the record, that the accommodation denial is being reported to the CAT Committee, the CRPD Committee, and the UN Special Rapporteur on Torture, and attach the international legal framework	Invokes international law expressly on the record; creates the domestic record of international law argument preservation that treaty bodies require as evidence of exhaustion of domestic remedies

§ 25.7 What Cannot Be Done: The Limitations That Must Be Understood

The disabled litigant must have a clear-eyed understanding of which tools will not work and why, to avoid wasting limited resources on mechanisms that the institutional avoidance pattern will defeat. Four categories of within-case remedies have predictable failure rates that approach certainty in a system of systemic discrimination:

Accommodation request through the ADA Coordinator (alone): The Hazari and Minkowski records demonstrate that the ADA Coordinator, when embedded in the court system, either replicates the judge's denial (as in Hazari, where the Coordinator played no independent role) or actively participates in fabricating grounds for denial (as in Minkowski, where Coordinator Faraone delivered the fraudulent 'shopping' denial). An accommodation request that flows through the embedded Coordinator without simultaneous filing of the full suite of within-

case remedies described in this Part is almost certain to be denied, and the denial will have the appearance of administrative process without the substance of independent review. The Coordinator must be bypassed or supplemented, not relied upon.

A standalone writ of mandate (California context): Parts XVIII and XXIV establish that writs of mandate in the disability accommodation context are denied by institutional policy. The Minkowski record documents six writ petitions across the state hierarchy — H050352, H050828, H051179, H051475, H051674, H052155 — every one of which was denied. A standalone writ, filed without the coordinated within-case remedy strategy and without the parallel administrative and international tracks, will be denied in the same time it takes to process it, and the denial will be used as further evidence that domestic remedies have been exhausted while simultaneously advancing the vexatious litigant narrative.

Informal communication with the judge or clerk: Informal emails, phone calls, or letters to the court requesting accommodation modifications outside the formal filing process do not create a legally cognizable record and are subject to characterization as irregular communication. Every accommodation-related communication must be filed formally, on the record, through the court's electronic filing system, so that it becomes part of the official case docket and creates a reviewable record.

Waiting: The most dangerous error a disabled litigant can make is to wait for the system to self-correct, wait for the next appeal, wait for a change in judicial attitude, or wait until the harm becomes undeniable. The accommodation paradox and the jurisdictional custody analysis establish that waiting is not a neutral strategy. Every day of unaccommodated participation compounds the harm, creates new instances of disability-caused conduct that can be characterized as non-compliance, and advances the case toward dismissal or adverse judgment from which no remedy is available. The coordinated filing strategy described in § 25.8 must be deployed as early in the proceeding as possible, not as a last resort.

§ 25.8 The Recommended Integrated Strategy

The following is the recommended integrated within-case strategy for a disabled litigant who is being denied accommodation by a presiding judge and court, who cannot file a separate lawsuit without additional resources or risk, and who needs to protect their rights, stop the discrimination to the extent possible, and build the record that subsequent mechanisms require. The strategy is designed as a single coordinated filing event — not a sequence of individual motions filed over time, but a simultaneous multi-document filing that creates multiple obligations, multiple failure modes, and a complete record in a single procedural act.

25.8.1 The Omnibus Disability Rights Filing

The Recommended Single Coordinated Filing: The Omnibus Disability Rights Filing

FILE SIMULTANEOUSLY IN ONE COORDINATED SUBMISSION: 1. MOTION FOR DECLARATORY RELIEF: seeking the five declarations described in § 25.1.2, establishing the court's legal obligations and the specific violations of those obligations in this case. 2. MOTION FOR JUDICIAL DISQUALIFICATION with affidavit: pursuant to 28 U.S.C. § 144 and § 455, establishing the three grounds (personal bias pattern, structural interest bias, accommodation paradox) and

specifically requesting assignment to an independent judge for ruling. 3. MOTION FOR PROTECTIVE ORDER / INSTITUTIONAL ADA INJUNCTION: seeking modification of the proceeding's schedule, format, and pace as a reasonable accommodation required by the ADA, the Rehabilitation Act, and the Constitution, directed to the court as an institution rather than to the individual judge. 4. DEMAND FOR AUTOMATIC STAY of all proceedings and deadlines pending resolution of motions 1-3. 5. NOTICE OF INTERNATIONAL LAW OBLIGATIONS: formally notifying the court on the record that the accommodation denial is being reported to the CAT Committee, the CRPD Committee, and the UN Special Rapporteur, invoking the full international legal framework. 6. MEDICAL DECLARATION (CURRENT): updated sworn declaration from treating physician(s) specifically correlating current procedural demands with current documented medical harm, meeting Istanbul Protocol documentation standards. 7. OBJECTION TO ALL PENDING SANCTIONS AND ADVERSE RULINGS: specific, documented objection to every sanction imposed for conduct causally attributable to unaccommodated disability, demanding dismissal on ADA grounds with specific causation analysis. FILE SIMULTANEOUSLY OUTSIDE THE CASE: 8. JUDICIAL CONDUCT COMPLAINT: filed with the Circuit's Chief Judge simultaneously, documenting the pattern of accommodation process failure (not ruling error) with specific citations. 9. ADA ADMINISTRATIVE COMPLAINT: filed with the DOJ Civil Rights Division and any relevant state enforcement agency simultaneously, with all supporting medical documentation. 10. IAJ REFERRAL: if an IAJ investigation has not already been initiated, file the case with the IAJ for Istanbul Protocol investigation, simultaneously with the within-case filing.

25.8.2 Why the Simultaneous Coordinated Filing Is More Effective Than Sequential Filing

The sequential approach — file the accommodation request, wait for denial, file the disqualification motion, wait for denial, file the writ, wait for denial — is the approach the institutional system expects and is designed to defeat. Each sequential step takes time; each denial becomes the next step's predicate; and the accumulation of denials is used to characterize the litigant as vexatious before the full legal arsenal has been deployed. The coordinated simultaneous filing changes the dynamic in three specific ways.

First, it creates multiple simultaneous obligations that the court cannot dismiss with a single boilerplate order. A denial that simultaneously disposes of a declaratory relief motion, a disqualification motion, a protective order motion, and a stay demand would need to engage each motion's specific legal standard on its own terms. A court that issues a single order dismissing all five motions without engaging their individual legal standards has created multiple counts of reviewable legal error in a single act.

Second, it puts the court on notice that the case is already in the international accountability system before any further adverse action. A court that imposes additional sanctions or adverse rulings after receiving formal notice that the case has been reported to the CAT Committee and the CRPD Committee has made a different kind of record than a court that acts in the absence of that notice. The post-notice adverse actions are stronger evidence of the deliberate infliction element of the CIDT analysis.

Third, it invokes the ADA § 12203 anti-retaliation protection immediately. The filing of motions for declaratory relief, disqualification, and protective order constitutes protected activity under the ADA's anti-retaliation provision. Any adverse action taken against the litigant after the filing is presumptively retaliatory unless the court can demonstrate an independent basis. The coordinated filing therefore creates a protective temporal marker from which all subsequent adverse actions must be assessed.

The Integrated Strategy: What It Achieves and What It Cannot

WHAT IT ACHIEVES: (1) Converts non-appealable accommodation denials into appealable legal rulings by framing them as declaratory relief determinations; (2) Creates the complete medical causation record that the Istanbul Protocol and treaty body procedures require; (3) Establishes the knowledge, intentionality, and foreseeability elements of UNCAT Art. 16 on the official record; (4) Deploys the ADA anti-retaliation protection from the earliest possible point; (5) Initiates parallel administrative and international tracks that operate outside the court system's control; (6) Preserves all legal arguments for appellate review and international petition by making them formally and specifically on the record; (7) Documents every element of the jurisdictional custody CIDT analysis — compelled participation, knowledge of harm, continuation despite notice, no path of withdrawal without total forfeiture. WHAT IT CANNOT ACHIEVE: (1) It cannot force a discriminating court system to stop discriminating — the institutional avoidance pattern will deny most of these motions; (2) It cannot resolve the accommodation paradox within the system that generates it; (3) It cannot substitute for the external accountability mechanisms — the IDAT, the DOJ pattern-or-practice investigation, the treaty body proceedings — that the thesis's reform agenda requires. WHAT IT IS FOR: The integrated strategy is not primarily a mechanism for obtaining accommodation from the discriminating court, though that remains the goal and occasionally the result. It is primarily a mechanism for building the record on which external accountability must act, invoking the full legal framework on the official record before the case is lost, and ensuring that when the system fails — as the accommodation paradox predicts it will — the failure is documented with maximum legal precision and in full compliance with the evidentiary standards of the international accountability mechanisms that are the thesis's ultimate answer to the structural impossibility this system has created.

§ 25.X The Cohen Collateral Order Doctrine: Immediate Reviewability of Accommodation Denials

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949), established that a small class of interlocutory orders is immediately appealable as final decisions under 28 U.S.C. § 1291 when the order (1) conclusively determines the disputed question, (2) resolves an issue completely separate from the merits of the underlying case, and (3) is effectively unreviewable on appeal from final judgment. Disability accommodation denials satisfy all three prongs in cases involving progressive neurological conditions where the harm from compelled unaccommodated participation is medically irreversible. The Hazari SCOTUS writ (No. 25-3879, Reason I and Appendix H, § 1) presents this argument as the second gap in federal law: the collateral order doctrine has never been applied to the right of a disabled litigant not to be physically destroyed by unaccommodated proceedings.

On the first prong: an accommodation denial conclusively determines the disabled litigant's right to participate under equal access conditions for the duration of the proceeding. It is not interlocutory in the sense of preliminary or contingent; it resolves — definitively and for the duration of the case — whether the litigant will have the cognitive and physical capacity that accommodation would provide. On the second prong: the accommodation question — whether the litigant's disability substantially limits a major life activity and whether the requested accommodation is reasonable — is completely separate from the merits of the underlying civil rights, contract, or property claim. A court can resolve the accommodation question without deciding any element of the underlying claim. On the third prong: this is where disability accommodation denials depart most dramatically from ordinary interlocutory orders. The harm from compelled unaccommodated participation — permanent neural destruction, immune collapse, missed disease-modifying therapy windows — is medically irreversible. An appeal after final judgment cannot restore destroyed immune

function or reverse permanent neurological damage. The harm is complete before the appeal is available. This makes accommodation denials in progressive-neurological-condition cases the paradigmatic case for the third Cohen prong: irreversible harm makes effective review after final judgment a legal fiction.

An independently sufficient basis for immediate appellate jurisdiction is 28 U.S.C. § 1292(a)(1), which grants courts of appeals jurisdiction over interlocutory orders "refusing" injunctions. An accommodation denial that denies the disabled litigant the injunctive relief of being accommodated has the practical effect of refusing an injunction under Carson v. American Brands, Inc., 450 U.S. 79, 84 (1981). Where the accommodation requested is a modification of court procedures — extended deadlines, remote participation, modified briefing schedules — the denial of that modification is, in functional terms, the refusal of an injunction requiring the court to modify its procedures. § 1292(a)(1) provides jurisdiction independently of any Cohen analysis. Litigants whose accommodation denials involve requests for procedural modification should cite both Cohen and § 1292(a)(1) explicitly in any notice of appeal, with the three-prong Cohen analysis applied by name, to preserve both grounds for immediate appellate review.

PART XXVI

The Procedural Architecture of Exclusion: How Procedural Demands Destroy Remedies, Relief, and Punishment for the Unaccommodated Disabled Litigant

Part XXV recommended an integrated simultaneous filing strategy as the most effective within-case approach to disability discrimination. It noted, without fully elaborating, that this strategy is itself substantially impaired — and sometimes made entirely inaccessible — by the very functional impairments that generate the need for accommodation in the first place. This is not an incidental practical difficulty. It is a structural feature of the court system's procedural architecture that operates as the final and most comprehensive mechanism of exclusion: even the remedies that formally exist are placed beyond the reach of the litigant most in need of them by the procedural conditions under which they must be invoked.

This Part develops that analysis in full. It demonstrates that the court's standard procedural demands — timing requirements, formatting standards, simultaneous filing obligations, cognitive complexity requirements, and physical participation demands — are not neutral technical specifications. When applied without accommodation to a litigant whose documented disability specifically impairs the capacities those demands require, they function as a disability-targeted exclusion mechanism: a second layer of discrimination that operates not through the denial of any specific right but through the destruction of the litigant's practical capacity to invoke any right at all. The procedural architecture of exclusion is what remains when every formal remedy has been denied — it ensures that the litigant cannot even demand the remedies that the law says exist.

The Fundamental Paradox of Procedural Accessibility

The legal system requires a disabled litigant to demonstrate, through complex procedural performance, that their disability makes complex procedural performance impossible. To file the declaratory relief motion that converts a non-appealable accommodation denial into an appealable legal ruling, the litigant must research the law, draft the argument, organize the exhibits, format the document to court specifications, file through the electronic system, and serve opposing parties — all within the time limits the court imposes and under the cognitive, physical, and psychological burden that the denial of accommodation has generated. The accommodation paradox operates not only at the level of logical structure (Part XVIII) but at the level of practical human capacity: the litigant who most needs the procedural remedy is the litigant whose disability has been most severely exacerbated by the denial that makes the remedy necessary. The system demands the highest performance exactly when it has destroyed the capacity for performance.

§ 26.1 The Cognitive Demands of Legal Procedure and What Specific Impairments Destroy

26.1.1 What Standard Legal Procedure Requires Cognitively

Standard legal procedure is among the most cognitively demanding activities a person can be required to perform. It requires sustained attention across extended periods (reading lengthy filings, tracking multiple deadlines, maintaining case awareness across months or years of litigation); working memory capacity sufficient to hold and integrate large quantities of legal, factual, and procedural information simultaneously; executive function capable of planning, prioritising, sequencing, and executing complex multi-step tasks under time pressure; processing speed adequate to meet filing deadlines that may be measured in days or hours; language processing sufficient to comprehend complex legal text and produce legally sufficient written arguments; and emotional regulation sufficient to maintain functional performance under conditions of extreme stress, threat, and adversarial pressure.

These are not peripheral demands. They are the core requirements of legal participation, and each of them is specifically and directly impaired by the conditions most commonly associated with disability accommodation needs in the judicial context: PTSD (sustained attention disruption, intrusive recollection, hyperarousal interfering with concentration); major depressive disorder (executive function collapse, processing speed reduction, motivational impairment); ADHD (attention, working memory, executive function, processing speed); multiple sclerosis (cognitive fatigue, processing speed, working memory, physical stamina); traumatic brain injury (processing speed, executive function, sustained attention); and the effects of medication used to manage these conditions (sedation, cognitive dulling, reaction time impairment).

The Neuropsychological Profile of Substantial Litigation Incapacity

The neuropsychological evaluation in the Hazari record (ECF-37 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)) documented processing speed at the 0.1 percentile — meaning that Hazari processed information more slowly than 99.9% of the population. A processing speed at the 0.1 percentile means that a task requiring 30 minutes of processing time for a non-disabled person requires approximately 6-10 hours for the affected individual — before accounting for cognitive fatigue, which causes further performance degradation over sustained effort. A standard motion that a competent attorney might draft in 3-4 hours would require 18-40 hours of sustained effort for a litigant with this profile — spread across multiple days because the cognitive fatigue of sustained effort makes extended single-session work impossible. Standard court deadlines of 14-21 days for most motions do not account for this multiplier. The Minkowski record documents the DSM-5 clinical cascade: PTSD, MDD, disabling anxiety, and ADHD combining to produce the specific pattern of functional incapacity that the courts characterized as 'demonstrated ability to participate' based on the litigant's desperate efforts to comply with unaccommodated demands.

26.1.2 The Simultaneous Filing Problem

Part XXV recommended the Omnibus Disability Rights Filing as a simultaneous ten-element submission. For a non-disabled attorney with a full support staff, the simultaneous filing of these ten documents is a significant but manageable undertaking, achievable over several days of focused work. For a litigant whose processing speed is at the 0.1 percentile, whose PTSD makes sustained attention to adversarial legal material severely difficult, whose major depressive disorder has reduced executive function to a fraction of its pre-litigation baseline, and whose cognitive fatigue means that useful working time may be measured in minutes rather than hours on any given day, the simultaneous filing of ten complex legal documents is not merely difficult. It is functionally impossible under standard procedural conditions.

The impossibility has a specific clinical structure. Each of the ten filing elements requires a different type of cognitive output: the declaratory relief motion requires legal research and argument; the disqualification affidavit requires detailed factual recall under oath; the medical declaration requires coordination with treating physicians; the international law notice requires

knowledge of treaty provisions; the protective order motion requires procedural knowledge of the specific rules; the sanction objections require review of every prior adverse ruling. A litigant with PTSD cannot switch among these document types without each transition triggering a stress response that impairs the subsequent document's quality. A litigant with ADHD cannot sustain the executive function required to track the interdependencies among ten simultaneous documents. A litigant with processing speed impairment cannot complete all ten documents within any standard filing window while also managing the physical demands of daily functioning, medical appointments, medication schedules, and the psychological impact of the litigation itself.

The requirement that these documents be filed simultaneously is therefore both procedurally necessary (as Part XXV demonstrated, sequential filing enables the system's serial denial strategy) and practically impossible for the unaccommodated disabled litigant whose disability is most severe. The simultaneous filing requirement and the disability-generated incapacity for simultaneous complex production are not independent features. They are two sides of the same trap: the system requires the highest procedural performance from the litigant whose disability, exacerbated by the system's own discriminatory conduct, has reduced their procedural capacity to its lowest point.

26.1.3 The Temporal Compression Problem

Standard procedural deadlines assume a baseline level of cognitive and physical functioning that disabled litigants frequently cannot meet without accommodation. More insidiously, the deadlines for the remedies that matter most in the disability accommodation context are specifically and systematically the shortest deadlines in the procedural framework:

- Writ of mandate petitions in California: the reviewing court expects filing within a reasonable time after the challenged order — and delays of even a few weeks are treated as waiver or lack of urgency. For a litigant in residential psychiatric treatment who is cognitively impaired by the very order being challenged, a 'reasonable time' standard that treats four weeks as excessive is a functional denial of the remedy.
- 28 U.S.C. § 144 disqualification affidavit: must be filed 'not less than ten days before the beginning of the term at which the proceeding is to be heard.' For a litigant who only learns of hearing dates in the compressed notice periods that courts routinely provide, this deadline is frequently unreachable without accommodation.
- Appellate motions for emergency stay pending accommodation appeal: courts of appeal typically require emergency stay applications to be filed within 24-72 hours of the challenged order. For a litigant in an acute psychiatric crisis triggered by the challenged order — the precise situation documented in the Minkowski record, where the filing requirement arrived while the litigant was requiring emergency medical intervention — a 24-hour deadline is a physical impossibility.
- Responses to sanctions motions: typically 14-21 days. For a litigant with processing speed at the 0.1 percentile, cognitive fatigue, and PTSD that makes engagement with threatening legal material specifically difficult, 14 days may not provide sufficient functional time to research, draft, and file an adequate response.
- MC-410 accommodation request forms (California): must be submitted 'as far in advance of the court proceeding as possible.' Courts have denied requests filed fewer than two weeks before hearings as untimely — despite the fact that the medical condition generating the need for accommodation may have deteriorated or intensified in the two weeks before the hearing precisely because of the hearing's approach.

The temporal compression problem is compounded by the fact that the most cognitively demanding procedural moments — the moments when multiple complex filings are required simultaneously, when deadlines are shortest, and when the legal stakes are highest — are also the moments of maximum disability-related cognitive and psychological impairment. The approach of a hearing triggers PTSD hyperarousal; the receipt of an adverse order triggers acute decompensation; the need to file multiple simultaneous documents under deadline pressure triggers the panic, cognitive shutdown, and executive function collapse that are the hallmark symptoms of the conditions the courts have refused to accommodate. The system has designed its most demanding procedural requirements to coincide with the moments of maximum disability-generated incapacity.

§ 26.2 How Procedural Demands Specifically Destroy Each Category of Remedy

26.2.1 How Procedure Destroys the Declaratory Relief Remedy

Declaratory relief requires a formal motion meeting the court's requirements for motion practice: a memorandum of points and authorities, a proposed order, proper caption, page limits, font and margin requirements, electronic filing compliance, and service on opposing counsel. For a litigant with PTSD whose functional impairment includes 'impaired range comprehension of complex questions' (ECF-37 language), the requirement to produce a legally sufficient memorandum of points and authorities — identifying every relevant statute, case, and constitutional provision and applying each to the specific facts of the case — is not a formal requirement that exists on paper only. It is a substantive barrier that the disability the motion addresses has specifically impaired the litigant's capacity to meet.

The page limit creates a further trap specific to PTSD and cognitive impairment: PTSD patients under stress frequently produce either far too little (cognitive shutdown, inability to access and organize information) or far too much (hypervigilant over-documentation, inability to edit and prioritize). Courts characterize the first pattern as inadequate legal argument and the second as exactly the 'rapid, prolix filings' pattern that courts have used to deny accommodation and support vexatious designations. The formal requirements of motion practice therefore create a disability-targeted trap: the litigant either cannot produce the motion at all, or produces it in a form that the court characterizes as evidence against the disability claim.

26.2.2 How Procedure Destroys the Disqualification Remedy

The § 144 affidavit requires the litigant to set forth, under oath and with particularity, the facts establishing the judge's personal bias. For a litigant with PTSD, this requires: retrieving detailed memories of adversarial interactions with the judge that are themselves traumatic stimuli; organizing those memories into a legally structured narrative while under the cognitive stress of the oath requirement; maintaining emotional regulation sufficient to produce legally coherent text while engaging with material that is specifically identified in the medical record as a trigger for acute decompensation; and completing this task within the filing deadline that may have been set by the very judge whose disqualification is sought.

The cognitive demands of the disqualification affidavit are specifically antithetical to the cognitive profile of a litigant whose PTSD was caused by the judicial conduct the affidavit must describe. Asking a PTSD patient to produce a detailed, organized, legally adequate account of the traumatic events their PTSD was caused by, under oath, under deadline, in adversarial proceedings before the person whose conduct caused the trauma, is a clinical description of a procedure specifically

designed to be impossible for the person most in need of it. The law that created the § 144 affidavit requirement did not contemplate this specific clinical profile — and the failure to accommodate it is exactly the individualized assessment failure that the ADA requires courts to remedy.

26.2.3 How Procedure Destroys the Appellate Remedy

Appellate review of accommodation denials is formally available but practically inaccessible in the disability accommodation context for reasons specific to the functional impairments that generate the need for accommodation. Appellate briefs require sustained, high-quality legal analysis produced over weeks or months; they require page limits that demand compression and editing rather than extended explanation; they require citation format compliance, record citations, and procedural waiver analysis; and they must be filed on a schedule that runs simultaneously with the ongoing trial court proceedings that are themselves causing harm.

For a litigant in residential psychiatric treatment — as Minkowski was during the period when she was required to prosecute appellate proceedings — the simultaneous demands of maintaining inpatient treatment compliance and prosecuting an appellate brief are structurally incompatible. The appellate court cannot be attended to without leaving the treatment facility; the treatment facility cannot be maintained without missing appellate deadlines. The appellate court's response to this incompatibility — in the Minkowski record, dismissal for failure to timely prosecute — is the system's conversion of a disability-generated impossibility into a procedural default. The remedy is destroyed not because the litigant chose not to use it but because the litigant's disability made it simultaneously available on paper and impossible in practice.

26.2.4 How Procedure Destroys the Administrative Complaint Remedy

An ADA administrative complaint to the DOJ requires: a written narrative of the discrimination, identifying specific incidents, dates, and parties; attachment of all relevant documentation; signature under penalty of perjury; submission within 180 days of the discriminatory act (in most contexts); and sufficient factual specificity to allow the DOJ to assess whether an investigation is warranted. For a litigant in residential psychiatric treatment, or in a period of acute decompensation generated by the discrimination itself, the 180-day window may pass without the litigant being in a functional state to identify, gather, organize, and submit the required documentation.

The 180-day limitation period is particularly destructive in the disability accommodation context because the discrimination is ongoing — each new hearing, each new deadline, each new sanction is a new discriminatory act — but the accumulation of discrimination over time makes the task of documenting it for an administrative complaint progressively more complex and cognitively demanding precisely as the litigant's capacity for complex cognitive tasks is being progressively reduced by the discrimination's medical consequences. The litigant who can most clearly see the full pattern of discrimination — after months or years of documented harm — is the litigant whose cognitive and functional capacity for the administrative complaint task has been most comprehensively degraded by that pattern.

26.2.5 How Serial Waiver Doctrine Destroys Every Remedy Simultaneously

Waiver doctrine holds that a litigant who fails to raise an issue in the trial court has waived the issue for appellate purposes. In the disability accommodation context, waiver doctrine is one of the most devastating procedural mechanisms of exclusion because it requires the disabled litigant to preserve every legal argument — the declaratory relief argument, the disqualification argument, the constitutional argument, the international law argument — at the moment of the

accommodation denial, which is precisely the moment of maximum cognitive and emotional impairment generated by that denial.

The operational effect of waiver doctrine on a litigant with cognitive impairment is brutal: the litigant must, in the immediate aftermath of an adverse order that has triggered acute decompensation, research and identify every legal argument that might be available, draft and file objections sufficient to preserve each argument for appeal, and do so within the preservation deadline that may be measured in days. The litigant who cannot do this — because the order that must be preserved triggered the very symptoms that prevent the preservation task — has lost every appellate remedy not because the remedies did not exist but because the procedural condition for accessing them was destroyed by the conduct they were designed to remedy. Waiver doctrine, applied without accommodation, converts the ADA's comprehensive remedial scheme into a framework in which every remedy is theoretically available and practically unreachable.

The Waiver Trap: How the Worst Moment Creates the Highest Procedural Demand

TRIGGER EVENT: Court issues order denying accommodation and imposing sanctions for disability-caused conduct. The litigant receives the order. CLINICAL RESPONSE: The order triggers acute PTSD stress response: hyperarousal, intrusive processing of the threat, cortisol spike, cognitive narrowing, executive function reduction, processing speed reduction, panic symptoms. This is not a choice or an overreaction. It is the documented clinical consequence of adversarial legal stimuli on a litigant with PTSD — confirmed by treating physicians and established in the medical record. PROCEDURAL DEMAND: Within 14 days (or fewer), the litigant must: (a) research the legal standards for each argument to be preserved; (b) draft specific objections to each element of the order; (c) identify every potential appellate issue and preserve it with sufficient specificity; (d) format, caption, and file the objections; (e) serve opposing counsel; and (f) simultaneously begin researching the declaratory relief, disqualification, and protective order motions that the order generates grounds for. FUNCTIONAL CAPACITY AT TIME OF DEMAND: At its lowest. The acute stress response has impaired every cognitive function that the procedural demand requires. The litigant who needed accommodation to function at 50% capacity before the order now needs it to function at 10% capacity after the order — but the court has denied accommodation and the most demanding procedural requirement is now imposed at precisely this moment. RESULT: Waiver. The litigant who cannot perform the preservation task loses every appellate remedy. The system records this as a litigant who failed to raise issues below, not as a system that destroyed the capacity to raise them.

§ 26.3 The Serial Filing Design: How the System Weaponizes Sequentiality

The court system's procedural architecture is designed around sequential processing: one motion is filed, the court rules, the next step follows from the ruling. This sequential design assumes a litigant who can process each step fully, absorb the ruling cognitively and emotionally, research the next step, and execute the next filing before the next step's deadline. For a non-disabled litigant with legal counsel, this sequential architecture is manageable. For an unaccommodated disabled litigant with cognitive and psychological functional impairments, the sequential architecture is a weaponized exhaustion mechanism.

The sequential architecture exhausts disabled litigants through three specific mechanisms. First, each sequential step requires the same cognitive and physical outputs that the litigant cannot sustain across extended periods: the accommodation request requires the same cognitive work as the first motion; the first motion requires the same work as the second; each step is as demanding as the last, but the litigant's capacity is depleted by each prior step. Second, the delay between sequential steps — which the system characterizes as providing the litigant with time to prepare

the next step — is actually the period during which the harm of the denied accommodation compounds. Each step takes weeks or months; during each interval, the disability worsens, the proceeding advances, and the litigant's legal position deteriorates. Third, by the time the litigant has exhausted the sequential options, the case has typically reached a point of irreversible procedural damage — dismissal, adverse judgment, sanctions accumulation, or vexatious designation — from which no sequential remedy can provide meaningful relief.

The Minkowski Sequential Filing Record as a Case Study in Procedural Exhaustion

The Minkowski record documents the sequential architecture's exhaustion mechanism with precision: May 2022: First accommodation request. Denied as untimely. September 2022: Writ H050352. Denied November 2022. March 2023: Writ H050828. Denied July 2023. July 2023: Provisional Writ H051179. Denied (limited relief only). October 2023: Writ H051475. Denied March 2024. December 2023: Writ H051674. Denied January 2024. May 2024: Writ H052155. Denied June 2024. Each writ required the litigant to: research the specific legal standards applicable to that writ; prepare the petition while in or recovering from treatment; meet the filing deadlines; continue to appear at trial court proceedings while the writ was pending (no stay was obtained); and absorb the denial and prepare the next step. The final writ was filed while the litigant was in residential psychiatric treatment (April 29 to June 19, 2024) for harm caused in part by the prior writs' failures. The two SCOTUS writs (S284033, S284308) were the ultimate sequential step — and both were obstructed at the filing stage. The entire sequential process spanned approximately two years, resulted in no substantive relief, produced worsening functional impairment at each stage, and terminated with the litigant in residential treatment, stripped of custody and property, and forced to flee the United States. This is the sequential architecture's design outcome for a disabled litigant in a system of systemic accommodation denial.

§ 26.4 The Formatting and Technical Compliance Trap

Beyond the cognitive demands of legal argument, standard procedural rules impose formatting, technical, and compliance requirements that function as disability-targeted barriers in ways that are rarely acknowledged. Page limits, margin specifications, font requirements, citation format rules, and electronic filing system navigation are each, individually, a manageable technical requirement for a person of normal cognitive function. For a person with severe cognitive impairment, ADHD, or PTSD-related executive function deficits, these requirements are sources of paralysing uncertainty that can prevent filing entirely.

The California MC-410 accommodation request form is itself an example of a technical barrier masquerading as accessibility infrastructure. The form requires the litigant to: identify their disability from a structured list; describe the specific accommodation sought; provide supporting documentation in a specified format; calculate and observe submission deadlines; attach physician letters in a specific format; and sign under penalty of perjury. A litigant with ADHD — the condition associated with specific difficulty attending to form completion, sequential multi-step task execution, and deadline management — may fail to complete the MC-410 correctly not because they do not need accommodation but because the mechanism for requesting it requires precisely the capacities that their disability has impaired. The Minkowski record documents date confusion (April versus May) in the processing of MC-410 forms — a confusion the court used as a basis for denial rather than as evidence that the litigant needed additional accommodation in the form request process itself.

Electronic filing systems create a parallel barrier. The federal PACER/CM-ECF system requires: account registration and password management; PDF formatting of documents with specific technical specifications; knowledge of filing categories and docket entry procedures; and navigation of a system designed for attorneys, not pro se litigants. For a litigant with severe

cognitive impairment, navigating this system while simultaneously managing the legal and factual content of the filing is a dual-task cognitive demand that exceeds functional capacity. The Minkowski record documents the litigant's need to rely on friends to assist with filing tasks — assistance that the court characterized as raising authenticity concerns rather than as evidence of disability-related need for technical assistance.

§ 26.5 The ADA's Specific Prohibition on Procedural Architecture as Discrimination

The preceding analysis is not merely a practical description of the difficulties disabled litigants face. It is a legal analysis of how procedural demands constitute disability discrimination within the meaning of the ADA, the Rehabilitation Act, and the Constitution. Each of the barriers described above — the temporal compression, the simultaneous filing impossibility, the waiver trap, the sequential exhaustion mechanism, the formatting compliance barrier — is a 'method of administration' that 'has the effect of discriminating on the basis of disability' within the meaning of 28 C.F.R. § 35.130(b)(3). The regulation expressly prohibits covered entities from using 'methods of administration' that produce disparate disability-related harm, regardless of intent.

The standard procedural architecture does not intend to exclude disabled litigants. But its application to disabled litigants without accommodation produces exactly the discriminatory effect the regulation prohibits: the systematic destruction of disabled litigants' capacity to invoke the remedies that the law formally makes available to them. A system that formally offers ten remedies and then places all ten beyond the practical reach of the litigants who most need them through the procedural conditions under which those remedies must be invoked has not provided the 'meaningful access' that the ADA requires. It has provided the appearance of meaningful access while engineering its substantive denial.

What the ADA Requires of Procedural Architecture

Under 28 C.F.R. § 35.130(b)(3), courts must ensure that methods of administration do not have the effect of discriminating on the basis of disability. Applied to procedural architecture, this requires: (1) DEADLINE ACCOMMODATION: Filing deadlines for disability-related motions must be extended to reflect the actual time required for a litigant with documented cognitive impairment to produce legally sufficient filings. The multiplier established by the neuropsychological evaluation should inform deadline calculations: a 14-day deadline becomes 70-140 days for a litigant with processing speed at the 0.1 percentile. (2) WAIVER DOCTRINE MODIFICATION: A litigant who cannot perform the preservation task because the disability is acutely exacerbated at the moment the preservation deadline falls due has not waived the preserved argument. Waiver doctrine must be applied with an equitable exception for disability-caused preservation failures, consistent with the ADA's anti-discrimination mandate. (3) SIMULTANEOUS FILING ASSISTANCE: Courts must provide assistance — through the ADA Coordinator, through court-appointed amicus, or through extended filing windows — that enables disabled litigants to file the coordinated remedies that their rights require without those remedies being rendered inaccessible by their disability. (4) TECHNICAL COMPLIANCE ACCOMMODATION: Electronic filing systems and form requirements must be modifiable for litigants with specific documented technical compliance barriers. Error in form completion resulting from documented cognitive impairment must be corrected rather than weaponized as a basis for denial. (5) STAY PENDING ACCOMMODATION DETERMINATION: All substantive proceedings must be automatically stayed during the period required for a disabled litigant to prepare and file disability-related remedies, because the harm of unaccommodated proceedings during that period defeats the purpose of the remedies.

§ 26.6 The Procedural Architecture as CIDT: The Istanbul Protocol Connection

The procedural architecture of exclusion is not merely a disability discrimination problem. When viewed through the Istanbul Protocol's framework, it is a component of the CIDT mechanism that the IAJ investigations of Hazari and Minkowski identified: the deliberate use of institutional processes to impose conditions of participation that state actors know will cause harm and from which the affected person cannot withdraw. The procedural architecture contributes to this mechanism in four specific ways that the Istanbul Protocol's harm documentation framework requires to be documented.

First, the architecture creates compelled performance under conditions of acute disability exacerbation. The highest procedural demands arise at the moments of maximum disability severity — immediately after adverse orders that trigger acute PTSD responses, during periods of treatment escalation when the litigant's functional capacity is at its lowest. The court's knowledge that its orders trigger acute responses, combined with its continuation of the procedural demands that require complex performance during those responses, satisfies the Istanbul Protocol's intentionality element: the state actor persists in harm-causing conduct after specific documented notice of the harm.

Second, the architecture produces escalating harm through serial failure. Each procedural failure — waiver, default, non-compliance — generated by the disability's impairment of procedural capacity becomes grounds for additional adverse consequences: sanctions for non-compliance, adverse inferences for failure to respond, vexatious designation for the filing patterns that the disability generates. The serial failure mechanism is the 'harm compounding' element of the jurisdictional custody CIDT test: each iteration of the proceeding increases the harm and increases the consequences of the disability-caused inability to comply with the proceeding's demands.

Third, the architecture converts remedies into instruments of further harm. The very act of attempting to invoke procedural remedies — filing the writ, preparing the appellate brief, drafting the administrative complaint — requires cognitive and physical engagement with adversarial legal material that reactivates PTSD, exacerbates depressive symptoms, triggers panic responses, and depletes the cognitive reserves needed for daily functioning. Attempting to use the remedies makes the disability worse. The litigant faces a direct choice between their health and their rights, which is itself a form of the coercion element of the CIDT analysis: the state is requiring the litigant to choose between physical and psychological integrity and access to justice.

Fourth, the architecture produces permanent foreclosure through procedural attrition. The cumulative effect of temporal compression, simultaneous filing impossibility, waiver doctrine, technical barriers, and sequential exhaustion is that by the time the disabled litigant has navigated the procedural architecture as far as their functional capacity allows, the case has reached a point of irreversible procedural damage. The foreclosure is permanent — vexatious designation, dismissed appeals, waived arguments, adverse judgments from which no remedy is available — and the permanent foreclosure is the final element of the jurisdictional custody CIDT test established in Part XXI. The procedural architecture of exclusion is therefore not merely a practical access barrier. It is the delivery mechanism through which the court system's CIDT is inflicted and made irreversible.

26.6.5 The Invisible Architecture: What Sophisticated Readers Miss and What That Reveals About the Exclusion Mechanism

The procedural architecture of exclusion has a property that is itself the most conclusive evidence of its effectiveness as a discrimination mechanism: it is invisible to sophisticated observers. Three independent AI legal analysis systems — ChatGPT, GROK, and Gemini — each conducted detailed evaluations of the thesis across multiple review passes. Each system read the accommodation paradox, the jurisdictional custody analysis, and the five avoidance mechanisms carefully. Gemini was sufficiently engaged that it spontaneously generated a complete IDAJA legislative package, a Senate Judiciary Committee briefing, and a public press release from the thesis's text. And yet none of the three systems engaged with Parts XXIV through XXVI in their error analyses.

This is not an observation about AI limitations. It is an observation about the procedural architecture's design. The avoidance mechanisms, the within-case remedies strategy, and the procedural architecture of exclusion are precisely the Parts of the thesis that document how the legal system's most sophisticated readers — whether human judges, human clerks, human law review editors, or AI systems trained on the entire corpus of American legal analysis — default to engaging the formal doctrinal structure and miss the procedural mechanisms through which that structure is made inaccessible to the litigants who most need it. The same default that causes a sophisticated AI system trained on millions of legal documents to evaluate treaty analysis, immunity doctrines, and remedies taxonomy while skipping the procedural access analysis is the same default that causes a federal appellate panel to evaluate the legal arguments in a disabled litigant's brief without asking whether the brief could have been better organised if the litigant had received the accommodation they requested.

What the AI Evaluation Gap Reveals: The Systemic Absence of Relief as a Feature, Not a Bug

The three AI systems collectively confirmed the thesis's treaty analysis as legally sound, validated its institutional architecture as coherent, and identified its most ambitious novel arguments as the appropriate targets for doctrinal refinement. None identified a factual error. None identified an internal inconsistency. All confirmed the accommodation paradox and the jurisdictional custody analysis as logically sound. And all missed the Parts that document how the remedies the law formally provides are made systematically inaccessible to the persons who need them. This gap is not random. It reflects the AI systems' training on legal documents that discuss formal rights, formal doctrines, and formal remedies — documents produced by legal actors whose primary concern is doctrinal coherence, not practical accessibility. The procedural architecture of exclusion does not appear in those documents as a doctrine or a rule. It appears as an absence: the absence of the litigant's voice; the absence of the unmet deadline; the absence of the unfiled objection; the absence of the remedy that was formally available and practically unreachable. Absences do not train AI systems. They are not in the database. This is precisely how the systemic absence of relief, remedy, and punishment for disability discrimination becomes self-sustaining. The mechanisms that produce the absence are themselves absent from the legal record. The disabled litigant who could not file the objection left no record of the objection that should have been filed. The waived argument leaves no trace of the waiver's cause. The procedural default appears in the record as the litigant's failure, not the system's design. And the sophisticated observer — whether human or AI — trained on that record learns to evaluate the doctrinal framework while systematically missing the mechanism through which the framework produces exclusion rather than access.

This observation closes the thesis's argument about the systemic absence of relief, remedy, and punishment for disability-based CRPD Article 15 violations. The CRPD's Article 15 prohibition on cruel, inhuman or degrading treatment by state actors is violated through the jurisdictional custody mechanism documented in Part XXI. The violation is prevented from generating remedy through the avoidance mechanisms documented in Part XXIV. The remedies that formally exist

are made inaccessible through the procedural architecture documented in Part XXVI. And the inaccessibility itself is invisible to the sophisticated observers — appellate panels, law review editors, AI legal analysis systems — who would otherwise be positioned to identify and respond to it.

The implication for the CRPD compliance analysis is direct. CRPD Article 4 requires states to take all appropriate measures to ensure the realisation of disability rights. CRPD Article 13 requires effective access to justice. CRPD Article 15 requires prevention of CIDT. A state that has the formal legal architecture to prevent CIDT — the ADA, the Rehabilitation Act, the Constitution — but has designed its procedural infrastructure in a way that makes those protections systematically inaccessible to the disabled persons most in need of them, has not taken 'all appropriate measures.' It has taken all appropriate formal measures while ensuring that the practical implementation of those measures reaches only those persons with the cognitive and financial resources to overcome the procedural architecture's barriers. This is a CRPD Article 4 violation that operates through absence rather than commission — and the absence, as the AI evaluation gap demonstrates, is self-concealing in a way that commission is not.

§ 26.7 What Structural Reform Must Address

The analysis of this Part identifies specific structural reforms that the IDAT model of Part XXIII and the legislative reform agenda of Part VI must incorporate. These are not aspirational improvements to administrative practice. They are legally required modifications to the court's methods of administration that the ADA's disparate impact prohibition mandates.

Procedural Barrier	Required Reform	Legal Basis
Temporal compression: short deadlines at moments of maximum impairment	All disability-related motions (accommodation requests, disqualification motions, declaratory relief motions) must carry extended deadlines calculated from the litigant's documented functional capacity, not from standard calendar assumptions. The IDAT assessment determines the applicable time multiplier.	ADA 28 C.F.R. § 35.130(b)(3) (methods of administration); § 35.160 (effective communication); Istanbul Protocol prevention obligation
Simultaneous filing impossibility for cognitively impaired litigants	Courts must provide structured assistance for disabled pro se litigants to prepare coordinated disability rights filings, through ADA Coordinator assistance, extended filing windows, and court-provided formatting support. The IDAT's Case Manager function (Part XXIII) addresses this directly.	ADA Title II reasonable modification; § 504 effective access; CRPD Art. 13 procedural accommodation
Waiver doctrine applied to disability-caused preservation failures	An equitable exception to waiver doctrine must apply when a litigant's failure to preserve an argument at the required time was caused by acute disability exacerbation generated by the same conduct that created the argument. This is an application of the disability causation principle to procedural doctrine.	ADA anti-stereotyping; CRPD Art. 13; due process meaningful access; equitable principles

Procedural Barrier	Required Reform	Legal Basis
Serial sequential architecture as exhaustion mechanism	Automatic stays of all substantive proceedings must be granted during the pendency of disability accommodation disputes, preventing the serial accumulation of harm and default while the accommodation question is being resolved.	ADA Title II; § 504; CRPD Art. 13; Part XVIII mandatory accommodation analysis
Technical compliance barriers (electronic filing, form completion)	Technical filing assistance must be provided to disabled litigants whose documented impairments specifically affect form completion, electronic system navigation, or multi-step procedural compliance. Errors resulting from documented cognitive impairment must be corrected, not weaponized.	ADA § 35.160 (effective communication); § 35.130(b)(3) (methods of administration)
Waiver trap: adverse orders creating preservation demands at moments of acute decompensation	A mandatory cooling-off period must follow every accommodation denial: no new substantive deadlines may be imposed within 30 days of an accommodation denial, providing the minimum time for the disability's acute exacerbation to stabilize before the next procedural demand falls due.	ADA duty to accommodate; Istanbul Protocol prevention obligation; jurisdictional custody CIDT analysis

The Procedural Architecture as the System's Most Effective Defense Against Accountability

The procedural architecture of exclusion is the legal system's most effective mechanism of self-protection because it operates invisibly. Every accommodation denial, every sanctions order, every vexatious designation can be identified and challenged as a discrete discriminatory act. But the procedural architecture that makes it impossible to challenge those acts — the deadline compression, the simultaneous filing demand, the waiver doctrine, the sequential exhaustion mechanism — does not appear in any order and is not attributed to any judge. It appears as the neutral operation of procedural rules that apply equally to everyone. This formal neutrality is the procedural architecture's greatest strength as a discrimination mechanism and its greatest vulnerability as a legal matter: it is exactly the kind of facially neutral method of administration that produces a discriminatory effect on a protected group, and that the ADA's disparate impact provision, 28 C.F.R. § 35.130(b)(3), specifically and expressly prohibits. The procedural architecture of exclusion is not inevitable. It is a choice — a choice to design procedural infrastructure without regard to its discriminatory impact on disabled litigants — and like every choice that produces prohibited discriminatory effects, it is a choice that the law requires to be undone.

§ 26.X The Panel Dismissal During Pending Disqualification: Caperton Structural Error

Reason V of the Hazari SCOTUS writ (No. 25-3879) identifies a category of procedural architecture error that goes beyond individual judicial bias: a panel's dismissal of an appeal while disqualification motions naming the panel's own members remain pending constitutes structural constitutional error under Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), and Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988). The writ documents that in Appeal No. 25-3879, the disqualification motions naming the panel members were

pending and unresolved when the panel issued its one-paragraph dismissal order. The panel dismissed the appeal — thereby mooting its own disqualification by eliminating the proceeding in which the disqualification was sought. This is not a case of a judge deciding a close legal question while disqualification is pending; it is a case of a panel using its own merits ruling to dispose of the disqualification motions that were challenging its authority to issue that ruling.

The structural error is distinct from ordinary recusal error in two respects. First, a dismissal that moot disqualification motions by eliminating the proceeding in which they were filed cannot be analyzed for harmless error: there is no way to assess whether a differently-constituted panel would have reached the same result because the panel's constitution was itself the subject of the pending motions. Second, the pattern is self-sealing in the same way as the accommodation paradox and the vexatious litigant designation: the panel's action resolves the disqualification by eliminating the proceeding in which the disqualification would operate, and the elimination of the proceeding prevents challenge to the panel's conduct. Caperton's constitutional principle — that the Due Process Clause requires adjudication by a decision-maker without a direct interest in the outcome — applies with even greater force when the decision being made determines whether the decision-maker will face disqualification. This argument applies to any appellate proceeding in which disqualification motions are pending; it is not specific to the Hazari record. It belongs in every brief challenging a dismissal or adverse ruling issued while disqualification is unresolved.

§ 26.Y The Contemporaneous Private Notation: Evidence Produced Without Litigation Purpose

The most powerful evidence of accommodation denial's cognitive consequences in the entire documented record is not in a court filing, a physician letter, or a laboratory report. It is a handwritten private notation made by the petitioner on the date of receipt of a SCOTUS Clerk's return letter, with no litigation purpose and no audience. The Hazari SCOTUS writ (No. 25-3879, Introduction) documents this: when the January 18, 2024 return letter for writ No. 23-7017 arrived — re-sent by the Clerk on February 6, 2024 — the petitioner made a contemporaneous personal notation on the date of receipt: "I had no cognitive (reading comprehension) ability to understand what the court was asking me to do."

The evidential significance of this notation derives from what it is not. It is not a declaration filed in support of a motion. It is not a statement in a brief. It is not a communication with counsel or with the court. It is a private written notation, made in the moment of receiving a court communication, recording the cognitive state that the accommodation denial produced at the precise moment when its consequences were most directly visible: inability to understand what a court order required. The Istanbul Protocol's methodology for assessing torture and CIDT consequences specifically values contemporaneous evidence produced without litigation purpose as the most reliable category of documentation — precisely because it cannot have been manufactured for tactical effect. A notation made privately, on the date of receipt, recording substantial cognitive incapacity at the moment that substantial incapacity was being directly experienced, satisfies the Istanbul Protocol's highest reliability standard. It is the antithesis of the "self-serving" characterization that Recipe 13 of Part XX-B deploys against treating physician documentation: a private notation with no litigation purpose and no audience cannot be self-serving. It can only be true.

PART XXVII

The Exhaustion Trap, Viable Domestic Pathways, and How the Defense Arguments Prove the Thesis

Three independent AI legal analysis systems — GROK, Gemini, and ChatGPT — each independently produced comprehensive defense memoranda when asked to represent a malicious and corrupt judge sued under the theories this thesis develops. The result was not a refutation of the thesis. It was a demonstration. Each defense memorandum deployed precisely the five avoidance mechanisms that Part XXIV documented: the terminal non-self-execution formula, the snapshot capacity inference, the fundamental alteration template, the vexatious designation weaponization, and the deliberate omission fiction. Gemini went further: it produced a motion for terminating sanctions and a proposed judicial order finding that the disabled litigant's prolific filings proved cognitive capacity — using the exact formula language from the Hazari record. The defense memoranda are not adversarial critiques of the thesis. They are exhibits.

This Part has three functions. First, it identifies the viable domestic causes of action — the pathways most likely to survive a motion to dismiss and generate a reviewable legal record even within the structurally captured system. Second, it develops the exhaustion trap analysis: the requirement that disabled litigants exhaust domestic remedies before accessing international accountability mechanisms is itself a mechanism that inflicts additional CIDT on the victim during the exhaustion process, and the international law exceptions to exhaustion apply here. Third, it demonstrates how the defense arguments themselves — precisely because they accurately describe current doctrine — constitute the systemic absence of relief, remedy, and punishment that CRPD Article 15 requires states to prevent.

§ 27.0 The Evidentiary Significance of the Documented Record: Compelled Exhaustion Under Jurisdictional Custody, Economic Siege, and the Absence of Any Alternative

The Hazari case record is exceptionally probative of systemic failure for three reasons that compound each other and that, taken together, make it unlike any other documented disability rights case in American legal history. The first reason is the systematic exhaustion of every category of domestic legal pathway available to a disabled person subjected to discrimination by a court — across prevention, protection, relief, remedy, and punishment — over more than eight years, from March 2018 through the present, in multiple state and federal forums simultaneously, with Istanbul Protocol-compliant independent verification by the Institute for the Advancement of Justice and Human Rights. The second reason is that this exhaustion was not a choice. It was the product of jurisdictional compulsion operating in combination with the deprivation of life-saving medical treatment that the discrimination itself caused. The third reason is that the American litigation system is specifically designed to prevent disabled litigants from reaching this point — through economic elimination — and that Hazari reached it anyway, from indigence, against the professional advice that every disabled litigant in his position receives, and at a documented medical cost that would have stopped any litigant for whom stopping was a viable option.

27.0.1 Compulsion: Why the Exhaustion Was Not a Choice

A disabled litigant subjected to judicial discrimination does not experience that discrimination as an external event from which she can disengage. The court that discriminates against her is also the court that exercises coercive jurisdictional authority over her. It controls whether her filings are accepted. It controls whether her deadlines are extended. It controls whether her case proceeds, is dismissed, or generates a fee award against her. It controls, through the power of contempt and sanction, the consequences of non-compliance with its orders. To withdraw from the proceedings is to forfeit all legal rights whose vindication the proceedings were brought to achieve. There is no middle option between submission to the discriminating institution and total abandonment of rights.

This is the structure of jurisdictional custody that Part V identifies in the Youngberg-to-courts doctrinal framework: when a state institution exercises coercive authority over a person, it assumes heightened obligations toward that person's physical and psychological wellbeing. The institution that both compels participation and causes harm through that participation is not merely failing a passive duty to accommodate. It is the active agent of the harm its compulsion inflicts. Every court that denied Hazari's accommodation request while continuing to require his participation was simultaneously making two decisions: the decision to deny accommodation, and the decision to continue imposing the conditions that his UCSF physicians had documented would cause MS relapse, immune system deterioration, and progressive neurological harm. The first decision is the discrimination. The second decision — to continue compelling participation after the medical consequences of that compulsion were in the court record — is the mechanism by which the discrimination became court-caused physical injury.

Hazari did not choose to pursue the exhaustion pathway. He was pushed along it by each court that refused to provide the accommodation that would have made the next step unnecessary. The first accommodation denial made the protection application necessary. The protection denial made the relief claim necessary. The relief claim's procedural extinguishment made the remedy application necessary. The remedy's unavailability made the punishment pathway necessary. The failure of every domestic punishment mechanism — judicial conduct complaints dismissed without investigation, mandamus denied at every level, prosecutors unwilling to act, declaratory relief blocked by the vexatious litigant designation, writs denied — made international treaty body notification a necessary parallel pursuit that continues. The international pathway is not concluded; it is the only accountability mechanism whose outcome remains open. At no point was there an exit from the domestic exhaustion that did not require abandoning the legal rights that the discrimination had been specifically designed to extinguish. The courts manufactured the exhaustion by design: every refusal forced the next step, and the next step was always before a forum controlled by the same institutional actors whose conduct was being challenged.

Compounding the jurisdictional compulsion was the deprivation of life-saving medical treatment that each stage of the unaccommodated litigation imposed. Hazari's UCSF physicians documented that litigation stress is the medically established cause of his MS relapses. Every hearing, every deadline, every adversarial filing that he was compelled to produce without accommodation was a medically documented harm-causing event. The accommodation he requested — time, schedule modification, relief from the synchronous demands of adversarial litigation — was not a procedural convenience. It was the medical treatment his condition required. Every court that denied accommodation was simultaneously denying medical treatment. The exhaustion pathway was therefore not merely a legal journey through successive forums; it was a journey through successive deprivations of the rest and isolation from distress that his physicians had prescribed as essential to preventing irreversible disease progression, imposed by courts that had the medical evidence in their own records and proceeded regardless. What courts characterized as litigation management was, in medical terms, the compelled

administration of a known pathogen to a patient whose physicians had specifically contraindicated exposure to it.

27.0.2 Economics: Why the American System Is Designed to Ensure This Exhaustion Never Happens

The American litigation system operates on the assumption that disputes are governed by market forces. Defendants with meritless positions buy compliance through settlement. Plaintiffs with meritorious claims attract representation through contingency fee arrangements whose economic viability depends on the claim's expected monetary value. Legal aid fills the gaps for claims whose social importance exceeds their monetary value. This market model contains a structural exclusion directly relevant to the Hazari record: it has no mechanism for a disabled pro se litigant asserting accommodation rights against courts themselves. No contingency fee lawyer will take a case against federal judges. The expected monetary recovery from ADA accommodation claims against courts is negligible; judicial immunity forecloses the damages that would make the case economically viable; and the reputational cost of litigating against the federal judiciary is a professional deterrent that rational lawyers apply in proportion to their investment in their careers. Legal aid organizations do not represent disabled litigants in ADA-against-courts accommodation claims; their funding structures, conflict rules, and case complexity criteria collectively exclude this category. Pro bono representation is structurally unavailable for litigation requiring sustained engagement across eight years, multiple courts, and multiple simultaneous proceedings. The market model produces a single outcome for a disabled litigant in Hazari's position: you cannot get a lawyer, and without a lawyer you cannot sustain eight years of procedurally complex litigation across multiple jurisdictions, and therefore you stop.

This is not an accident of the system's design. It is a feature. American litigation economics assume that claims whose costs exceed their monetary returns will not be pursued. For disabled litigants asserting accommodation rights against courts — rights whose vindication has no monetary return, whose vindication forecloses rather than enables economic recovery, and whose vindication the courts whose conduct is at issue control — the economic design guarantees abandonment. The legal system produces collateral damage among disabled litigants not primarily through its explicit legal rules but through its economic architecture: by making the cost of resistance survival-level and the probability of recovery negligible, it ensures that rational actors will withdraw. Most disabled litigants subjected to judicial discrimination do withdraw — accepting the status of collateral damage of jurisprudence not because they find the injustice right, but because no economically viable alternative has been made available to them. The prevailing professional advice to a disabled litigant who has encountered judicial discrimination is: stop — accept becoming collateral damage of jurisprudence, a disabled person whose rights are extinguished not by a tribunal that adjudicated the merits but by a system that prevented the merits from ever being reached — as a lesser harm than continued litigation. This advice is rational from a risk management perspective. It is also advice to accept what the law prohibits. The fact that the prevailing professional advice to disabled litigants subjected to judicial discrimination is to accept it is itself the most powerful evidence that the enforcement pathway has failed: if the law were enforceable, lawyers would advise their clients to enforce it.

Hazari was indigent when he submitted his first disability accommodation request in March 2018. He had no resources to hire counsel, no resources to retain medical experts, no resources to satisfy the bond requirements that courts impose as conditions of emergency injunctive relief. He faced attorney fee awards entered against him in proceedings in which he was unable to participate because accommodation was denied — awards totaling hundreds of thousands of dollars, entered in cases whose underlying merits were never adjudicated because the accommodation denial prevented the merits from being reached. Each fee award made the next litigation step more

economically impossible. Each vexatious litigant designation made the next court's procedural bar more difficult to clear. The economic pressure was not the background condition of the litigation. It was applied deliberately, cumulatively, and specifically to disable the capacity to continue. The system was doing what it was designed to do. That it did not succeed — that Hazari continued across more than eight years, in more than seventy-nine numbered proceedings across nine court systems — California state trial and appellate courts, the California Supreme Court, the United States District Courts for the Northern District of California and the District of Colorado, the Ninth Circuit, the Tenth Circuit, the Bankruptcy Court, and the Supreme Court of the United States — before more than fifty-six judicial officers, through the Bankruptcy Appellate Panel, the Ninth Circuit, twenty-one SCOTUS writ attempts (with a twenty-second being filed), and international treaty body proceedings — is not evidence of vexatiousness. It is evidence of the depth of the injustice. A litigant stops when the cost of continuing exceeds the cost of stopping. Hazari continued because no stopping point was not also a point of permanent defeat.

27.0.3 The Five Pathways: Systematic Exhaustion and Systematic Failure

Prevention addresses the pathway that should stop discrimination before it causes harm: the disability accommodation request itself, the ADA coordinator referral, pre-filing injunctive relief, emergency stay applications, and safe harbor requests invoking the court's own medical record of harm. From March 2018 forward, Hazari submitted accommodation requests in every proceeding, in every court, in every format those courts prescribed. Every one was denied, deferred, ignored, or procedurally extinguished. The courts that denied accommodation did not do so because the accommodation was unreasonable — the identical accommodation was granted by Judge Freeman of the Northern District of California, who found it compelled by controlling law and the medical evidence in the court's own record. The California courts, acting concurrently on the same medical evidence, denied it. Prevention failed not because the pathway was inadequate in theory but because the courts that controlled its operation declined to operate it.

Protection addresses the pathway that should shield the disabled litigant once discrimination has begun: protective orders stopping harmful proceedings while accommodation is determined, stays pending accommodation challenges, emergency motions to halt proceedings that medical evidence establishes are causing active physical harm. These protections were sought repeatedly, documented in detail, and supported by treating physician evidence that courts are required to treat as authoritative under the ADAAA. They were denied at every level — by the trial courts that were themselves the discriminating actors, by the appellate courts that reviewed those denials without granting accommodation for the review itself, and by the California Supreme Court, which required Hazari to seek vexatious litigant pre-clearance before it would permit him to file a grievance about the denial of accommodation. Protection failed because the only institutions authorized to provide it were the same institutions whose discrimination it was designed to address, and those institutions declined to exercise that authority against themselves.

One protection mechanism that courts could theoretically have invoked but did not — and critically, could not — is guardian ad litem appointment under Federal Rule of Civil Procedure 17(c). Rule 17(c) authorizes appointment of a guardian ad litem for an "incompetent person" — a person formally adjudicated legally incompetent under state law. The documented record establishes substantial incapacity: the inability to participate in litigation safely and effectively without accommodation, documented by eleven treating physicians and confirmed by the Social Security Administration. This is not legal incompetency. No adjudication of legal incompetency exists in the record. The court therefore had no authority to appoint a guardian ad litem under Rule 17(c), and any appointment over the litigant's objection would have violated CRPD Article 12's prohibition on substituted decision-making over a legally competent person. What the court had authority to do — and was obligated to do under the ADA and the Rehabilitation Act — was

provide accommodation enabling the litigant's own participation. Substantial incapacity triggers an accommodation obligation, not an appointment authority. The courts' failure to distinguish these two legal frameworks is itself a form of disability discrimination: it misidentifies the applicable law, misapplies the remedy, and — if appointment were used as a substitute for accommodation — removes the disabled litigant from their own case entirely rather than enabling their participation in it. The full doctrinal analysis appears in Part XVIII, § 18.9.

Relief addresses the pathway that should remedy discrimination already imposed: ADA Title II claims, Rehabilitation Act claims, constitutional access-to-courts claims, and CRPD-informed interpretive arguments. Every one was blocked by the procedural posture that the discrimination itself had created. The vexatious litigant designation — imposed through proceedings in which accommodation was denied and in which Hazari was unable to fully participate — was then used to prevent the filing of the ADA claims that would have challenged the vexatious litigant designation. The accommodation paradox documented in Part XVIII operates here at the relief level: the discrimination that makes the internal challenge impossible simultaneously makes the court record that proves the discrimination the very document that courts use to justify procedural bars to filing the relief claim. The proof of discrimination is the bar to the claim of discrimination. Relief failed because the pathway to relief runs through the same courts that committed the discrimination and requires procedural capacities from the disabled litigant that the discrimination has destroyed.

Remedy addresses the pathway that should make the disabled litigant whole once discrimination is established: damages for court-caused disability harm, declaratory relief establishing the accommodation right, mandatory accommodation orders with enforcement mechanisms, and international accountability through IACHR precautionary measures and CRPD treaty body procedures. None was obtained. Judicial immunity closed the damages pathway for the acts of the judicial officers themselves. The absence of ADA Title II direct coverage of federal courts closed the statutory damages pathway in the federal forum. The vexatious litigant designation closed the declaratory relief pathway in the California forum. The international accountability mechanisms provide findings and recommendations but lack enforcement mechanisms that operate on the timeline of an active case. Remedy failed because every remedy vehicle is conditioned on procedural steps that the discrimination itself has made unavailable, or is barred by immunity and coverage doctrines that the thesis's Part XXVIII canonical analysis demonstrates are products of misconstruction rather than statutory mandate.

The SCOTUS accommodation record is itself the terminal proof of exhaustion at the highest domestic level. Appendix E of the Hazari SCOTUS writ (No. 25-3879) documents more than fifty filings to this Court across 2020–2026 — submissions that were denied or returned without filing for Rule 14 formatting defects that the petitioner's MS-caused cognitive impairment at the 0.1 percentile produced. Each submission contained an embedded accommodation request. No accommodation request was ruled upon. The Court returned the submissions for the formatting defects that the absence of accommodation produced, without ever addressing whether the accommodation that would have prevented those defects was legally required. The Accommodation Paradox of Part XVIII operates at SCOTUS itself: the Court returned filings for defects caused by the disability for which accommodation was requested, without ruling on the accommodation request that would have prevented the defects that caused the filing to be returned. The notice of the current writ further documents that the November 2023 and January 2024 submissions were physically mailed to the Court by the petitioner's wife because he was too substantially incapacitated to mail them himself, and that upon receiving the return letter he made a contemporaneous notation: "I had no cognitive (reading comprehension) ability to understand what the court was asking me to do." This Court is not a forum that has reviewed the accommodation claim and found it insufficient. It is a forum that returned the filing that

contained the claim for defects that the claim, if granted, would have prevented. Fourty-plus returns across more than eight years, without a single ruling on the accommodation request embedded in each one, is the domestic exhaustion proof at the highest judicial level.

UNCAT Article 13 requires each state party to ensure that any individual who alleges that acts of torture or CIDT have been committed has the right to complain to, and have the case promptly and impartially examined by, the competent authorities. Understanding II(5) of the deposited instrument explicitly names this Court among the competent authorities of the United States responsible for implementing Articles 10–16 — the articles that include Article 13. More than fifty filings to this Court between 2020 and 2026 were Article 13 complaints: each one alleged CIDT by judicial officers and sought the Court's supervisory intervention. Each was returned without adjudication. On January 22, 2025, the Court's Clerk, acting for the Chief Justice, responded directly to one such complaint: this Court has "no authority to institute or conduct investigations" and directed Petitioner to "add a footnote" for future recusal requests. This response invokes an internal procedural limitation — the Court's self-assessed lack of investigative authority — as a justification for non-performance of the Article 13 obligation to have complaints "promptly and impartially examined." VCLT Article 27 prohibits exactly this invocation: a party may not invoke its internal law as justification for failure to perform a treaty obligation. The January 22, 2025 Clerk letter is the documented exercise of that prohibited invocation. This Court is not merely a forum that failed to accommodate a disabled petitioner. It is a named competent authority under a deposited treaty instrument that invoked its own internal procedures to decline performance of the Article 13 obligation to examine the complaints those procedures prevented it from accepting.

Punishment addresses the pathway that should create accountability for judges who discriminate. The domestic punishment mechanisms have been exhausted without result. Judicial conduct complaints under the Judicial Conduct and Disability Act were dismissed without investigation. Mandamus was denied at every level of the federal judiciary. Declaratory relief was blocked by the vexatious litigant designation that unaccommodated litigation produced. Writs of certiorari and writs of mandamus across more than twenty SCOTUS filings were denied without explanation. Injunctive relief was denied. Criminal referral under 18 U.S.C. § 242 — willful deprivation of rights under color of law — faces prosecutorial discretion barriers that make § 242 enforcement against judicial officers effectively non-existent in American practice; prosecutors will not act. Congressional notification has been made without legislative response. Every domestic punishment mechanism that exists on paper — the Judicial Conduct and Disability Act, the disciplinary referral system, the en banc review process, the criminal referral pathway — has been invoked and has produced no result, confirming what the Reuters "Teflon Robe" investigation, the Wall Street Journal financial conflicts investigation, and the GAO accountability report have each independently documented as the systematic failure of domestic judicial accountability at the national level. The international accountability mechanisms stand in deliberate contrast. Treaty body proceedings are not exhausted; they are active and pending. The UN secretariat has acknowledged receipt of the communications and has indicated that a response is forthcoming, operating on international institutional timelines that cannot be compressed by domestic urgency. The IAJ's submission to the Committee Against Torture is pending, with substantive engagement anticipated. These pathways have not failed — they have not yet concluded. Their distinction from the exhausted domestic mechanisms is analytically critical: it is precisely because every domestic pathway has been exhausted without result that the international treaty body proceedings are not merely supplementary accountability mechanisms but the primary remaining forum in which the documented violations can receive authoritative recognition. The international pathway is not a backup for a functioning domestic system. It is the consequence of a domestic system that has exhausted its own capacity to self-correct.

27.0.4 Why This Record Is Unprecedented

The Hazari record is unprecedented because it is the first documented case in American law in which a disabled litigant systematically exhausted every category of domestic pathway — prevention, protection, relief, remedy, and punishment — under the following specific combination of conditions: (1) from indigence, without legal representation, without the economic resources that American litigation assumes; (2) under jurisdictional compulsion, with each stage of the exhaustion forced by each preceding court's refusal to accommodate; (3) while suffering the deprivation of prescribed life-saving medical treatment that the compelled unaccommodated participation imposed at each stage; (4) against the professional advice that every rational adviser gives to a disabled litigant in his position; (5) over more than eight years, producing a publicly accessible federal court docket of extraordinary evidentiary completeness; (6) independently verified under Istanbul Protocol methodology by the Institute for the Advancement of Justice and Human Rights, with findings confirmed by two independent complainants and a certified ADA advocate; and (7) in a legal and institutional environment that the Reuters, Wall Street Journal, and GAO national investigations independently documented as structurally incapable of self-correction. This combination of conditions is what makes the record a controlled experiment rather than an individual case. The variables that ordinarily cause cases to terminate before they generate this kind of documentation — economics, professional advice, physical attrition, procedural extinguishment — were all present and operating throughout. The record exists despite them. That is why it is exceptionally probative of systemic failure: not because of what was done to him, but because of what his refusal to stop, under conditions designed to make stopping inevitable, proves about what the system does to every disabled litigant who cannot stop.

The Tenth Circuit's dismissal in No. 24-1107 is not merely an additional failed appeal. It is the documented result of a deliberate, good-faith attempt to access a genuinely neutral forum outside the Ninth Circuit — an attempt that the Tenth Circuit foreclosed by refusing to recognize the Forum Nullus doctrine that the litigant invoked as the jurisdictional and constitutional ground for seeking a different circuit. This specific filing — an attempted inter-circuit escape from a documented Forum Nullus condition — and its dismissal together establish two things for the international exhaustion analysis. First, that every category of domestic appellate remedy, including the geographically external remedy of a separate circuit, has been exhausted. Second, that the domestic system has no remaining internal mechanism for addressing the structural incapacity that Forum Nullus names. These two facts together satisfy the most demanding interpretation of the exhaustion requirement that international bodies apply before accepting individual petitions — and they are documented in the public record of two independent federal courts spanning two different circuits.

§ 27.1 What the Defense Memoranda Prove: The Avoidance Mechanisms in Action

The three AI defense memoranda produced a collective motion-to-dismiss architecture of eighteen grounds, a notice of supplemental authority, a motion for terminating sanctions, and a proposed judicial order. Read as legal documents, they are advocacy for the defense. Read as evidence, they are the most comprehensive single-document demonstration of the jurisprudence of avoidance that the thesis has presented.

The Defense as Documentary Evidence of the Five Avoidance Mechanisms

MECHANISM 1 — TERMINAL NON-SELF-EXECUTION (Part XXIV § 24.2.1): All three defense memoranda cited Medellin v. Texas as the sole and final answer to all treaty arguments, without performing any of the five remaining analytical steps that Medellin itself requires. ChatGPT stated:

> 'CRPD, VCLT Article 18, CAT, and other international instruments do not create private domestic causes of action' — citing non-self-execution as the terminal conclusion without engaging Charming Betsy, Senate legislative history, constitutional avoidance, or customary law. This is precisely what Part XXIV documented: courts use Medellin as a one-step dismissal of a seven-step obligation. MECHANISM 2 — SNAPSHOT CAPACITY INFERENCE (Part XXIV § 24.2.2): Gemini's proposed judicial order specifically includes a 'Findings Regarding Snapshot Capacity' section stating that the disabled litigant's 'rapid, prolix filings' in the days before a claimed incapacity constitute 'objective evidence of his functional capacity,' and that the 'documented disabilities do not impact [his] abilities to prosecute this case in the manner he alleges.' This is the snapshot inference applied as judicial finding, precisely as the thesis documented it — and precisely what the ADAAA's episodic disability provisions forbid. MECHANISM 3 — FUNDAMENTAL ALTERATION TEMPLATE (Part XXIV § 24.2.3): All three memoranda characterise requested accommodations as 'fundamentally altering the judicial function' without identifying the specific alteration that the specific modification would produce in the specific proceeding. GROK states: 'Indefinite stays, blanket exemptions from deadlines, or demands that the court suspend ordinary adjudication can be cast as fundamentally altering the judicial function.' The template is deployed without the particularised findings the defense requires. MECHANISM 4 — VEXATIOUS DESIGNATION WEAPONISATION (Part XXIV § 24.2.4): Gemini's motion for terminating sanctions specifically argues that the disabled litigant's twenty-plus SCOTUS writs constitute 'objective frivolousness,' that the litigant 'uses the cloak of disability to insulate himself from the consequences of his own procedural defaults,' and that 'no sanction less than dismissal is adequate.' The vexatious designation mechanism is completed: disability-caused filing behavior → vexatious label → terminating sanctions → permanent exclusion. MECHANISM 5 — DELIBERATE OMISSION FICTION (Part XXIV § 24.2.6): All three memoranda treat the ADA Title II omission of federal courts as an affirmative exemption: 'Congress explicitly defined public entities as state or local governments; it did not include the federal judiciary.' The drafting artifact is converted into an affirmative permission for federal courts to discriminate without statutory obligation. The three principles of federal court coverage in Part XXIV § 24.5 are not engaged.

The defense memoranda also demonstrate a sixth feature: the use of the litigant's own prior SCOTUS writ history as evidence against them. GROK, Gemini, and ChatGPT all cite the twenty-plus cert denials as establishing 'systematic rejection of these theories,' 'objective frivolousness,' and 'consistent lack of merit.' Part XXIV identified SCOTUS silence as Avoidance Mechanism 5 — not evidence of lack of merit but an institutional choice not to resolve fundamental questions whose resolution would require acknowledging court-caused CIDT. The defense's use of that silence as evidence of frivolousness is the most precise possible demonstration of how institutional avoidance is weaponised: the court's refusal to engage becomes proof that the argument has no merit; the proof of no merit justifies further refusal to engage; and the cycle is self-sealing.

§ 27.2 Viable Domestic Pathways: The Causes of Action That Survive

The defense memoranda's comprehensiveness is itself analytically useful: it maps the entire immunity and doctrinal landscape and reveals where the defenses are weakest. The following analysis identifies the causes of action most likely to generate a reviewable legal record and survive threshold dismissal, ranked by strength.

27.2.1 ADA Title II Institutional Claim Against State Courts with Prospective Relief

The strongest viable domestic claim is an ADA Title II institutional claim against a state court system, naming the Chief Judge or ADA Coordinator in their official capacity, seeking prospective

injunctive relief requiring implementation of individualized accommodation assessment protocols for an ongoing active case. This claim is strong for four specific reasons.

First, Tennessee v. Lane is unambiguous that state courts are public entities under Title II. The defense memoranda do not contest this. They try to limit Lane to physical courthouse access, but Lane's holding addresses 'the right of access to courts' broadly, and the congressional record Congress compiled for Title II's enactment included documented patterns of denial of procedural accommodations — not merely physical access barriers. The defense argument that Lane concerns only courthouse entry is not supported by Lane's text or the congressional record.

Second, the institutional liability channel avoids absolute judicial immunity entirely. The claim is not against the individual judge but against the court system's accommodation policies and protocols. Stump v. Sparkman protects the judge; it does not protect the institution's policy of applying formula denial without individualized assessment.

Third, the prospective relief limitation is satisfied: if the underlying case is active, there is an ongoing denial of accommodation that the relief would remedy. The request is not retrospective revision of completed rulings but prospective modification of the accommodation process for future proceedings.

Fourth, the deliberate indifference standard for ADA damages — which the defense correctly identifies as requiring more than a dispute about medical evidence weight — is satisfied when the court has specific, detailed medical documentation from multiple treating physicians and continues to deny accommodation using formula language without engaging that documentation. ECF-139 (Hazari v. County of Santa Clara, No. 5:19-cv-04392-BLF, N.D. Cal.)'s 'not required to provide any accommodations' statement, combined with the eleven prior accommodation requests and the specific medical documentation in the Hazari record, satisfies the deliberate indifference standard.

The Lane Rebuttal: Why the Physical-Access Limitation Argument Fails

The defense argues that Tennessee v. Lane 'concerns denial of physical access to courts' and does not extend to accommodation denials in ongoing proceedings. This argument is refuted by Lane's own text. The Court identified the right at stake as 'the right of access to the courts,' not 'the right to enter courthouse buildings.' The congressional record Congress compiled for Title II included documented instances of: courts failing to provide sign language interpreters in proceedings; courts failing to provide alternative formats for litigants with visual impairments; and courts imposing procedural requirements that systematically excluded disabled persons from participation. None of these are 'physical access' in the narrow doorway-ramp sense. The right the Court was protecting was the right to participate in judicial proceedings on an equal basis — which encompasses accommodation of functional limitations that prevent equal participation as fully as it encompasses the right to enter the building. The defense's narrow reading of Lane would render Title II's congressional findings about judicial exclusion meaningless, which no interpretive principle supports.

27.2.2 ADA § 12203 Anti-Retaliation: The Claim That Judicial Immunity Weakest Covers

The ADA's anti-retaliation provision, 42 U.S.C. § 12203, prohibits retaliation against any person who has engaged in conduct protected by the ADA, including making a request for accommodation. The anti-retaliation claim has a structural advantage over all other claims: the adverse actions it targets are adverse actions taken because of protected activity, not adverse actions taken as neutral case management. The defense memoranda acknowledge this weakness obliquely: GROK states that 'accommodation requests in judicial proceedings are often deemed non-protected or the adverse action is a protected judicial ruling (immune),' but this is circular.

A judicial ruling that is itself a retaliation for protected activity cannot invoke the immunity of an ordinary judicial ruling without using immunity to permit the precise conduct immunity was not designed to protect.

The anti-retaliation claim's strongest application is the specific temporal correlation between accommodation requests and escalating adverse judicial action. The Hazari record documents eleven accommodation requests and an escalating pattern of sanctions, adverse credibility findings, and ultimately the vexatious designation. The Minkowski record documents accommodation requests followed within days by acute adverse actions, including the vexatious motion filed while the litigant was in residential psychiatric treatment. Each request-to-adverse-action sequence is a potential anti-retaliation claim whose causal inference is supported by the proximity, pattern, and absence of legitimate alternative explanation.

27.2.3 § 504 Against State Courts as Federal Funding Recipients

State courts receive federal financial assistance through multiple established channels: the Court Improvement Program (Title IV-E, administered through HHS), Victims of Crime Act (VOCA) funding, Violence Against Women Act grants, and various judicial administration improvement programs. These funding streams are not theoretical; they are documented in annual DOJ and HHS grant databases. A state court system that accepts VOCA funding for its victim services programs and simultaneously denies disability accommodation to a victim-plaintiff in those programs is a § 504 covered entity with a documented funding nexus for the specific program where the accommodation was denied.

The defense memoranda treat § 504 state court coverage as uncertain. It is not uncertain for the specific programs funded by these grants. The defense's argument that federal courts are not covered as 'recipients' is correct and conceded in this thesis; it does not address state courts whose federal funding nexus is documented and specific.

27.2.4 The False Official Statements Dimension: 18 U.S.C. § 1001 and § 242

The Minkowski record contains a specific and documented instance of what the IAJ investigation characterised as the fabrication of a false factual predicate for an accommodation denial: the 'shopping in San Jose' representation, made while flight records establish Minkowski was physically confined in a Los Angeles psychiatric facility. A false official statement in a judicial proceeding, made by an officer of the court in their official capacity, raises criminal accountability dimensions that the defense memoranda do not address and that judicial immunity does not cover.

18 U.S.C. § 242 criminalises the deprivation under color of law of any right, privilege, or immunity secured by the Constitution or laws of the United States. A judge who fabricates a factual basis for an accommodation denial — stating as fact that a litigant was present in one location when documented evidence shows they were in another — is not making an erroneous legal ruling. They are making a false factual representation in an official judicial document. This conduct is not within the judicial function that Stump v. Sparkman and Mireles v. Waco were designed to protect. Those cases establish immunity for judicial discretion and adjudicative judgment; they do not establish immunity for the fabrication of facts.

The § 242 pathway is a criminal referral to the Department of Justice, not a private civil claim, which means it does not face the individual immunity barriers that doom the private civil suit. The DOJ's Civil Rights Division has prosecuted § 242 cases against law enforcement officers who falsified records in the performance of official duties. The fabrication of a false geographic alibi in a judicial accommodation denial order is structurally equivalent.

27.2.5 The DOJ Pattern-or-Practice Investigation: The Most Powerful Available Mechanism

The private plaintiff cannot compel the DOJ to investigate, but the private plaintiff can submit the IAJ investigation findings to the DOJ Civil Rights Division as a pattern-or-practice referral under 42 U.S.C. § 12133, which incorporates 29 U.S.C. § 794a's remedies including DOJ enforcement authority. The IDAT database design in Part XXIII was built precisely to generate the aggregate data that a pattern-or-practice investigation requires. Two independent Istanbul Protocol-compliant investigations of different victims, identifying the same five structural mechanisms in the same court system, across overlapping timeframes, is exactly the Teamsters pattern-or-practice evidentiary standard.

The defense memoranda do not have an effective response to DOJ pattern-or-practice enforcement because there is none. The defense can delay, argue coverage, and challenge individual causation in individual suits. It cannot argue that the DOJ lacks authority to investigate and require remediation of a documented institutional pattern of disability discrimination under ADA Title II. Lane's congressional findings specifically authorise this enforcement channel.

27.2.6 The Declaratory Judgment Strategy: Converting Non-Appealable Denials Into Reviewable Law

Part XXV developed the declaratory judgment strategy in full. Its key virtue against the defense memoranda's threshold arguments is that it converts a discretionary case management decision — which the defense correctly identifies as non-appealable and immune — into a legal ruling on the court's statutory and constitutional obligations. A court that issues a declaration that it has no obligations under the ADA, or that its obligations are satisfied by formula denial, has issued a legal ruling on a question of law that is directly appealable de novo. The defense memoranda do not have an answer to this because the defense's best argument — the court was exercising discretion — is precisely what the declaratory judgment framing eliminates.

The US Instrument of Ratification: How Domestic Judicial Sanctions Cannot Defeat the Convention

The rehearing petition in 25-5649 (DE-22) identifies three specific provisions of the US Instrument of Ratification that are analytically crucial to the exhaustion argument but have not previously been incorporated into the thesis.

Understanding II(1)(c): 'The United States understands that "sanctions" includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.' This Understanding explicitly covers judicial dismissals. A dismissal of an appeal as 'frivolous' by judges who are defendants in the same litigant's lawsuit — without addressing disqualification — is a judicial sanction. Under Understanding II(1)(c), that sanction cannot defeat the Convention's purpose. The equivalence promise becomes internally contradictory when used as the tool of its own defeat.

Understanding II(5): 'The United States understands that this Convention shall be implemented by the United States Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered by the Convention.' Federal courts exercising jurisdiction over cases involving disabled litigants bear direct constitutional responsibility for UNCAT implementation.

Senate Executive Report 101-30: The Equivalence Promise and Its Breach

The Senate Executive Report accompanying ratification states: 'The United States understands that, in order to fulfill its obligations under the Convention, the United States need not enact further legislation because existing federal and state laws already provide the necessary mechanisms for the prevention of torture and cruel, inhuman or degrading treatment or punishment.' S. Exec. Rep. No. 101-30, at 25-36 (1990). THE PROMISE: Congress represented to the international community that existing domestic remedies provide protection equivalent to UNCAT requirements. No new legislation was needed. THE BREACH: The 25-5649 record documents the application of the wrong legal standard (§ 1915(e)(2) IFP frivolousness applied to a fee-paying appellant), by named-defendant judges, while pending disqualification motions were ignored, producing a dismissal with 'no further filings entertained.' This is not a remedy equivalent to UNCAT standards — it is the denial of any remedy at all. THE ANALYTICAL CONSEQUENCE: When the equivalence promise fails — when domestic judicial process systematically produces outcomes that no reasonable reading of UNCAT would permit — the argument for CAT Article 20 investigation is complete. The treaty body does not need to prove that the United States legislature intended to violate UNCAT. It needs only to show that domestic practice has failed to provide the equivalent protection that Congress promised in the Senate's advice and consent.

§ 27.3 The Exhaustion Trap: How Domestic Remedy Requirements Inflict the Harm They Were Designed to Prevent

International human rights procedures — the CAT Committee's individual communications procedure under CAT Article 22, the CRPD Committee's Optional Protocol procedure, and the Human Rights Committee's ICCPR Optional Protocol procedure — each require that a petitioner have exhausted domestic remedies before the committee will accept the communication. The exhaustion requirement is designed to give states the opportunity to correct their own violations before international oversight is engaged. It is based on the assumption that domestic remedies are available, effective, and accessible.

The assumption fails catastrophically in the judicial disability discrimination context. For a disabled litigant in jurisdictional custody whose cognitive and functional capacity has been progressively impaired by the very proceedings whose accommodation they sought, domestic remedies are simultaneously formally available and practically impossible. The exhaustion requirement does not merely delay access to international accountability; it inflicts additional harm during the delay by requiring the disabled litigant to navigate the procedural architecture of exclusion — the very mechanism that Part XXVI identified as destroying the capacity to invoke remedies — as the price of accessing the international forum.

The Exhaustion Trap: Six Ways Domestic Remedy Requirements Compound the Harm

STEP 1: The disabled litigant must file the accommodation request in the domestic court. The court denies it using formula language without individualized assessment. This is Harm 1. STEP 2: The litigant must file a motion for reconsideration or appeal. Each such filing requires cognitive and psychological output that the denied accommodation was supposed to protect. The denial of the accommodation makes the exhaustion step harder. This is Harm 2: the exhaustion step is made more difficult by the violation being exhausted. STEP 3: The appellate court denies relief, often characterizing the litigant's advocacy for accommodation as additional evidence of litigation capacity (snapshot inference). Each appellate filing that fails generates new evidence that the defense memoranda will use: 'twenty-plus denied writs establish objective frivolousness.' This is Harm 3: each exhaustion attempt generates evidence used to deny the subsequent step. STEP 4: The litigant must pursue the judicial conduct complaint. The complaint is dismissed by the chief judge of the same circuit whose judicial culture produced the original denial. The dismissal is added to the

defense record as evidence that 'the system has rejected these theories.' This is Harm 4: the dismissal of the conduct complaint is weaponised as evidence against the underlying claim. STEP 5: The litigant must pursue the ADA administrative complaint. This requires compiling, organizing, and submitting documentation of the discrimination at a time when the litigant's functional capacity has been further reduced by the accumulated harm of Steps 1-4. The 180-day limitation period may have run on some claims. This is Harm 5: the passage of time required for exhaustion expires legal remedies. STEP 6: The litigant must exhaust SCOTUS options (for CRPD Committee procedures requiring exhaustion through the highest domestic court). Each SCOTUS writ that is denied without engagement becomes, in the defense's hands, evidence of 'the Supreme Court's consistent rejection of these theories.' The SCOTUS's silence is converted into its endorsement. This is Harm 6: SCOTUS's institutional avoidance is weaponised as institutional validation.

27.3.1 The International Law Exceptions to Exhaustion That Apply Here

Each of the major international procedures recognizes exceptions to the exhaustion requirement. The ICCPR Optional Protocol states that a communication is inadmissible if 'the same matter is being examined under another international procedure' or if 'domestic remedies have not been exhausted — unless the remedies are unreasonably prolonged or unlikely to bring effective relief.' CAT Article 22(5)(b) requires exhaustion unless 'the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation.' The CRPD Optional Protocol Article 2(d) similarly excepts cases where 'the remedies are unreasonably prolonged or unlikely to be effective.'

All three exceptions apply to the judicial disability discrimination context with specific force:

- **Exception 1:** UNREASONABLY PROLONGED: The Hazari record documents domestic remedy attempts spanning more than eight years, including nine Ninth Circuit proceedings and twenty-plus SCOTUS writs. More than eight years of domestic proceedings without substantive engagement satisfies any reasonable interpretation of 'unreasonably prolonged.' The CAT Committee has found that three to five years of domestic proceedings without substantive remedy constitutes unreasonable prolongation; more than eight years satisfies this standard comprehensively.
- **Exception 2:** UNLIKELY TO BRING EFFECTIVE RELIEF: The accommodation paradox (Part XVIII), the five avoidance mechanisms (Part XXIV), and the procedural architecture of exclusion (Part XXVI) collectively establish that domestic remedies are structurally unlikely to bring effective relief for disability discrimination by courts. A system that uses the same formula denial across all accommodation requests, at all court levels, with SCOTUS declining to engage, is not a system in which additional domestic remedy attempts are likely to produce different results. The IAJ investigations of both Hazari and Minkowski demonstrate the same structural mechanisms operating identically across two independent cases — which is precisely the pattern that establishes systemic impossibility rather than individual case misfortune.
- **Exception 3:** ADDITIONAL EXCEPTION — SERIOUS RISK FROM EXHAUSTION ITSELF: The UN Human Rights Committee has also recognized an exception where requiring exhaustion would expose the petitioner to serious risk of harm during the exhaustion period. The jurisdictional custody CIDT analysis (Part XXI) establishes that each additional domestic remedy attempt compounds the harm: each appeal, each writ, each conduct complaint requires additional adversarial legal engagement that, for a disabled litigant in jurisdictional custody, causes additional neurological deterioration, psychiatric decompensation, and functional impairment. Requiring exhaustion of all domestic remedies before accessing international accountability is, for this class of petitioner, itself a CIDT mechanism. The treaty bodies have not formally articulated this

principle in the specific context of disabled litigants in judicial proceedings, but it follows directly from their general jurisprudence on exhaustion and from UNCAT's Article 16 positive obligation to prevent CIDT.

27.3.2 The Exhaustion Record as the Strongest International Evidence

The exhaustion requirement's most important feature, paradoxically, is that the record of failed domestic remedies is the strongest possible evidence for the treaty body claim. A petitioner who has exhausted every level of the domestic hierarchy — trial court, appellate court, state supreme court, federal district court, circuit court of appeals, SCOTUS — without obtaining substantive engagement with the legal analysis has demonstrated, with greater force than any theoretical argument could achieve, that the domestic system is structurally unable to provide the relief that international law requires.

The Hazari record's more than eight years of domestic proceedings is not merely exhaustion of administrative prerequisites; it is the most comprehensive available documentation of the jurisprudence of avoidance in operation. Every accommodation denial, every sanction for disability-caused conduct, every writ denied without engagement, every SCOTUS cert denial — each is a data point demonstrating that the specific legal arguments this thesis has developed were presented to and ignored by the domestic system. The treaty body that receives the petition receives not merely a legal argument but a fully documented historical record of systematic institutional non-engagement.

The Exhaustion Paradox Resolved: Why the Worst-Case Domestic Record Is the Best International Case

The defense memoranda argue that the twenty-plus denied SCOTUS writs prove the theories lack merit. The treaty body analysis inverts this entirely. For treaty body purposes, twenty-plus denied SCOTUS writs prove: (a) domestic remedies have been exhausted; (b) the exhaustion took more than eight years (unreasonably prolonged); (c) each denial was without substantive engagement (unlikely to bring effective relief through further domestic proceedings); and (d) the SCOTUS's institutional silence across two independent cases raising the same structural arguments is the clearest available evidence that the domestic system has made an institutional choice not to resolve the question. The defense's best argument in domestic court — 'the highest court has consistently rejected these theories' — is the petitioner's best argument before an international tribunal: 'the domestic system has exhausted without substantive engagement, and further domestic proceedings would be unreasonably prolonged and unlikely to be effective.' The same fact proves opposite things in the two forums. This is not a logical paradox; it is the precise consequence of the jurisprudence of avoidance: the domestic system's refusal to engage converts the exhaustion record into international accountability evidence.

The BAP Trilogy: A Third Independent Forum Confirming Systemic Exhaustion

The exhaustion record documented in the Hazari case now encompasses a third independent institutional forum: the Bankruptcy Appellate Panel (BAP NC-24-1204). Between January 27 and June 4, 2025, Hazari filed four successive Safe Harbor and Disability Accommodation demands before the BAP, each supported by updated medical documentation. The BAP dismissed the appeal for lack of prosecution on July 31, 2025 by judges Corbit, Brand, and Faris — while all four accommodation motions remained pending and unadjudicated. Three days later, the Ninth Circuit opened appeal 25-5649.

The Ninth Circuit dismissed 25-5649 as frivolous on January 29, 2026. Docket Entry 21 identifies the panel: Silverman, Paez, and H. Thomas. Judge Barry G. Silverman had also sat on the 25-3879 panel (S.R. Thomas, Silverman, Bennett) that dismissed the prior district court accommodation appeal for lack of jurisdiction on September 2, 2025 — three days after the BAP dismissal. Before both appellate dismissals, Silverman had been individually served with disqualification motions in appeal 24-6312,

incorporated by reference in both 25-3879 and 25-5649. Neither disqualification was adjudicated before either dismissal.

The January 6/7, 2026 procedural sequence in 25-5649 adds a further dimension. On January 6, the court issued a full briefing schedule — discharging the October 30 OSC and setting the opening brief due February 6, 2026. On January 7, that order was vacated as 'issued in error' without explanation. Twenty-two days later, the Silverman panel dismissed the appeal as frivolous. A path to merits review opened and closed within 24 hours, with no explanation, followed by the final dismissal. The mandate issued February 20, 2026 — the same date as the Second Notice of Appeal in 19-cv-04392-BLF.

For treaty body purposes, the BAP trilogy is analytically decisive. The UNCAT Article 20 exhaustion standard asks whether domestic remedies are 'available, effective, and not unduly prolonged.' Three independent institutional forums — operated by different judges under different procedural rules addressing different legal matters — produced the identical functional outcome: accommodation requests pending at dismissal, no merits adjudication of the disability discrimination claim, dismissal for procedural non-compliance. When three independent institutional actors produce the same outcome from the same medical record, the remedy is not unavailable because of individual judicial error. It is unavailable because of systemic institutional policy. This is what Article 20 was designed to address.

The BAP trilogy establishes exhaustion at the institutional level across three independent forums. The following national empirical record establishes that the structural inadequacy of domestic remedies is not a product of the Hazari litigation's particular facts — it is the documented condition of American judicial disability accountability nationwide.

The National Accountability Floor: Why Domestic Remedies Are Structurally Inadequate

The CRPD Committee and UNCAT treaty bodies require that domestic remedies be “available, effective, and not unduly prolonged” before international accountability mechanisms are invoked. The national empirical record — across Reuters’ 5,122 documented proceedings, the WSJ’s 685 cases, and the GAO’s independence analysis — establishes that these requirements are structurally unmet for judicial disability accommodation failures: AVAILABILITY: Judicial conduct complaints are processed by the same institution they challenge. The GAO confirmed that federal investigations are referred to the originating component with no independence requirement. A complaint about accommodation failures in the Ninth Circuit goes to the Ninth Circuit Judicial Council. EFFECTIVENESS: The Reuters nine-in-ten return rate establishes the accountability ceiling for all judicial misconduct. For disability accommodation violations — which courts have characterized as discretionary case management rather than personal misconduct — the expected effectiveness is below this ceiling. Reuters found that “victims of judicial misconduct are left uncompensated” even in the most serious documented cases. UNDULY PROLONGED: Reuters documented that commission investigations routinely span years. Retirement or resignation terminates investigations with full benefits and no adverse finding. The Hazari case’s six-and-a-half years across 11 proceedings and 56 judges, culminating in a final judgment with no merits adjudication of the disability discrimination claim, is not a unique failure of timing — it is the predictable consequence of the structural design Reuters documented nationally.

The 382-Day Administrative Hold: Domestic Remedy as Permanent Non-Adjudication

Appeal 24-6312 introduces a domestic remedy failure that is analytically distinct from the nine categories already documented in Part XXVII. It is not a denial (which is a ruling). It is not a dismissal on jurisdictional grounds (which is a ruling). It is administrative closure of a case containing pending disqualification motions for 47 named judges, without adjudicating those

motions, while the named judges continue to sit on the same litigant's panels in subsequent appeals.

The 24-6312 Administrative Hold: 382 Days and Counting

March 3, 2025: Commissioner Fitzgerald issues ACMS-37 — administratively closes 24-6312. 'No mandate will issue and the court may reopen this case at any time, on its own initiative or at the request of a party.' PENDING IN THE CLOSED CASE AS OF MARCH 20, 2026: • Disqualification motions for 47 named Ninth Circuit judges (DE 15) • Individual disqualification motions for: Berzon, Bumatay, Callahan, Clifton, Collins, Friedland, Hurwitz, Ikuta, Nguyen, Owens, Sanchez, Schroeder, Silverman, Sung, S.R. Thomas, Tashima, Wardlaw, and others • Emergency motion to stay trial court proceedings (DE 40, April 16, 2025) • Accommodation motion (DE 39-1, March 9, 2025) NONE have been adjudicated. ACTIONS BY NAMED JUDGES WHILE DISQUALIFICATION PENDING: • Silverman: signed 25-3879 dismissal (September 2, 2025) — 183 days after ACMS-37 • Silverman: signed 25-5649 dismissal (January 29, 2026) — 332 days after ACMS-37 • S.R. Thomas: signed 25-3879 dismissal (September 2, 2025) — 183 days after ACMS-37 • H. Thomas: signed 25-5649 dismissal (January 29, 2026) — 332 days after ACMS-37 (named in en banc motion) ZERO adjudications of any disqualification motion during this 382-day period.

The CRPD Committee and UNCAT treaty bodies require domestic remedies to be 'available, effective, and not unduly prolonged.' The 24-6312 administrative hold documents a fourth category of domestic remedy failure that supplements the three already analyzed in this Part: remedies that are formally available (the case can be reopened 'at any time'), nominally pending (the motions were filed and acknowledged), and indefinitely preserved in non-adjudication (the case remains closed 382 days later with all motions unresolved). This is not unavailability — the mechanism is theoretically available. It is not ineffectiveness in the ordinary sense — the motions were accepted for filing. It is permanent non-adjudication while the conduct the motions challenge continues, specifically documented by the signing of two terminal dispositive orders by a judge whose disqualification has been pending for more than a year.

The GAO finding that federal judicial accountability investigations are referred to the originating component with nothing prohibiting assignment to investigators with close relationships to the subject applies with particular force here. The disqualification motions in 24-6312 name judges who would be required to decide, at the circuit level, whether those motions should be adjudicated. The administrative closure mechanism ensures they are never called upon to make that decision. The protective mechanism designed for the disabled litigant — accommodation by administrative closure — simultaneously neutralizes the accountability mechanism — disqualification motions — without any ruling that is subject to review.

The Complete BAP Accommodation Denial Timeline: December 2024 to July 2025

BAP NC-24-1204: Eight Months of Documented Accommodation Denial

DEC 15, 2024: Opening letter from BAP. Contains NO disability accommodation information. Appellant's appeal was specifically about deprivation of disability accommodation by the Bankruptcy court. JAN 2, 2025: Briefing order. Intimidatory language: 'FAILURE OF APPELLANT TO TIMELY PROVIDE AN ADEQUATE OPENING BRIEF... MAY RESULT IN DISMISSAL OF THE APPEAL, OR IN SUMMARY AFFIRMANCE.' Source: DE-1, citing BAP Docket. JAN 14, 2025: Deficiency notice titled 'LACK OF PROSECUTION BY THE APPELLANT.' Lists multiple unpaid fees and

unfiled documents. Threatens dismissal. Source: DE-1. MAR 10, 2025 (Corbit, Gan, Brand): Sealing GRANTED; accommodation DENIED. Cited Roman v. Jefferson at Hollywood LP, 495 F. App'x 804 (9th Cir. 2012): 'the ADA does not apply to federal courts.' Stated it would 'endeavor to provide sufficient accommodations' — then denied all substantive accommodation. This order arrived by US mail on March 17, 2025 — 7 days after issuance. APR 2, 2025 (Corbit, Gan, Brand): Continued denial. Brief deadline remains April 9. APR 21, 2025: Conditional Order of Dismissal. Brief required by May 5 or show cause. MAY 22, 2025 (Brand): 'Final Warning.' Created ambiguous dual-deadline: filing deadline vs. received-by deadline both June 5. 'No further extensions of time will be granted.' Appellant had 4 days to mail brief after receiving notice. JUN 10, 2025 (Corbit, Brand, Faris): Appeal dismissed for lack of prosecution. Disqualification and injunction motions (filed June 4, received June 9) ignored. JUL 31, 2025 (Corbit, Brand, Faris): Reinstatement denied. Characterized 850 pages of filings vs. 4-page informal brief as evidence that Appellant 'is not willing to comply.' Imposed 'no further papers' restriction. KEY STRUCTURAL PROBLEM: The BAP required electronic filing through PACER, which requires self-training and approval. Appellant's cognitive impairments prevented completion of the self-training. Appellant was therefore limited to US mail with unpredictable delivery (some BAP communications arrived more than 5 days after issuance). The ambiguous deadline in the May 22 order — filing vs. received-by — was resolved against the appellant through a cognitive communication that the July 31 dismissal order characterizes as requiring a 'repeated reading and forensic dissection' to identify.

The BAP trilogy is analytically distinct from the other Ninth Circuit accommodation denial forums in two respects. First, it is the only forum in which accommodation denial was expressly justified by citation to a specific (and incorrect) legal proposition: Roman v. Jefferson. Second, the ambiguous deadline mechanism — resolved against the cognitively impaired appellant — is the most precise example in the record of how procedural complexity operates as a weapon against cognitive disability. The BAP knew from its own filings that the appellant had disclosed cognitive impairment. The May 22 order's dual-deadline structure required a 'forensic dissection' to resolve. The July 31 order then held the appellant responsible for failing to perform that forensic dissection in time.

ZERO Days of Medical Treatment: The Simultaneous Five-Case Architecture

Appeal 24-6312's administrative closure on March 3, 2025 (ACMS-37) was described in the thesis as providing accommodation without adjudication — the closure was 'designed to protect his human rights' but generated no precedent. DE-17 in 25-5649 establishes a sharper characterization: ACMS-37 was issued 'in response to disqualifications of this court, en banc,' meaning it was a direct procedural response to the 47-judge disqualification motion. More critically, DE-17 documents the consequence: since the administrative closure of 24-6312, the appellant 'received ZERO days of essential life-saving medical treatment.'

The Five-Case Simultaneity Architecture: ZERO Days of Treatment Since ACMS-37

From DE-17 in 25-5649 (Response to Order to Show Cause, December 2025): 'The order to close the appeal was issued on 3/3/2025 a. CAND Case 4:21-cv-04262-JSW proceeded unabated from 3/14/2025 to 6/26/2025 b. CAND Case 5:19-cv-04392-BLF proceeded unabated from 2/24/2025 to the present day c. BAP Case NC-24-1204 proceeded unabated from 2024 to 7/31/2025 d. 9th Circuit Case 25-3879 proceeded unabated from 6/23/2025 to 9/24/2025 e. 9th Circuit Case 25-5649 proceeded unabated from 9/5/2025 to the present day' 'In total, since the administrative closure of appeal 24-6312, the Plaintiff-Appellant received ZERO days of essential life-saving medical treatment.' THE STRUCTURAL MECHANISM: The ACMS-37 administrative closure of 24-6312 provided 'accommodation' in only one of five concurrent proceedings. The other four proceeded simultaneously. Accommodation in one forum while four courts simultaneously deprived the same person of accommodation provides, by mathematical necessity, zero net benefit from the accommodation. THE INDIVISIBILITY ARGUMENT (DE-17): 'The Appellant is one and the same

> indivisible human being. Deprivation of his life-saving medical treatment and continuous infliction of serious and irreparable physical and mental injuries upon him by one judge while another simultaneously grants him Safe Harbor results in only one outcome: the absence of Safe Harbor.'

This is the ZERO days formula: the administrative closure was simultaneous with proceedings in 5 other courts, each applying the same standard that denied accommodation. The result was not partial accommodation — it was zero accommodation. This quantification is the strongest possible demonstration of why the five-case, 56-judge, 6.5-year record does not represent a collection of independent failures but a single indivisible harm delivered through multiple simultaneous forums.

§ 27.4 The Systemic Absence of Relief, Remedy, and Punishment: What the Defense Memoranda Confirm

The most significant analytical contribution of the defense memoranda is not any specific doctrinal argument but their aggregate demonstration that relief, remedy, and punishment for disability discrimination by courts are systematically absent from the domestic legal framework. Reading the three memoranda together reveals the following structure:

Damages against individual judges: Barred by absolute judicial immunity. No exception for malice, corruption, or fabrication. (GROK, Gemini, ChatGPT all agree.)

Institutional ADA damages against state courts: Requires abrogation of sovereign immunity under Section 5; limited by whether the conduct independently violates the Fourteenth Amendment; standard of deliberate indifference; standard of solely by reason of disability. Available in principle for documented deliberate denial of accommodation but difficult in practice. No comparable mechanism for federal courts.

Injunctive relief against individual judges: Materially restricted by the 1996 § 1983 amendment. No prior declaratory decree in most cases. (All three defense memoranda agree.)

Treaty-based claims in domestic courts: Barred by non-self-execution. No private cause of action. (All three defense memoranda agree, and this thesis concedes the domestic application — the treaty claims operate through international accountability bodies, not domestic courts.)

Pattern-or-practice structural relief: Private plaintiff cannot compel DOJ; no standing for structural reform absent surviving claim. (All three agree.)

Judicial conduct complaints: Administrative only; no damages; no judicial review of dismissal; no private right to compel action. (All three agree.)

Criminal accountability (§ 242): Available for fabrication of facts, not for legal error; requires DOJ prosecution; not a private remedy.

The Aggregate Picture: What Cannot Be Obtained Domestically for Disability Discrimination by Courts

DAMAGES from the individual judge who discriminated: Never. Absolute immunity. DAMAGES from the court system as institution: Difficult; requires Lane/Georgia alignment; no mechanism for federal courts. INJUNCTION against the individual judge stopping ongoing discrimination: Severely restricted by 1996 amendment; requires prior declaratory decree. CRIMINAL PROSECUTION of the judge for disability-based CIDT: Requires DOJ; not a private remedy; judicial immunity does not apply to § 242 for fabricated facts but DOJ has never prosecuted a judge for disability discrimination.

TREATY-BASED LIABILITY in domestic courts: None. Non-self-executing. INTERNATIONAL ACCOUNTABILITY: Available through CAT Committee, CRPD Committee, Special Rapporteur once domestic remedies are exhausted — but exhaustion itself inflicts harm, and international bodies cannot compel domestic courts to change their conduct. BREACH OF CRPD ARTICLE 15 LIABILITY: No domestic private cause of action. No domestic mechanism for CRPD Article 15 enforcement. No domestic remedy for the prevention, cure, or punishment of Article 15 violations by courts. THE CONCLUSION IS INESCAPABLE: For the specific wrong of disability discrimination by courts producing CIDT-level harm, domestic law provides no adequate mechanism for relief, remedy, or punishment. This is not a gap in the law's coverage that more aggressive pleading can close. It is a structural feature of the domestic legal architecture — the product of the five avoidance mechanisms, the accommodation paradox, the exhaustion trap, and the procedural architecture of exclusion operating in combination — that can only be resolved through the IDAT, congressional action, and international accountability mechanisms that this thesis has designed.

27.4.1 What This Absence Means for CRPD Article 4 Compliance

CRPD Article 4 requires states to take 'all appropriate measures for the implementation and promotion' of disability rights, 'to modify or abolish existing laws, regulations, customs and practices' that discriminate against persons with disabilities, and to 'take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.' CRPD Article 15 requires states to 'take all effective legislative, administrative, judicial or other measures to prevent' CIDT of persons with disabilities.

The domestic legal architecture that the three AI defense memoranda map is not an architecture that satisfies these obligations. It is an architecture in which the most powerful form of disability discrimination — discrimination by the courts responsible for adjudicating disability rights — is the form most comprehensively immunised from the mechanisms the ADA was designed to provide. This immunisation is not accidental. It follows from the combination of absolute judicial immunity, Title II's state-focused drafting, § 504's contested federal court coverage, Bivens' curtailment, and the 1996 § 1983 amendment — each individually defensible, each producing as their aggregate effect a zone of impunity for the most serious disability discrimination in American governance.

The CRPD Committee does not accept this architecture as compliance with Article 4. The Committee's jurisprudence establishes that a state's Article 4 obligation is not satisfied by the formal existence of anti-discrimination legislation; it requires that the legislation be effective in practice. Legislation that formally prohibits disability discrimination by courts while structurally immunising the most serious forms of that discrimination from every available remedy is not effective in practice. The domestic legal architecture that the three defense memoranda describe is, for the CRPD Committee, the clearest possible evidence that the United States has not fulfilled its Article 4 and Article 15 obligations in the judicial context.

The Final Synthesis: The Defense Arguments as the International Case

The three defense memoranda, read together, constitute the most compelling single document in the international accountability case. They confirm: (1) absolute judicial immunity bars individual damages regardless of malice or corruption; (2) injunctive relief against judges is materially restricted; (3) federal courts are not clearly covered by ADA Title II; (4) § 504 federal court coverage is contested; (5) Bivens is curtailed; (6) treaty claims produce no domestic private cause of action; (7) the litigant's history of filing produces evidence of vexatiousness rather than evidence of disability; and (8) the same SCOTUS silence that the domestic defense uses to prove lack of merit proves, before a treaty body, unreasonable prolongation and systemic ineffectiveness of domestic remedies. Submit the defense memoranda to the CAT Committee as Exhibit A. They demonstrate,

> in the words of the defense counsel for the discriminating judge, that domestic law provides no effective remedy for the violation they document. That is the exhaustion record. That is the Article 4 compliance failure. That is the Article 15 violation. And that is why international accountability mechanisms are not a supplement to domestic law but its necessary replacement in this domain.

§ 27.5 The Mandatory Supervisory Review Argument: Where Certiorari Discretion Ends

The exhaustion framework documented in §§ 27.0–27.0.4 establishes the factual predicate for a constitutional argument that no prior petition has been positioned to make: that when all of the following conditions are simultaneously present, the standard certiorari discretion scheme under 28 U.S.C. § 1254 is not the constitutionally adequate response. The conditions are: (1) systematic institutional violation by the federal judiciary itself, documented across more than seventy-nine numbered proceedings in California Superior Court, the California Sixth District Court of Appeals, the California Supreme Court, three federal district courts, the Ninth Circuit, the Tenth Circuit, the Bankruptcy Court, and the Supreme Court of the United States, before more than fifty-six judicial officers; (2) complete failure of every other domestic corrective mechanism — judicial conduct complaints dismissed without investigation, mandamus denied, declaratory relief blocked, writs returned, injunctions denied, prosecutors unwilling to act; (3) ongoing irreversible harm to an identifiable class of persons — disabled litigants in federal court without accommodation — with the irreversibility documented through FDA-certified physiological measurement; and (4) a specific named-authority treaty obligation, in Understanding II(5) of the UNCAT deposited instrument, that explicitly identifies this Court as a competent authority responsible for implementing UNCAT Articles 10–16.

The Hazari SCOTUS writ (No. 25-3879, Reason VIII and Appendix L) presents this argument formally, distinguishing it carefully from a general attack on the discretionary certiorari scheme. The argument does not assert that § 1254 is invalid or that SCOTUS must review any particular class of cases. It asserts a narrower proposition: that when the four conditions above are simultaneously documented in a single record — as they are in the record this thesis analyzes — the constitutional limits of certiorari discretion are reached, and the named-authority treaty obligation under the deposited instrument supplies an independent basis for mandatory supervisory review that operates alongside rather than displacing § 1254. No prior petition in American legal history has presented all four conditions simultaneously. This one does. The argument is novel and significant not because it asserts a new theory of SCOTUS power, but because it identifies, for the first time, the specific combination of circumstances in which the constitutional limits of the general discretionary scheme are concretely reached — and establishes where discretion ends and constitutional obligation begins.

For this thesis's exhaustion framework, the mandatory supervisory review argument completes the five-pathway analysis. Prevention failed. Protection failed. Relief was blocked. Domestic remedy was closed. Domestic punishment was exhausted. The international pathway is active but pending. The mandatory supervisory review argument addresses the residual question: is there any domestic institutional actor whose intervention could provide remedy without requiring the internationally unprecedented position that the only adequate response to judicial disability discrimination in American courts is a treaty body finding? The answer this argument provides is yes — one domestic institution exists whose supervisory authority could close all eight gaps simultaneously, establish a binding national standard, and do so within the domestic constitutional order. That institution is the Supreme Court of the United States. The mandatory

supervisory review argument is the thesis's doctrinal theory for why that Court's engagement is not merely desirable but, on the specific facts documented in the record, constitutionally required.

PART XXVIII

The Statutory Interpretation Architecture: How the Congressional Research Service Framework Compels the Thesis's Conclusions Before Domestic Courts

The Congressional Research Service's definitive report on statutory interpretation, 'Statutory Interpretation: Theories, Tools, and Trends' (CRS Report R45153, March 2023), is not merely a neutral academic survey of interpretive methodology. It is the document that Congress itself uses to understand how courts interpret statutes — a document prepared by the nonpartisan research arm of the legislative branch to inform the legislative branch about the tools its drafting choices will activate in the judicial branch. As such, it is both a catalogue of the five primary interpretive tools federal judges apply and an authoritative source on what Congress understands those tools to require.

This Part demonstrates that the thesis's three core domestic law arguments — the enforcer consistency principle, the federal unity principle, and the CRPD harmonisation principle — are not merely novel legal theories awaiting a sympathetic court. They are compelled by the standard application of the five interpretive tools that both textualist and purposivist judges, across all judicial philosophies, are required to apply when interpreting the ADA, the Rehabilitation Act, and related disability statutes. Every methodological tool in the CRS taxonomy, properly applied, reaches the thesis's conclusions. The thesis is not asking domestic courts to do something new. It is identifying what the existing tools, consistently applied, already require.

The chapter also addresses the defense arguments directly in the language of statutory interpretation: the deliberate omission fiction, the snapshot capacity inference, and the formula denial pattern are not just legally wrong as substantive matters; they are methodologically invalid applications of the interpretive tools that courts themselves endorse. A domestic judge who accepts the defense's interpretive methodology is applying the canons of construction incorrectly, as measured by the CRS's own catalogue of those canons.

Why the CRS Report R45153 Is Authoritative Evidence in This Context

CRS Report R45153 documents the five tools of statutory interpretation as used by federal courts, with extensive citation to Supreme Court precedents endorsing each tool. It was prepared in 2023 by Congress's own legal research service specifically to inform Congress about how courts read statutes. Its catalogue of the canons of construction is compiled from Scalia & Garner's Reading Law (the textualist canon compilation) and Eskridge et al.'s Cases and Materials on Legislation and Regulation (the purposivist canon compilation). These are the two most authoritative compendia of the canons in modern American legal scholarship. A judge applying any of the tools that CRS R45153 documents is applying tools endorsed by the Supreme Court, by textualist theory, by purposivist theory, and by the congressional research apparatus — simultaneously. The thesis's arguments are therefore not made from outside the interpretive mainstream; they follow from it.

§ 28.1 The Ordinary Meaning Tool and the ADA's Comprehensive Coverage Mandate

The first tool courts apply is the ordinary meaning of the statutory text. The ADA's text states its purpose in § 2 as 'a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.' The ordinary meaning of 'comprehensive national mandate' is a mandate covering all relevant actors within the nation's governance structure. The defense argument that federal courts are exempt converts 'comprehensive' into 'partial.' No ordinary reader of the ADA's text and stated purpose would read 'comprehensive national mandate' as meaning 'a mandate covering everyone except the branch responsible for adjudicating it.'

The ordinary meaning principle is endorsed by all nine current members of the Supreme Court across all judicial philosophies (CRS R45153, p. 14, citing majority, concurring, and dissenting opinions by all Justices). A textualist applying ordinary meaning to 'comprehensive national mandate' reaches the same conclusion a purposivist does: comprehensive coverage. The defense's exemption argument requires courts to give the word 'comprehensive' a meaning that, in ordinary English, it does not have.

Textualist Ordinary Meaning Analysis: 'Comprehensive National Mandate'

A textualist asks what a reasonable English speaker would understand 'comprehensive national mandate for the elimination of discrimination against individuals with disabilities' to mean. The word 'comprehensive' is defined in all standard dictionaries as: 'including or covering all or everything,' 'complete, all-inclusive,' 'of broad scope.' (Merriam-Webster, Black's Law Dictionary.) A comprehensive national mandate, on ordinary meaning, is one that covers the entire national governance structure. The ADA's text further provides in § 12131(1) that 'public entity' includes 'any State or local government.' This definition specifies the entities covered by Title II's operational provisions; it does not define the outer boundaries of the ADA's comprehensive mandate, which operates through multiple statutory mechanisms including § 504 and constitutional provisions. Reading the operational definition of 'public entity' in Title II as the outer limit of the comprehensive mandate converts a jurisdictional provision into an exclusionary declaration — precisely the interpretive error that the rule against surplusage and the whole-text canon prohibit.

§ 28.2 The Statutory Context Tool and the Enforcement Architecture

The second tool is statutory context: courts interpret specific provisions in light of the statute's broader structure and overall scheme. The CRS report observes that 'a provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme.' The ADA's broader statutory context — specifically, the enforcement architecture created when Tennessee v. Lane (2004) vested federal courts with jurisdiction to enforce Title II against state courts — directly informs the coverage question that Title II's definitional section leaves ambiguous.

The statutory context analysis has two dimensions. First, within the ADA itself: Congress created a comprehensive statutory scheme to eliminate disability discrimination throughout American governance. Congress expressly assigned the enforcement of that scheme to federal courts. Reading the scheme to exempt its own enforcers from its substantive mandate creates an internal contradiction within the statutory scheme that the harmonious-reading canon — 'the provisions of a text should be interpreted in a way that renders them compatible, not contradictory' (CRS R45153, Appendix, semantic canons) — prohibits. Second, between the ADA and its implementing regulations: 28 C.F.R. § 35.130(b)(3)'s prohibition on methods of administration that have a discriminatory effect applies to the judicial context without limitation; its text does not exempt federal courts. Reading the regulation's substantive prohibition consistently with the statute's comprehensive mandate requires coverage.

The Harmonious-Reading Canon Applied to the ADA's Enforcement Architecture

Canon: The provisions of a text should be interpreted in a way that renders them compatible, not contradictory. (CRS R45153, Appendix; Scalia & Garner, Reading Law.) APPLIED TO THE ADA: The ADA's enforcement architecture assigns federal courts the role of compelling state court ADA compliance under Tennessee v. Lane. If federal courts are exempt from the ADA's substantive mandate, the enforcement jurisdiction provisions and the exemption operate in direct contradiction: courts exercise ADA jurisdiction while themselves violating the ADA. The harmonious-reading canon requires the reading that eliminates this contradiction. The only reading that eliminates it is the reading that covers federal courts. DEFENSE FAILURE: The defense's reading preserves the contradiction. It argues that the statute's enforcement provisions vest jurisdiction in federal courts, but that the statute's substantive mandate does not reach federal courts. This produces a statutory scheme in which the enforcer and the violator are the same institution — the precise irreconcilable contradiction that the harmonious-reading canon directs courts to avoid. Under the defense's methodology, the harmonious-reading canon has simply been misapplied.

§ 28.3 The Canons of Construction and Their Collective Compulsion

The third tool, and the most methodologically important for this Part, is the canons of construction. CRS R45153 catalogues the full range of semantic and substantive canons, drawing from both the textualist Scalia/Garner compilation and the purposivist Eskridge compilation. Seven distinct canons, independently applied, each reach the conclusion that the ADA covers federal courts. Their combined application is overwhelming.

28.3.1 The Canon of Constitutional Avoidance

The constitutional avoidance canon provides that if one plausible reading of a statute would raise 'serious doubt' about the statute's constitutionality, courts should look for another, 'fairly possible' reading that avoids the constitutional issue. (CRS R45153, p. 31; Edward J. DeBartolo Corp. v. Fla. Gulf Coast.) The reading that exempts federal courts from the ADA's substantive non-discrimination mandate raises serious constitutional doubts under Bolling v. Sharpe: it is 'unthinkable that the same Constitution would impose a lesser duty on the Federal Government' than on state governments. The Bolling doubt is not a marginal constitutional concern; it is a direct invocation of the Supreme Court's own language about the constitutional unthinkability of federal exemption from mandates imposed on states. The alternative reading — that federal courts are covered — is plainly possible and resolves the constitutional doubt entirely.

Constitutional Avoidance Canon Applied: The Bolling v. Sharpe Doubt

Canon: 'Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.' (CRS R45153, Appendix; Crowell v. Benson, 285 U.S. 22 (1932).) SERIOUS CONSTITUTIONAL DOUBT: Bolling v. Sharpe, 347 U.S. 497 (1954), established that the Fifth Amendment imposes equal protection obligations on the federal government. The Court used the word 'unthinkable' to describe a reading that would exempt the federal government from obligations imposed on states. A reading of the ADA that exempts federal courts from the non-discrimination mandate imposed on state courts raises a Bolling equal protection concern of the highest order. FAIRLY POSSIBLE ALTERNATIVE: The reading that covers federal courts is plainly possible: Section 504 covers federal programs and activities; the enforcer consistency principle provides a statutory construction basis; the CRPD harmonisation principle confirms the reading is consistent with existing law. The constitutional avoidance canon requires courts to choose this reading. DEFENSE FAILURE: The defense neither identifies the Bolling concern nor addresses the constitutional avoidance canon. A defense brief that does not engage with the constitutional

avoidance canon when the defense's preferred reading raises a Bolling doubt has not applied the standard toolkit of statutory interpretation. Methodologically, the defense argument is incomplete.

28.3.2 The Rule Against Hiding Elephants in Mouseholes

The 'elephants in mouseholes' canon provides that 'Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes.' (Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001).) An exemption for the entire federal judiciary from a comprehensive national anti-discrimination mandate would be the largest single institutional exemption in American administrative law. If Congress intended to create it, the intention would appear in clear statutory text, not in the negative implication of a definitional subsection describing the operational entities covered by Title II. The silence of the ADA's text on federal court exemption is not evidence of deliberate exemption; under the elephants-in-mouseholes principle, it is evidence of the absence of exemption.

Elephants in Mouseholes Canon Applied: The Exemption That Cannot Be in a Mousehole

Canon: 'Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not hide elephants in mouseholes.' (CRS R45153, Appendix; Whitman v. Am. Trucking Ass'ns.) THE ELEPHANT: A permanent, absolute exemption from the ADA's substantive non-discrimination mandate for the entire federal judiciary — the branch that adjudicates disability rights for 330 million Americans — is an elephant of surpassing size in American administrative law. THE CLAIMED MOUSEHOLE: The negative implication of Title II's definition of 'public entity' as applying to state and local governments. This definitional subsection's silence on federal courts is the claimed mousehole in which the defense argues Congress hid this elephant. APPLIED: The elephants-in-mouseholes canon directly refutes the deliberate omission fiction. If Congress intended to create a permanent federal judicial exemption from the ADA's comprehensive mandate, that intention would appear in clear and express statutory text. Its absence proves the exemption does not exist; the elephant cannot be in the definitional-subsection mousehole.

The Congressional Accountability Act of 1995 (CAA) provides additional and decisive confirmation of this principle. The CAA explicitly applied both ADA Title II and Title III obligations to the legislative branch of the federal government. Congress therefore demonstrated, in 1995 — five years after enacting the ADA — that it understood precisely how to subject a federal branch to ADA coverage when it intended to do so: with express statutory text naming that branch. The CAA is an elephant — the explicit application of ADA obligations to a co-equal branch of the federal government — that Congress placed in express statutory text, not in the negative implication of a definitional subsection. The contrast with the federal judiciary is constitutive rather than incidental: if Congress had intended to exempt the federal judiciary from the ADA's comprehensive mandate, it would have done so expressly, as it did expressly include the legislative branch. The absence of any such express exemption, alongside Congress's demonstrated knowledge of how to write branch-specific ADA obligations, confirms that the federal judicial exemption is not deliberate — it is inadvertent, and the elephants-in-mouseholes canon compels the coverage reading.

28.3.3 The Casus Omissus Canon and the Expressio Unius Rebuttal

The defense relies on the expressio unius canon: the expression of one thing (state courts as public entities) implies the exclusion of others (federal courts). CRS R45153 correctly notes that this canon 'is strongest when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not

inadvertence.' State courts and federal courts are not members of an associated group or series in the relevant sense — they operate under completely different constitutional provisions, Section 5 of the Fourteenth Amendment for state courts and Article III for federal courts.

More precisely, the expressio unius argument fails against the casus omissus analysis: 'a matter not covered by a statute should be treated as intentionally omitted' only when the overall statutory architecture supports deliberate omission. Here, the ADA's stated comprehensive purpose, the constitutional avoidance analysis, the enforcer consistency principle, and the CRPD harmonisation evidence all point to inadvertent omission caused by the constitutional architecture of Section 5 — not deliberate exemption. The CRS report's own account of expressio unius confirms this limitation: the canon operates to establish deliberate exclusion only when deliberate exclusion is independently supported. It is not.

Defeating the Expressio Unius Defense with Four Canons Simultaneously

DEFENSE ARGUMENT: Title II's definition of 'public entity' as state and local governments, without mentioning federal courts, implies their deliberate exclusion under the expressio unius canon. CANON DEFEAT 1 — CONSTITUTIONAL AVOIDANCE: The expressio unius reading raises a Bolling equal protection doubt. The constitutional avoidance canon requires the court to choose the alternative reading (coverage of federal courts) unless it is 'plainly contrary to Congressional intent' — which, given the ADA's comprehensive mandate and the CRPD no-new-legislation evidence, it is not. CANON DEFEAT 2 — ELEPHANTS IN MOUSEHOLES: Even if expressio unius could establish a negative implication, the implied exemption would be of elephant size, not mousehole size. The canon's own limits prevent it from creating exemptions of this magnitude by negative implication. CANON DEFEAT 3 — HARMONIOUS READING: The expressio unius reading produces an irreconcilable contradiction in the statutory scheme (enforcers exempt from what they enforce). The harmonious-reading canon must prevail over expressio unius when the latter produces statutory incoherence. CANON DEFEAT 4 — DOG THAT DIDN'T BARK: No one in the legislative history of the ADA discussed the exclusion of federal courts. If Congress had intended to create a permanent federal judicial exemption from its comprehensive anti-discrimination mandate, that intention would have been discussed. Its total absence from the legislative record proves the omission was inadvertent, not deliberate. The Congressional Accountability Act of 1995 reinforces this conclusion: when Congress did intend to apply ADA obligations to a federal branch (the legislative branch), it said so expressly. The contrast proves the federal judicial omission was not intentional exclusion but inadvertent gap — exactly what the dog-that-didn't-bark canon was designed to address.

28.3.4 The Dog That Didn't Bark Canon

CRS R45153 specifically identifies the 'dog that didn't bark' presumption: 'a prior legal rule should be retained if no one in legislative deliberations even mentioned the rule or discussed any changes in the rule.' Applied here: a prior understanding that the ADA's comprehensive mandate covered all governmental actors — including federal courts — should be retained unless the legislative record contains discussion of a deliberate decision to exempt federal courts. No such discussion appears in the ADA's legislative history. No Member of Congress stated that federal courts would be exempt. No committee report discussed the federal judicial exemption. The dog did not bark.

This conclusion is independently confirmed by the most thorough research into the ADA's legislative history available for this analysis. That research — exhaustively reviewing congressional committee reports, floor statements, and DOJ regulatory history — found no committee report or floor statement saying, in substance, 'we are excluding Article III courts.' The express finding was: 'I did not find a committee report or floor statement saying, in substance, we are excluding Article III courts.' This is exactly what the dog-that-didn't-bark canon requires. The same research concluded that the omission is 'best described as structural and textually intentional' rather than 'affirmatively justified in the legislative history by an explicit

constitutional rationale.' Structural and textually intentional omission — omission from a definitional subsection rather than from an express exclusion clause — is precisely what the elephants-in-mouseholes canon addresses: a federal judicial exemption of this magnitude cannot be a structural and textually implicit omission. It requires express statutory text. The absence of that text, confirmed by the absence of any legislative discussion, proves the omission was inadvertent rather than deliberate.

28.3.5 The Mandatory/Permissive Canon and the ADA's 'Shall Not Discriminate'

The mandatory/permissive canon provides that 'shall' is usually mandatory and imposes a duty; 'may' usually grants discretion. (CRS R45153, Appendix; Kingdomware Techs., Inc. v. United States.) The ADA's core operative provision states: '[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.' The word 'shall' makes this mandatory. The formula denial pattern — in which courts apply template language without individualized assessment, treating the accommodation decision as discretionary case management — converts a mandatory 'shall not' into a discretionary 'may not if convenient.' Under the mandatory/permissive canon, courts have no discretion to decline the individualized assessment that the ADA's 'shall' requires. The snapshot capacity inference, the fundamental alteration template, and the formula denial are not exercises of discretion; they are violations of a statutory mandate.

The Supreme Court's most recent ADA decision, A.J.T. v. Osseo Area Schools, Independent School District No. 279, 605 U.S. ____ (2025), directly controls the canonical analysis at this point. A.J.T. reaffirmed that disability accommodation determinations require individualized assessment — a factual inquiry into the specific person's specific limitations in the specific context — and specifically rejected categorical substitutes for that individualized analysis. Applied to the judicial accommodation context: the Judicial Conference's Three-Layer Architecture (acknowledged accommodation for communications disabilities; discretionary accommodation without standards for all other categories) is precisely the categorical non-individualized approach that A.J.T. v. Osseo Area Schools, 605 U.S. ____ (2025), held unlawful in the educational-services context by reaffirming the individualized assessment standard — a principle that, while decided in an educational setting, directly supports the thesis's objection to categorical substitutes for individualized disability analysis in any covered context. A court that applies a categorical rule — "communications disabilities receive accommodation; cognitive and neurological disabilities receive discretionary consideration" — is applying the kind of categorical substitute for individualized assessment that the Supreme Court has now explicitly rejected. The Canon of Constitutional Avoidance (CRS R45153 Canon 6) further compels this reading: construing the ADA to permit categorical disability hierarchies in court accommodation would raise serious Fifth Amendment equal protection concerns that A.J.T. confirms are not necessary to the statute's operation, because the statute already requires individualized assessment that eliminates the categorical hierarchy by design.

The Mandatory/Permissive Canon Applied to Accommodation Denials

Canon: 'Shall' is usually mandatory and imposes a duty; 'may' usually grants discretion. (CRS R45153, Appendix; Kingdomware Techs., Inc. v. United States, 579 U.S. 162 (2016).) STATUTORY TEXT: ADA § 12132: 'No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.' (emphasis added) MEANING: The use of 'shall' makes the non-discrimination obligation mandatory. A court that characterizes accommodation decisions as discretionary case management has misapplied the mandatory/permissive canon. There is no discretion in the obligation not to discriminate. There is

> discretion only in the specific form of accommodation provided, subject to the fundamental alteration and undue burden exceptions — exceptions that require specific factual findings, not formula language. SNAPSHOT INFERENCE FAILURE: When a court uses the fact that a disabled litigant filed documents as evidence against their disability claim, it is exercising 'discretion' to deny a mandatory obligation. Under the mandatory/permissive canon, this is not permissible. The ADAAA's episodic disability provisions codify this canon's application to disability: the mandatory obligation to accommodate applies to the episodic worst period of disability, not to the snapshot of activity that precedes decompensation.

28.3.6 The Rule Against Surplusage Applied to the ADAAA Episodic Disability Provisions

The rule against surplusage requires courts to give each word and clause of a statute operative effect, avoiding readings that render any provision inoperative or redundant. (CRS R45153, p. 27; Bailey v. United States.) The ADAAA of 2008 added specific provisions addressing episodic disabilities: 'An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.' These provisions exist specifically to reject the snapshot capacity inference — the practice of using a period of activity to deny disability status. If courts may nonetheless apply the snapshot inference (as the defense memoranda argue), the ADAAA's episodic provisions are rendered surplusage. A statutory provision that courts may ignore whenever they characterize their conduct as 'case management' has no operative effect. Under the surplusage canon, the episodic provisions must have operative effect — which means they prohibit the snapshot inference in judicial proceedings, including in disability accommodation determinations.

28.3.7 In Pari Materia and the CRPD as Interpretive Authority

The in pari materia canon provides that 'statutes addressing the same subject matter generally should be read as if they were one law.' (CRS R45153, Appendix.) The ADA, the Rehabilitation Act, and the CRPD all address the same subject matter: disability rights and accommodation obligations. Under the in pari materia canon, these instruments should be read together. The CRPD's unambiguous coverage of all judicial proceedings, combined with the Senate's SFRC finding that existing law already meets the CRPD standard, informs how the ambiguous provisions of the ADA and § 504 should be read. This is the Charming Betsy canon in its formal canonical articulation: 'Presumption that U.S. law conforms to U.S. international obligations.' (CRS R45153, Appendix.) Under this canon, the ambiguous coverage question must be resolved in favor of the reading that conforms to the international obligation.

The Charming Betsy canon operates at maximum strength when the international obligation it invokes is jus cogens. The prohibition on torture and cruel, inhuman or degrading treatment is not merely a treaty commitment; it is a peremptory norm of customary international law from which no derogation is permitted under VCLT Article 53. The Committee Against Torture's 2014 Concluding Observations found that existing U.S. domestic law fails to provide equivalent prevention, complaint, examination, remedy, and accountability for CIDT by state actors, specifically calling on the United States to ensure all acts of CIDT are criminalized regardless of the perpetrator's official capacity and that all victims have access to effective remedy. The U.S. ratification package for UNCAT rested on the asserted equivalence of domestic law — specifically that the Fifth, Eighth, and Fourteenth Amendments and existing statutes provide protection equivalent to UNCAT's requirements. That asserted equivalence creates the Charming Betsy canon's most compelling application: domestic courts cannot construe 18 U.S.C. §§ 242 and 1983 in ways that leave a remedial vacuum where the U.S. itself represented to the international community that no vacuum existed, without converting a representation of equivalence into

documented non-equivalence. Where proximate domestic statutes — principally § 242 for criminal accountability and § 1983 for civil accountability where statutory conditions are met — plausibly bear rights-protective constructions consistent with their text and elements, the Charming Betsy canon compels those constructions rather than constructions that leave judicial CIDT-equivalent conduct entirely without remedy. This is not a claim that jus cogens gives courts unlimited power to rewrite statutes beyond their text; it is the Charming Betsy canon's core operation — preferring the statute-consistent reading that avoids international law violation over the reading that produces it. Where the statute's text and elements genuinely cannot bear the rights-protective construction without judicial rewriting, the result is not that UNCAT becomes irrelevant; it is that the asserted domestic equivalence is exposed as deficient, the U.S. is in documented breach of its deposited commitments, and the political branches bear an affirmative constitutional obligation under Article VI to supply the implementing legislation the CAT found missing. The thesis's prescriptive architecture in Part XXVIII operates precisely at this intersection: where statutes will bear the rights-protective reading, courts should impose it; where they will not, the resulting remedial gap is itself evidence of unconstitutional non-equivalence that the Judicial Conference and Congress are obligated to close.

§ 28.4 The Legislative History Tool and the SFRC Reports

The fourth tool is legislative history. CRS R45153's hierarchy of legislative history ranks committee reports as 'the most authoritative source for finding the Legislature's intent' (p. 47), with floor debates and individual member statements at the bottom. The thesis's primary legislative history evidence — Senate Foreign Relations Committee Executive Reports 112-6 and 113-12, finding that existing law 'meets or exceeds' the CRPD standard — is at the top of CRS's legislative history hierarchy: committee reports by the committee with direct jurisdiction over the subject matter.

A textualist who acknowledges any use of legislative history must engage with committee reports. A purposivist is affirmatively required to consider them. Both methodologies therefore compel engagement with the SFRC's finding that existing law meets the CRPD standard — which, as § 28.3.7 establishes, forecloses the reading that existing law does not cover federal courts. The legislative history at the top of every judge's hierarchy directly contradicts the defense's primary argument.

Both Methodologies Require Engagement with SFRC Reports 112-6 and 113-12

TEXTUALIST USE OF LEGISLATIVE HISTORY (CRS R45153, p. 44): 'Even textualist judges may use legislative history to determine whether a statutory term has a specialized meaning or to determine whether a seemingly incongruous result nonetheless aligns with congressional intent.' The SFRC committee reports are precisely this kind of textualist-permissible legislative history use: they address whether the existing statutory terms (ADA/§ 504 coverage) bear the meaning (comprehensive disability rights protection meeting CRPD Article 13 standards) that the statute's text, read comprehensively, suggests they bear. PURPOSIVIST USE OF LEGISLATIVE HISTORY (CRS R45153, p. 44): Purposivists are affirmatively required to consult committee reports as the most reliable expression of Congress's intent. The SFRC reports express Congress's understanding that existing law comprehensively meets the CRPD standard. A purposivist court that ignores these reports has failed to apply purposivism's own methodological requirements. COMMITTEE REPORT HIERARCHY: Under the CRS-documented hierarchy, committee reports rank first among all forms of legislative history. The SFRC reports are committee reports by the committee with direct jurisdictional authority over the subject matter. No form of legislative history carries more weight in either the textualist or purposivist framework. The defense has not — and cannot — produce committee-level legislative history supporting the exemption it claims Congress intended.

§ 28.5 The Statutory Implementation Tool and the VA/SSA Comparator

The fifth tool is statutory implementation: how a statute actually works, what problem it was designed to address, and whether the consequences of an interpretation align with the statutory scheme. (CRS R45153, p. 51.) The defense's fundamental alteration argument claims that providing disability accommodation in judicial proceedings would fundamentally alter the nature of judicial proceedings. The statutory implementation tool directly refutes this claim by examining how comparable governmental adjudicative systems — operating under the same ADA framework — already provide individualized disability assessment as a routine function.

The Veterans Administration adjudication system and the Social Security Administration's disability determination system together process millions of disability claims annually using individualized functional assessment, accommodated hearings, and an extensive body of precedent on functional limitation analysis. Both systems are federal governmental adjudicative processes operating under federal law. Both demonstrate that individualized disability assessment in formal adjudication is administratively feasible, financially manageable, legally required, and constitutionally unproblematic. The statutory implementation evidence — how comparable statutory schemes actually operate — directly contradicts the fundamental alteration defense.

The VA/SSA Systems as Statutory Implementation Evidence Under CRS R45153

The CRS report observes that courts will look to 'the way a statute has been applied in the past, or might be applied in the future' to determine whether proposed interpretations are consistent with how Congress envisioned the statute operating. (CRS R45153, p. 51.) The VA and SSA systems are direct statutory implementation evidence that Congress, through other federal statutes, has already operationalized the individualized disability assessment that courts claim would fundamentally alter their own adjudicative function. The ADA's implementing regulation at 28 C.F.R. § 35.130(b)(7) specifically provides that accommodations are only required where they do not 'fundamentally alter the nature of the service, program, or activity' — not where they change how adjudication is conducted, but where they change what adjudication is. The VA and SSA systems demonstrate that individualized assessment does not change what adjudication is; it changes how it is administered. The fundamental alteration defense is not supported by statutory implementation evidence.

§ 28.6 The Convergence of Purposivism and Textualism: Both Methodologies Reach the Same Conclusion

CRS R45153 documents that while purposivism and textualism differ in methodology, they increasingly converge in practice, and even the most committed textualists acknowledge the relevance of statutory purpose as reflected in text. (CRS R45153, pp. 11-14.) The thesis's coverage argument does not require a court to choose between textualism and purposivism. It reaches the same conclusion from both directions.

A textualist analyzing the ADA applies the ordinary meaning of 'comprehensive national mandate,' the harmonious-reading canon, the constitutional avoidance canon, the elephants-in-mouseholes principle, the mandatory/permissive canon, and the rule against surplusage applied to the ADAAA's episodic provisions — and reaches coverage of federal courts. A purposivist analyzing the ADA asks what problem Congress was trying to solve (documented patterns of disability discrimination throughout American governance) and whether the exemption reading is consistent with that purpose (it is not) — and reaches the same conclusion. The fact that both

methodologies converge is itself probative: it is the strongest available evidence that the coverage conclusion is correct under any reasonable interpretive approach.

The Methodological Convergence: Textualism and Purposivism Both Compel Federal Court Coverage

TEXTUALIST PATH: Ordinary meaning of 'comprehensive' → statutory context (harmonious reading) → constitutional avoidance (Bolling doubt) → elephants in mouseholes (no exemption by negative implication) → mandatory/permissive (shall = mandatory, no discretion) → surplusage (ADAAA episodic provisions have operative effect) → Charming Betsy (CRPD Article 13 conformity) → CONCLUSION: Federal courts are covered. PURPOSIVIST PATH: ADA's documented purpose (eliminate discrimination throughout governance) → legislative history (SFRC committee reports, highest hierarchy, no-new-legislation finding) → statutory implementation (VA/SSA systems prove feasibility) → practical consequences (exemption produces calamitous result of enforcers violating what they enforce) → CONCLUSION: Federal courts are covered. CONVERGENCE: Every tool in the CRS taxonomy, applied by either methodological school, reaches the same conclusion. The defense's exemption argument cannot be reached through any systematic application of any recognized interpretive tool. It can only be reached by treating the ADA's silence as affirmative legislative intent — a conclusion that the dog-that-didn't-bark canon, the elephants-in-mouseholes principle, and the constitutional avoidance canon all independently prohibit.

§ 28.7 Synthesis: The Master Interpretive Matrix

The following matrix maps each thesis argument to its supporting interpretive tools and identifies the specific canon or methodological principle that makes the argument not merely persuasive but methodologically compelled.

Thesis Argument	Textualist Tool	Purposivist Tool	Canon	Why Defense Argument Fails Methodologically
Federal courts must comply with ADA (coverage)	Ordinary meaning: 'comprehensive' covers all governmental actors; statutory context: harmonious reading requires enforcers to comply	Purpose: ADA's stated goal of eliminating discrimination throughout governance; legislative history: SFRC committee reports (top of hierarchy)	Constitutional Avoidance (Bolling doubt); Elephants in Mouseholes (no exemption by negative implication); Dog that Didn't Bark (no discussion of exemption in record)	Defense applies expressio unius without satisfying its conditions (not an 'associated series'); ignores constitutional avoidance canon; ignores elephants-in-mouseholes limit; ignores dog-that-didn't-bark evidence from legislative history
Formula denial without individualized assessment violates ADA	Mandatory/permissive canon: 'shall not discriminate' is mandatory, not discretionary; surplusage: ADAAA episodic provisions have operative effect	Purpose: Congress enacted ADAAA specifically to eliminate snapshot capacity inferences;	Mandatory/Permissive Canon ('shall' = mandatory duty); Rule Against Surplusage (ADAAA episodic provisions must have operative effect)	Defense characterizes mandatory accommodation as discretionary case management, applying 'may' standard to 'shall' obligation;

Thesis Argument	Textualist Tool	Purposivist Tool	Canon	Why Defense Argument Fails Methodologically
		legislative history: ADAAA committee reports document the legislative fix		defense's snapshot reasoning renders ADAAA episodic provisions surplusage
CRPD operates as interpretive authority via Charming Betsy	Charming Betsy canon (listed in CRS R45153 Appendix as 'Presumption that U.S. law conforms to U.S. international obligations'); in pari materia (ADA, § 504, CRPD address same subject)	Legislative history: SFRC committee reports (highest hierarchy) find existing law meets CRPD; purposivist requires courts to give effect to committee report findings	In Pari Materia (ADA and CRPD address same subject, read together); Charming Betsy (formal substantive canon listed in CRS); Presumption of Consistent Usage	Defense invokes Medellin v. Texas as if it answers the interpretive question; Medellin addresses self-execution (private cause of action), not Charming Betsy (interpretive use); defense's terminal Medellin formula misapplies a non-self-execution holding to an interpretive canon question
Vexatious designation without disability causation analysis violates ADA	Mandatory/permissive canon applied to vexatious designation: courts 'shall not' subject disabled litigants to discrimination; surplusage: vexatious power cannot override mandatory non-discrimination mandate	Purpose: Congress enacted the ADA specifically to address historical patterns of disability-based exclusion from public activities, including courts; vexatious designations targeting disability-caused behavior replicate the exact pattern Congress prohibited	Rule Against Surplusage (vexatious power does not render the ADA's mandatory mandate surplusage); Harmonious Reading (vexatious power and ADA mandate must be read compatibly)	Defense treats vexatious designation power as plenary, ignoring ADA's mandatory overlay; rule against surplusage requires reading the ADA's mandatory non-discrimination requirement to operate alongside, not be overridden by, vexatious designation power
Exhaustion trap creates CRPD Article 4 compliance failure	Statutory implementation: how the ADA's remedial scheme actually works; practical	Purpose: Congress created ADA remedies to be available to	Practical Consequences Canon (a reading that produces calamitous results must be	Defense does not address the practical consequences of its reading; a remedial

Thesis Argument	Textualist Tool	Purposivist Tool	Canon	Why Defense Argument Fails Methodologically
	consequences: a remedial scheme that systematically destroys the capacity to invoke its own remedies is not operating consistent with its text	disabled persons; a remedial scheme that systematically destroys availability through procedural architecture defeats the remedial purpose; legislative history: ADA legislative record documents Congress's intent to provide effective, accessible remedies	rejected); Purposive Construction (interpret ambiguous procedural provisions to carry out statutory purpose of providing effective remedies)	scheme that is formally available but practically inaccessible to the class it is designed to protect is not a remedial scheme Congress intended to enact

The Methodological Lesson for Domestic Courts

The thesis's core domestic arguments are not products of creative legal theory that courts must choose to accept or reject on policy grounds. They are the product of systematically applying the five interpretive tools that all federal judges across all methodological traditions apply. A domestic court that rejects these arguments is not disagreeing with the thesis on policy; it is misapplying the canons of construction, ignoring the highest-authority legislative history in its own hierarchy, and violating the constitutional avoidance obligation that Bolling v. Sharpe imposes. The CRS report's documentation of these tools is important not merely as academic confirmation but as evidence of Congress's own understanding of how courts interpret statutes. When Congress enacted the ADA with a 'comprehensive national mandate,' it did so knowing that courts apply the ordinary meaning canon, the constitutional avoidance canon, the elephants-in-mouseholes principle, and the in pari materia canon. Reading the ADA's 'comprehensive national mandate' to exempt its own enforcers from its mandate is inconsistent with every tool Congress understood courts would apply. The thesis asks domestic courts to interpret the ADA correctly. The CRS report confirms that correct interpretation requires the thesis's conclusions.

APPENDIX: CASE VIGNETTES

The Hazari and Minkowski Records as Living Proof: Vignettes Demonstrating Every Thesis Proposition

The following vignettes are ordered by the Part of the thesis whose proposition they illustrate. Each vignette anchors the abstract legal argument to a specific documented event, date, ECF citation, or IAJ investigation finding. The purpose is not to repeat the analysis — which is developed in the relevant Part — but to make each argument's factual grounding immediately visible. Amber-bordered vignettes (V-H) document the Hazari record. Maroon-bordered vignettes (V-M) document the Minkowski record. Purple-bordered vignettes (V-B) demonstrate both records in parallel.

The reader who encounters a proposition in any Part of this thesis and needs to see its factual grounding should find it here. The reader who encounters these vignettes first will find that the thesis's legal architecture is built on documented events, not theoretical scenarios. Every abstract argument in this thesis happened to a real person on a specific date in a specific court.

The Hazari Case: Complete Accommodation Timeline — ECF-8 through ECF-151 (2019–2026)

The following table documents every accommodation-related order in Hazari v. County of Santa Clara (19-cv-04392-BLF), extracted from the verified ECF record. It is the most complete accommodation timeline in any federal disability rights case in the Ninth Circuit's published record.

ECF	Date	Event	Significance
8	Oct 22, 2019	60-day extension only	Court denied 6-month request as 'excessive.' First signal: court would not grant full requested accommodation period.
10	Dec 13, 2019	First formal ADA motion	Hazari states on record: 'this Court does not have any published or known (ADA) disability accommodation, or a disability administrative contact.' Requests private hearing to present medical evidence.
12	Dec 17, 2019	Court names coordinator; denies private hearing	Names Snooki Puli (408-535-5583) as ADA Coordinator. No protocol, no assessment, no program documentation. Private hearing denied. No substantive accommodation process initiated.
16	Feb 25, 2020	1st stay — 90 days GRANTED	405-page medical motion. Court grants unopposed. Case stayed. Medical records sealed.
25	Jun 10, 2020	2nd stay — 90 days GRANTED	Unopposed.
30	Sep 14, 2020	3rd stay — 180 days GRANTED	References Dr. Horvath letter (ECF-27). Unopposed.

ECF	Date	Event	Significance
34	Mar 16, 2021	4th stay — 180 days GRANTED	References PTSD diagnosis documentation (ECF-32). Unopposed.
45	Sep 10, 2021	5th stay — 180 days GRANTED	Court notes passage of time 'may begin to prejudice defendants.' First signal of shifting tolerance.
52	Mar 1, 2022	6th stay — 180 days GRANTED	Defendants non-opposed.
58	Sep 9, 2022	7th stay — 180 days GRANTED	Defendants non-opposed.
60/61	Sep 2022	ADA records request STRUCK	Hazari files formal letter requesting ADA self-evaluation records under 28 C.F.R. § 35.105. Court strikes as 'inadvertently filed' without engaging substance. No ADA compliance records ever produced.
64	Mar 9, 2023	8th stay — 180 days GRANTED	Defendants do not respond to court's query. Court grants.
69	Sep 7, 2023	9th stay — 180 days GRANTED	Defendants again do not respond. Court grants.
75	Mar 1, 2024	10th stay — 365 days GRANTED	Court grants one-year stay. Final sentence: 'The Court wishes good health for Mr. Hazari.' Medical records remain sealed.
78/80	Feb–Mar 2025	Defense objects; sealed records disclosed	County files opposition for first time. Court orders sealed records disclosed to defense as 'Attorneys' Eyes Only' (ECF-80). Defense reviews physician letters documenting substantial incapacity.
84	Mar 7, 2025	Rossi Declaration filed	Rossi declares under oath: physician letters say Hazari cannot participate. One letter records his statement that court treatment is 'cruel and inhuman.' Defense argues against accommodation citing his litigation activity.
87	Mar 10, 2025	11th request DENIED	'Mr. Hazari's contention that his disability prevents him from prosecuting his case is contradicted by his rapid, prolix filings in this case.' Same sealed medical record as ECF-75. Three days after Rossi Declaration.
93	Mar 24, 2025	Reconsideration DENIED	'Plaintiff again demonstrated his capability of prosecuting this case through the rapid, prolix filings.' Each challenge to the denial becomes evidence against the challenge.
98	Apr 14, 2025	First disqualification DENIED	Judge Freeman adjudicates her own disqualification, citing her own prior language from ECF-87 as evidence that the disqualification lacks merit.
117	Jun 19, 2025	UNCAT Art. 20 invoked on official docket	Errata Notice of Appeal: Hazari explicitly invokes UNCAT Article 20 exhaustion standard on the official Ninth Circuit docket, 18 months before the case concluded.
122	Jul 1, 2025	Complaint DISMISSED — 90 days to amend	Court grants 90-day extension 'recognizing Mr. Hazari's medical issues' rather than standard 14 days.
138	Nov 20, 2025	53-page complaint filed as wrong document type	Hazari files updated complaint as 'Request for Judicial Notice' on the deadline. Substantive content present.

ECF	Date	Event	Significance
			Wrong procedural caption. Court treats as non-compliance.
139	Dec 1, 2025	FINAL DISMISSAL — failure to prosecute	'For more than six years after filing the complaint, Mr. Hazari has repeatedly delayed prosecution of this action.' 'Despite not being required to provide any accommodations for Mr. Hazari at all, the Court has given him more time than any litigant in recent memory.'
148	Jan 23, 2026	Reconsideration DENIED	'After more than six years without any meaningful developments in this pro se action, the Court dismissed plaintiff Cyrus Hazari's complaint for failure to prosecute.'
150	Jan 23, 2026	Judgment entered	Final judgment for all defendants. Plaintiff takes nothing.
151	Feb 20, 2026	Second Notice of Appeal	Appeals to Ninth Circuit. Lists all 9 circuit proceedings. Same date: mandate issues in 25-5649.

Vignettes for Part II: The Federal Disability Statutes

CORRECTED VIGNETTE

V-H-1: The ADA Coordinator Who Was Named But Had No Program *(Parts II and XIX — ECF-10, ECF-12, ECF-60, ECF-61)*

On December 13, 2019, in ECF-10, Hazari filed his first formal Administrative Motion for ADA Accommodation. In that motion he stated explicitly: 'this Court does not have any published or known (ADA) disability accommodation, or a disability administrative contact.' This statement was made on the official court record by the litigant who had already attempted to obtain accommodation information from the Pro Se Advocate.

The court's response in ECF-12 (December 17, 2019) named a specific Disability Access and Accommodation Coordinator: Snooki Puli, 408-535-5583, snooki_puli@cand.uscourts.gov. The court directed Hazari to contact her for facility accommodations and to file motions for deadline modifications. The court simultaneously denied the private hearing Hazari requested to present his medical information.

The Gap Between a Name and a Program

Naming a coordinator and providing a phone number is not an ADA accommodation program. Under 28 C.F.R. § 35.105, a public entity must: (1) conduct a self-evaluation of its policies and practices; (2) identify any barriers to participation by persons with disabilities; (3) develop a transition plan to address those barriers. None of these steps are documented in the court record. The coordinator's name and phone number, provided in isolation without any documented assessment protocol, self-evaluation report, or grievance procedure, does not constitute an operative ADA accommodation program. Hazari's statement in ECF-10 — 'this Court does not have any published or known (ADA) disability accommodation' — remained accurate after ECF-12: the

coordinator was named, but the program was not documented. The thesis proposition is therefore precisely correct: not that no coordinator existed, but that no operative program existed.

Three years later, on September 22, 2022, Hazari sent a formal written request to the court (ECF-60) seeking copies of the court's ADA self-evaluation under 28 C.F.R. § 35.105 and its transition plan. On September 29, 2022, the court filed ECF-61 — an order striking ECF-60 from the docket as 'inadvertently filed' and referring it to the Clerk of Court. The court never engaged the substance of the ADA records request. No self-evaluation was provided. No transition plan was produced. The ADA compliance records request was removed from the court's docket without adjudication.

ECF Sequence: From Named Coordinator to Struck Records Request

Dec 13, 2019 (ECF-10): Hazari states court has no known ADA accommodation or disability contact. Dec 17, 2019 (ECF-12): Court names coordinator Snooki Puli — no protocol, assessment, or program documented. Sep 22, 2022 (ECF-60): Hazari requests ADA self-evaluation records under 28 C.F.R. § 35.105. Sep 29, 2022 (ECF-61): Court strikes ECF-60 as 'inadvertently filed.' ADA records request removed from docket without engagement. No records produced.

The ADA records request was not inadvertent from Hazari's perspective. It was the logical procedural step following years of accommodation requests that had no documented assessment process behind them. Its removal from the docket as 'inadvertently filed' — without any engagement of its substance — is itself a datum: the court treated a formal ADA compliance records request as an administrative misfiling rather than a substantive legal demand. This is the institutional non-recognition of the ADA's self-evaluation obligations in direct operation.

CORRECTED AND ENRICHED VIGNETTE

V-H-2: 'Not Required to Provide Any Accommodations': The Snapshot Inference and the 12-Month Reversal *(Parts VI, X, XIX — ECF-75, ECF-87, ECF-139)*

The Hazari dismissal order (ECF-139, December 1, 2025) contains a sentence that encapsulates the thesis's core proposition in a single judicial utterance: 'Despite not being required to provide any accommodations for Mr. Hazari at all, the Court has given him more time than any litigant in recent memory.' This sentence simultaneously asserts the court's position that it had no legal obligation to accommodate, and characterizes every stay it had granted as voluntary charity rather than legal compliance. This is the official institutional position of a federal court on the ADA's application to its own proceedings.

The Critical 12-Month Contrast: ECF-75 vs ECF-87

MARCH 1, 2024 — ECF-75 (10th Stay, 365 days): 'Good cause appearing, the Court GRANTS Plaintiff's Administrative Motion. The above-captioned case remains STAYED 365 days from the date of this Order.' The order closes with the sentence: 'The Court wishes good health for Mr. Hazari.' MARCH 10, 2025 — ECF-87 (11th Request, DENIED): 'Mr. Hazari's contention that his disability prevents him from prosecuting his case is contradicted by his rapid, prolix filings in this case.' SAME MEDICAL RECORD. SAME JUDGE. SAME SEALED PHYSICIAN LETTERS. 12 MONTHS APART. The only material change between these two orders is that Defendants finally filed an opposition to

the accommodation request, providing the court access to the sealed records as 'Attorneys' Eyes Only' under ECF-80. The court then used Hazari's filings — including filings contesting the denial — as evidence against his disability claim. The procedural act of filing the reconsideration motion became the evidence that reconsideration was unwarranted.

The ECF-87 reasoning contains a structural circularity that the ADAAA's episodic disability provisions were enacted specifically to foreclose. Episodic and remitting conditions produce periods of relative functional capacity — periods during which a person can file documents, communicate, and take action — interspersed with periods of severe incapacity. The ADAAA states unambiguously that 'an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.' The Ninth Circuit's standard for MS and similar episodic conditions has never been that a person must demonstrate continuous maximal incapacity to qualify as disabled. Yet ECF-87 applied precisely that standard: because Hazari could file documents during a period of relative capacity, his disability claim regarding periods of incapacity was 'contradicted.'

ECF-93 (March 24, 2025), denying reconsideration, compounded this: 'The Court found that Plaintiff again demonstrated his capability of prosecuting this case through the rapid, prolix filings.' Each motion Hazari filed to challenge the denial became further evidence against him. The only way to avoid this circular trap was to file nothing — which would have resulted in dismissal for failure to prosecute. The impossible choice is documented with mathematical precision across these two orders.

Vignettes for Part V: The Constitutional Foundation

V-H-3: Youngberg by Analogy — The Coercive Jurisdiction Profile (Part V; Part XXI)

The Hazari record documents a litigant who: (a) was compelled by federal court jurisdiction, under threat of dismissal with prejudice, default judgment, and terminating sanctions, to participate in litigation proceedings; (b) had four treating physicians specifically documenting that those proceedings were causing progressive neurological and immunological deterioration; (c) had a peer-reviewed research paper (ECF-74, 'The Multiple Sclerosis Stress Equation') establishing the scientific mechanism by which litigation stress triggers MS relapse; (d) had a neuropsychological evaluation (ECF-37) documenting processing speed at the 0.1 percentile, requiring 2-3 times the normal amount of time for each task; and (e) could not withdraw from the proceedings without losing six years of civil rights litigation and the underlying right to enforce a judgment already won in 2005. This is not a description of a person who chose to continue difficult litigation. It is a description of a person held in jurisdictional custody under the precise conditions that Youngberg established as generating state constitutional care obligations — applied, here, by analogy to the coercive authority of compulsory court jurisdiction. THESIS PROPOSITION (Part V § 5.5): The jurisdictional custody analysis is not a theoretical extension of Youngberg. It is a description of the Hazari record. Every element of the jurisdictional custody CIDT test in Part XXI was present: jurisdictional control, medical knowledge, compelled participation, harm compounding, permanent foreclosure.

Vignettes for Part VI: Courts as Disability-Causing Actors

V-H-4: The Three Harm Categories in One Case (Part VI)

The Hazari record documents all three categories of court-caused disability harm — caused, exacerbated, and maintained — in a single case spanning more than eight years. HARM CAUSED BY COURT PROCESS: The PTSD diagnosis (ECF-32) is directly attributed to litigation stress. The treating psychotherapist documented that 'Mr. Hazari's nervous system is in a sustained state of hyperactivation resulting from prolonged exposure to uncontrollable stress.' The PTSD did not precede the litigation; the litigation produced it. HARM EXACERBATED BY COURT CONDUCT: The immunological data (IAJ investigation, 2025) documents CD8 T-cells flatlined at 54 cells/μL for 28 months — severely below the normal minimum of 180. The disease-modifying therapy was suspended due to infection risk caused by the immune system collapse. The treating physician (Dr. Horvath, ECF-27) documented: 'It is my medical opinion that Mr. Hazari requires complete rest from all litigation-related activities. Continued stress will likely trigger disease progression.' The court had this documentation when it continued to impose standard procedural demands. HARM MAINTAINED BY REFUSAL OF RELIEF: The case was finally dismissed on January 7, 2026 (ECF-139) — not because the underlying claims were resolved but because the litigant, whose documented disability made standard participation medically contraindicated, could not comply with standard procedure without accommodation. The court refused stabilizing accommodation, waited for the litigant to fail to comply, and then dismissed. The dismissal maintained the harm by ensuring no substantive resolution of the underlying civil rights claims would ever occur. THESIS PROPOSITION (Part VI): The three-category court-caused disability harm framework is not a theoretical taxonomy. It is a description of the Hazari record across six years.

V-H-5: 'Rapid, Prolix Filings' — The Snapshot Inference Applied (Part VI; Part X; Part XXIV)

In ECF-87 (March 10, 2025), the court denied an accommodation request in part on the basis that the litigant's 'rapid, prolix filings' demonstrated litigation capacity. In the weeks before that denial, Hazari had filed documents because the proceedings were advancing and the alternative was default. The documents were extensive because processing speed impairment at the 0.1 percentile and PTSD-driven hypervigilance produce exactly the filing pattern the court characterized: lengthy, repetitive, and urgent. The court saw a litigant who was filing a lot and inferred capacity. The treating physicians, the neuropsychological evaluation, and the immunological data together showed a litigant in medical crisis whose desperate filing activity was the disability manifestation, not its disproof. Separately, the IAJ investigation documented the defense's characterization of Hazari in the state court proceedings: 'He has been at death's door since roughly 2018... Yet on and on and on he goes with his vicious, unmitigated, outrageous and prolix attacks on the judiciary.' This characterization was produced during the period when Hazari's CD8 T-cells were flatlined at 54 cells/μL and his physicians were documenting progressive neurological deterioration. The legal system's characterization of the filing pattern as 'vicious attacks' and the medical record's characterization of it as the behavioral manifestation of documented severe disability tell exactly opposite stories about the same behavior. THESIS PROPOSITION (Part VI; Part XXIV Mechanism 2): The snapshot capacity inference is documented in ECF-87 with the specific language the thesis identifies. The filing pattern characterized as 'rapid, prolix' is the disability manifestation; its characterization as evidence of capacity is the precise legal error the ADAAA's episodic disability provisions were designed to prevent.

Vignettes for Part VII: The Absolute Prohibition

V-H-6: The Istanbul Protocol Four-Element Analysis Applied (Part VII)

The Istanbul Protocol requires documentation of four elements for a CIDT determination: state actor authority, foreseeable harm, intentional continuation after notice, and severe physical or psychological suffering. The Hazari record satisfies all four. STATE ACTOR AUTHORITY: A federal district court judge, in their official judicial capacity, exercising the coercive authority of Article III jurisdiction over a litigant who could not withdraw without forfeiting all fundamental rights in a six-year civil rights case. FORESSEEABLE HARM: Documented by four treating physicians across multiple years. Dr. Horvath (ECF-27): 'Continued stress will likely trigger disease progression.' The peer-reviewed research paper (ECF-74) establishes the scientific mechanism. The neuropsychological evaluation (ECF-37) documents the specific cognitive impairment profile that makes standard litigation participation impossible without harm. INTENTIONAL CONTINUATION AFTER NOTICE: The court received the medical documentation, acknowledged it in orders (including ECF-139's reference to 'numerous extensions and accommodations over the years'), and continued to impose standard procedural demands. ECF-139's statement that the court was 'not required to provide any accommodations' demonstrates that the continuation was not inadvertent error but deliberate policy. SEVERE PHYSICAL OR PSYCHOLOGICAL SUFFERING: CD8 T-cells flatlined at 54 cells/μL for 28 months (severely below the normal minimum of 180). Disease-modifying therapy suspended due to infection risk. PTSD diagnosed as directly caused by litigation stress. Processing speed at the 0.1 percentile. Six years of progressive deterioration. THESIS PROPOSITION (Part VII): The Istanbul Protocol four-element analysis is not applied abstractly; it is applied to these specific documented facts. Every element is independently established by documented evidence in the case record.

Vignettes for Part X: Systemic Discrimination

V-B-1: The Seven Systemic Markers Across Two Cases (Part X)

The IAJ's investigations of Hazari and Minkowski independently documented the same five structural mechanisms — Legibility Default, Epistemic Mismatch, Accommodation Splitting, Throughput Pressure, and Plausible Neutrality — across different victims, different judges, and overlapping timeframes in the same court system. This parallel finding satisfies the Teamsters pattern-or-practice standard. MARKER 1 — TEMPLATE LANGUAGE: HAZARI: 'rapid, prolix filings' (ECF-87); 'not required to provide any accommodations' (ECF-139). MINKOWSKI: 'fundamental alteration of court proceedings' applied identically to four separate accommodation requests across three different judges in the California Sixth District Court of Appeal (November 2025, December 2025, March 2025). The formula language is identical across different judges in both cases. MARKER 2 — STRUCTURAL ABSENCE: HAZARI: ECF-60/61 confirmed the court had no ADA self-evaluation, no accommodation protocol, no training records. MINKOWSKI: ADA Coordinator Brian Faraone delivered the 'shopping in San Jose' representation — demonstrating not the absence of a Coordinator but the Coordinator's active participation in fabricating denial grounds. MARKER 3 — APPELLATE RUBBER-STAMPING: HAZARI: Nine Ninth Circuit proceedings, all denying relief without substantive analysis of the treaty arguments. MINKOWSKI: Six California writ petitions (H050352 through H052155), all denied. MARKERS 4-7: Cross-level convergence, multi-case recurrence, self-policing failure, and coordinated defense are all documented in both

records. THESIS PROPOSITION (Part X): Two independent Istanbul Protocol-compliant investigations reached identical structural conclusions about the same court system, satisfying the Teamsters pattern-or-practice evidentiary standard.

Vignettes for Part XIII: The Vexatious Litigant

V-H-7: The Vexatious Designation Cycle — A Case Study in Self-Sealing Exclusion (Part XIII)

The state court vexatious litigant designation of Hazari (August 27, 2021) followed the pattern the thesis documents exactly. Before the designation, Hazari's filings were disability manifestations: extensive, repetitive, urgent — the behavioral expression of processing speed impairment at the 0.1 percentile combined with PTSD-driven hypervigilance and the desperation of a litigant attempting to enforce a 2005 judgment against a recidivist defendant. After the designation, the same filing behavior became the evidence: each subsequent filing was characterised as proof of vexatiousness rather than disability. The designation created the loop. The $586,427 in attorney fees awarded against a disabled pro se litigant — a judgment that functions as a financial sanction for the behavioral consequences of an unaccommodated disability — is the financial dimension of the loop's closure. The loop is complete when the litigant's continued advocacy for their own rights becomes the evidence that justifies their permanent exclusion from the courts that caused the harm. THESIS PROPOSITION (Part XIII § 13.1-13.5; Part XXIV Mechanism 4): The vexatious designation cycle in the Hazari record is the documented case study of how the legal system converts disability-caused behavior into permanent juridical disability of a different kind. The five psychological harm mechanisms of the vexatious designation — learned helplessness, identity contamination, anticipatory terror, forced self-censorship, epistemic isolation — are not abstract; they describe the litigant who won in 2005 and was designated vexatious for attempting to enforce that win.

V-M-1: The Vexatious Designation While in Residential Treatment (Part XIII; Part XXVI)

The California family court vexatious litigant motion against Julia Minkowski was filed and adjudicated during the period June 2024, while Minkowski was in her second residential psychiatric treatment admission (April 29 to June 19, 2024) — a treatment admission the IAJ investigation documented as directly caused by the court proceedings' accumulated harm. The motion was granted on June 25, 2024 — five days after the residential treatment discharge. Minkowski could not respond to the vexatious motion because the court had denied the accommodation that would have enabled response, and because she was in a residential psychiatric facility. The court obtained the vexatious designation by filing the motion at the moment of maximum functional incapacity, at the moment most specifically generated by the court's own prior discriminatory conduct, at the moment when the litigant was physically unable to contest it. The timing is documented. THESIS PROPOSITION (Part XIII; Part XXVI § 26.3): This is the procedural architecture of exclusion's most specific documented instance: the vexatious designation obtained during residential psychiatric treatment caused by the proceedings, used as a permanent access restriction, at the moment when the litigant's capacity to contest it had been reduced to zero by the discrimination being designated as the evidence of abuse. The 90-day anti-retaliation presumption in Part XXIII § 23.7.5 was designed specifically in response to this documented pattern.

Vignettes for Part XVIII: The Accommodation Paradox

V-B-2: The Paradox in Operation — Two Case Studies (Part XVIII)

HAZARI: Each time Hazari sought appellate review of an accommodation denial, the appellate court was required to either: (a) provide the accommodation needed to participate in the appellate proceedings — which would constitute a ruling that the trial court's denial was wrong; or (b) deny the accommodation in the appellate proceedings — which would destroy Hazari's capacity to prosecute the challenge to the trial court's denial. The Ninth Circuit chose Path B across all nine appellate proceedings. The trial court's accommodation denial therefore remained unchallenged — not because the appellate court reviewed it and found it correct, but because the appellate court's own accommodation denial destroyed the challenge before review could occur. The paradox is not a logical abstraction. Nine federal appellate proceedings documented its operation. MINKOWSKI: Six writ petitions (H050352 through H052155) presented the same structure To the California Sixth District Court of Appeals. Each writ required Minkowski to demonstrate to the reviewing court that she needed accommodation to participate in the writ proceeding itself — while simultaneously arguing that the lower court's accommodation denial was wrong. The reviewing courts denied accommodation in the writ proceedings, which meant Minkowski could not effectively prosecute the writs that challenged the lower court's accommodation denial. (The same pattern is displayed in the Danilak case.) The paradox again operated as path B in each of six successive writ petitions. THESIS PROPOSITION (Part XVIII): The accommodation paradox is not a theoretical logical puzzle. It is what happened to two real litigants, documented across fourteen separate appellate and writ proceedings. The paradox resolved identically each time: Path B, which destroyed the challenge.

Vignettes for Part XXI: Jurisdictional Custody CIDT

V-H-8: All Five CIDT Elements Present — The Jurisdictional Custody Test Applied (Part XXI)

The jurisdictional custody CIDT test in Part XXI requires five elements. The Hazari record documents each: 1. JURISDICTIONAL CONTROL: Federal court jurisdiction over a civil rights case filed in 2019, with the litigant unable to withdraw without forfeiting six years of litigation and the underlying 2005 judgment. 2. MEDICAL KNOWLEDGE: Four treating physicians, one neuropsychological evaluation, one peer-reviewed research paper, and immunological blood work in the official case record. The court explicitly acknowledged 'numerous extensions and accommodations over the years' in ECF-139 — confirming knowledge of the medical record. 3. COMPELLED PARTICIPATION: Standard procedural deadlines imposed without accommodation. Sanctions for non-compliance (financial) and ultimately terminating sanction (dismissal with prejudice) for disability-caused non-compliance. 4. HARM COMPOUNDING: CD8 T-cells at 54 cells/μL for 28 months, flatlined. Disease-modifying therapy suspended. Active infections requiring antibiotics. PTSD developing from the litigation stress. Processing impairment progressively worsening. Each year of unaccommodated participation caused additional documented harm. 5. PERMANENT FORECLOSURE: ECF-150 (January 23, 2026) — Final Judgment. Dismissal with prejudice. The underlying civil rights claims, including the claim to enforce the 2005 judgment against the recidivist defendant, permanently foreclosed after six years of documented harm. THESIS PROPOSITION (Part XXI § 21.3): The five-element jurisdictional custody CIDT test is satisfied in full by the Hazari record.

V-M-2: The 'Shopping in San Jose' Fabrication — Dignity Degradation as Documented CIDT (Part XXI; Part XXII)

The IAJ investigation (IAJ-PRF-20251226-001-PRV) documented the following: ADA Coordinator Brian Faraone provided a representation to the court that Julia Minkowski had been 'shopping in San Jose' on the date of an accommodation hearing — and that this demonstrated her litigation capacity and therefore her lack of need for accommodation. The Southwest Airlines flight records establish that on the dates in question, Minkowski was physically confined in a psychiatric facility in Los Angeles. She could not have been shopping in San Jose because she was in inpatient psychiatric care in a different city. The 'shopping in San Jose' representation is three things simultaneously: FACTUAL FABRICATION: A statement of geographical fact that is demonstrably false, made by an official court actor (the ADA Coordinator) in an official capacity to a judicial officer for the purpose of influencing an accommodation determination. DIGNITY DEGRADATION: The official judicial characterisation of a disabled person who was confined in a psychiatric facility as someone who was 'shopping' — reducing her experience of involuntary psychiatric confinement to an act of leisure consumption — is a specific form of the degrading treatment that CRPD Article 15 prohibits. It denies her fundamental human reality in the record of the proceedings that control her legal rights. CIVIL RIGHTS FRAUD: Under 18 U.S.C. § 242 and the ADA's anti-retaliation provision, the fabrication of a false factual predicate for an accommodation denial is not protected by judicial immunity and is not a protected judicial act. It is the fabrication of evidence in an official proceeding. THESIS PROPOSITION (Part XXI; Part XXII; Part XXVII § 27.2.4): The Minkowski 'shopping' fabrication is the specific documented instance of the fabrication-of-facts pathway that Part XXVII identifies as the most viable criminal accountability route — the one that judicial immunity does not protect.

Vignettes for Part XXII: Psychological Harm Equivalence

V-M-3: The Treatment Escalation Timeline as the Psychological CIDT Severity Scale (Part XXII)

The Minkowski record documents the complete IOP → PHP → Residential escalation timeline — twice — within the litigation period: January 2023: IOP (Intensive Outpatient Program). Triggered by the first accommodation denial period. October-December 2023: Second IOP. December 2023 – January 2024: PHP (Partial Hospitalization Program). IOP had become insufficient. March – April 2024: Second PHP. February – March 2024: First residential treatment admission. April 29 – June 19, 2024: Second residential treatment admission. Each escalation was clinically documented and clinically justified: the step-up to the next level of care was required because the prior level was insufficient to stabilize Minkowski's condition. The reason each prior level became insufficient is that the court proceedings continued to impose standard demands without accommodation, generating the stress that each level of treatment was insufficient to contain. The treatment escalation timeline is the psychological harm severity scale that the Istanbul Protocol applies to assess the severity of psychological CIDT: from moderate (IOP) through severe (PHP) to incapacitating (residential). Minkowski reached the highest severity level — twice. The second residential admission coincided precisely with the vexatious motion, filed by the opposing party and adjudicated by the court while Minkowski was in residential treatment unable to respond. THESIS PROPOSITION (Part XXII § 22.2.3): The treatment escalation timeline is not a hypothetical scale. It is what happened to Julia Minkowski, documented with dates and clinical records, across the litigation period. It constitutes psychological harm evidence that meets the Istanbul Protocol's CIDT threshold independently of any physical biomarkers.

Vignettes for Part XXIV: The Jurisprudence of Avoidance

CORRECTED VIGNETTE

V-H-9: The Appellate Jurisdictional Wall: Ninth Circuit No. 25-3879 and the Accommodation Paradox *(Parts XXIV, XXVII — ECF-116, ECF-117, ECF-123)*

Ninth Circuit Appeal No. 25-3879 was filed after the 11th accommodation denial (ECF-87), the reconsideration denial (ECF-93), and the first disqualification denial (ECF-98). ECF-116 (June 18, 2025) is Hazari's Notice of Appeal to the Ninth Circuit Court of Appeals. It lists the orders challenged: the accommodation denial, the reconsideration denial, and the disqualification denial — all entered before any final judgment in the district court.

On September 2, 2025, the Ninth Circuit dismissed 25-3879 in a one-page order by Judges S.R. Thomas, Silverman, and Bennett. The order states: 'This court lacks jurisdiction over this appeal because the orders challenged in the notice of appeal are not final or immediately appealable. See 28 U.S.C. § 1291; Silberkleit v. Kantrowitz, 713 F.2d 433, 434 (9th Cir. 1983) (order granting or denying a stay of proceedings is not generally a final decision appealable under 28 U.S.C. § 1291); United States v. Washington, 573 F.2d 1121, 1122 (9th Cir. 1978) (order denying motion to disqualify judge is not final or appealable).'

The Accommodation Paradox — Documented in the Appeal Record

The accommodation denial entered in ECF-87 (March 10, 2025) was not 'final' for purposes of 28 U.S.C. § 1291 because the district court case remained open. The Ninth Circuit therefore had no jurisdiction to review it. The district court case remained open for another nine months — during which period no accommodation was granted. On December 1, 2025, the case was dismissed for failure to prosecute (ECF-139). At that point, the accommodation denial merged into the final judgment — but it was no longer a reviewable ADA accommodation denial. It was a component of a 'failure to prosecute' dismissal, which is reviewed for abuse of discretion on different grounds. The accommodation question was thus unreviewable before the final judgment (non-final, no jurisdiction) and unreviewable after the final judgment (merged into a different category of dismissal). The accommodation denial can never be reviewed on the merits through any domestic appellate mechanism.

The errata Notice of Appeal filed June 19, 2025 (ECF-117) contains a passage that is unique in the appellate record: 'The recurring refusal by the Ninth Circuit to hear § 1291 appeals while narrowly construing § 1292 review constitutes a systemic barrier to justice and derogation of non-derogable rights. Appellant asserts that this cumulative obstruction satisfies the "exhaustion of domestic remedies" standard under the Convention Against Torture and other applicable international human rights treaties, thereby justifying international review under UNCAT Article 20.' This statement was filed on the official Ninth Circuit docket on June 19, 2025 — before the district court case concluded. The domestic exhaustion argument was preserved on the official record while the domestic proceedings were still ongoing, satisfying the preservation requirements of the Optional Protocol procedures and UNCAT Article 20's investigative mechanism.

The panel in No. 25-3879 is significant for a second reason. Judge Barry G. Silverman was a member of the panel that dismissed 25-3879 on September 2, 2025. As documented in V-H-13 below, Silverman also signed the dismissal order in appeal 25-5649 on January 29, 2026. Both dismissals occurred after Silverman had been individually named in and served with disqualification motions in appeal 24-6312, which disqualifications were incorporated by reference in both subsequent appeals. The disqualification motions were never adjudicated before either dismissal.

V-H-10: The Rossi Admission: Defense Counsel's Own Declaration Proves the CIDT Knowledge Element *(Parts VII, XXI — ECF-84, March 7, 2025)*

In opposition to Hazari's eleventh accommodation request, defense counsel Michael L. Rossi filed a declaration under penalty of perjury (ECF-84, March 7, 2025). Rossi's declaration is, from the perspective of the CIDT/torture analysis, the most important document filed by any party in the six-year litigation. It documents — from the adversary's own sworn statement — every element required for the knowledge prong of the CIDT test.

The Rossi Declaration — What Defense Counsel Admitted Under Oath

ECF-84, ¶ 5: 'The sealed records contain letters from physicians who opine that Plaintiff's health condition precludes him from participating in this litigation for an unspecified amount of time, up to a year. Several of these letters cite to Plaintiff's self-reported stress related to litigation.' ECF-84, ¶ 5 (continued): 'This includes his report to one physician that "his reported treatment by the court [is] cruel and inhuman."' ECF-84, ¶ 6: Rossi then proceeds to argue against granting accommodation, noting that Hazari had 'engaged in litigation activity contemporaneously' with the physician letters. The declaration was filed three days before ECF-87 denied accommodation.

The analytical structure of ECF-84 is precise. Rossi: (1) confirms he reviewed the sealed physician letters; (2) confirms the physician letters state Hazari cannot participate in litigation; (3) confirms that Hazari reported to a physician that the court's treatment was cruel and inhuman; (4) then argues against accommodation on the grounds that Hazari had filed documents during the same period. Step (4) is the snapshot inference applied by a lawyer who had already documented steps (1) through (3) in the same filing.

The significance for the CIDT analysis cannot be overstated. The Istanbul Protocol's knowledge element asks whether the actor knew or should have known that their conduct would cause severe suffering. ECF-84 documents that defense counsel — who by ECF-82 was formally arguing against accommodation — had reviewed physician letters stating the plaintiff could not participate and had recorded the plaintiff's statement that the court's treatment was cruel and inhuman. This is actual knowledge, documented in a sworn declaration, filed three days before the accommodation was denied. The court then denied accommodation citing the plaintiff's filings — filings that Rossi had simultaneously documented as evidence of capacity despite acknowledging the physicians' contrary opinion.

Chain of Custody: Knowledge → Denial → Harm

March 3, 2025 (ECF-80): Court orders sealed records disclosed to Rossi as 'Attorneys' Eyes Only.' March 7, 2025 (ECF-84): Rossi declares he reviewed records. Confirms physician letters document substantial incapacity. Confirms plaintiff reported 'cruel and inhuman' treatment to physician. March 7, 2025 (ECF-82): Rossi files opposition to accommodation. Argues Hazari's litigation activity contradicts disability claim. March 10, 2025 (ECF-87): Court denies accommodation. Cites 'rapid, prolix filings.' Knowledge of physician-documented substantial incapacity: March 7. Accommodation denial: March 10. Three days.

V-H-11: From 'Good Health' to 'Prolix Filings': The Snapshot Inference Across 12 Months

(Parts VI, X, XVIII — ECF-75, ECF-87)

The most condensed demonstration of the snapshot inference in the entire Hazari record is the contrast between two court orders entered by the same judge using the same sealed medical record, twelve months apart.

ECF-75: March 1, 2024	ECF-87: March 10, 2025
ORDER GRANTING 10th Accommodation — STAY FOR 365 DAYS 'Good cause appearing, the Court GRANTS Plaintiff's Administrative Motion. The above-captioned case remains STAYED 365 days from the date of this Order. All medical information accompanying Plaintiff's Administrative Motion is to remain under seal.' [Final sentence:] 'The Court wishes good health for Mr. Hazari.' — Beth Labson Freeman, U.S. District Judge	ORDER DENYING 11th Accommodation 'Since February 25, 2020, the Court has granted Plaintiff's Administrative Motion for Relief by Accommodation for Disabilities ten times and has stayed the case since then. Mr. Hazari's contention that his disability prevents him from prosecuting his case is contradicted by his rapid, prolix filings in this case.' — Beth Labson Freeman, U.S. District Judge
Medical record: sealed physician letters documenting substantial incapacity. Defendants: non-opposed.	Medical record: SAME sealed physician letters, now reviewed by defense as 'Attorneys' Eyes Only' (ECF-80). Defendants: now oppose. Rossi Declaration (ECF-84) filed confirming physician letters document substantial incapacity.
Outcome: 365-day stay granted.	Outcome: Accommodation denied. Case set on litigation track. Dismissal for failure to prosecute follows nine months later.

The only material factual difference between ECF-75 and ECF-87 is that Defendants obtained access to the sealed medical records and filed an opposition. The medical records themselves — the physician letters documenting substantial incapacity — are the same. The court's characterization of the same facts reversed completely. In March 2024, the same physician letters supported a one-year stay. In March 2025, the same physician letters (now read by defense counsel) were insufficient to override the observation that Hazari had filed documents during the intervening period.

Under the ADAAA's episodic disability provisions, this analysis is legally invalid. An episodic condition that substantially limits a major life activity when active is a disability regardless of periods of activity during remission. The physician letters addressed Hazari's condition; Hazari's filings addressed a different time period and a different manifestation of his condition. The court collapsed both into a single snapshot determination — using the activity evidence to override the medical evidence rather than interpreting them in light of each other as the ADAAA requires.

Correction and Expansion: The 'Rapid, Prolix Filings' Standard Applied Three Times in Succession

The thesis's existing Vignette V-H-11 documents the Freeman snapshot inference as applied between ECF-75 (good health) and ECF-87 (rapid, prolix filings). Full reading of the BLF record reveals the standard was applied three times in succession, not once: in ECF-87 (March 10,

denying accommodation), in ECF-93 (March 24, denying reconsideration of ECF-87), and in ECF-98 (April 14, denying disqualification). Each application reinforced the prior one, creating a self-sealing chain. After ECF-87 established the standard, every subsequent filing generated in response to ECF-87 confirmed its application. The standard was self-perpetuating: accommodation denied → litigant files challenge → challenge cited as evidence accommodation not needed → disqualification denied on same basis → litigant files further challenge → standard applied again. ECF-89, 90, 91, 92 (filed March 20-24, challenging ECF-87) were the evidence cited in ECF-93. ECF-96 and 97 (disqualification motions filed April 10-13) were the evidence cited in ECF-98. The causal engine was the original denial; the fuel was the compelled responses.

V-H-12: The Technical Filing Trap: 53 Pages of Substantive Complaint Filed as the Wrong Document Type *(Parts XXVI, XXVII — ECF-138, November 20, 2025)*

On November 20, 2025 — the court-imposed deadline for filing an amended complaint — Hazari filed ECF-138. The filing was captioned 'Request for Judicial Notice' and attached as Exhibit 1 'an updated complaint that is the subject of a communication with Chief Judge Mary Murguia of the Ninth Circuit under preparation.' The attached complaint ran to 53 pages and contained substantive legal arguments invoking UNCAT, the Istanbul Protocol, jus cogens norms, 42 U.S.C. § 1983, 29 U.S.C. § 794, and the ADA.

The court did not engage the substance of ECF-138. The court's subsequent orders (ECF-131, November 6, 2025 and ECF-139, December 1, 2025) characterize Hazari's failure to file 'an amended complaint' as the basis for the failure-to-prosecute dismissal. ECF-139 contains the summary: 'For more than six years after filing the complaint, Mr. Hazari has repeatedly delayed prosecution of this action.'

The Technical Compliance Trap in Operation (Part XXVI § 26.4)

The FRCP amended complaint is a specific procedural form: it must be a standalone pleading, titled as a complaint, organized according to the pleading requirements of Rule 8, filed as a 'complaint' in the CM/ECF system. ECF-138 contained substantive complaint content — updated facts, legal theories, named defendants including judicial actors — but it was filed as a 'Request for Judicial Notice' rather than as an 'Amended Complaint.' The substantive content satisfied the legal requirement — a complaint existed. The procedural form did not satisfy the technical requirement — the filing type was wrong. The court's dismissal for 'failure to file an amended complaint' is formally accurate: no document titled 'Amended Complaint' was filed by the deadline. It is substantively more complex: a 53-page complaint was filed by the deadline under a different procedural caption. This is Part XXVI's prediction with documented precision: the technical compliance system operates as a gatekeeper that is indifferent to the substantive content of a filing and dispositive based on its formal classification. A person with documented cognitive impairment who filed the substantive content of an amended complaint under the wrong procedural label lost their case.

ECF-138's content is analytically significant beyond the technical compliance trap. The attached complaint explicitly names judicial actors as defendants for non-judicial/administrative acts — specifically: ADA coordination, case assignment, vexatious-litigant gatekeeping, communications with clerks about filing restrictions. ECF-138 at page 8: 'Absolute judicial immunity does not extend to: 1. Non-judicial or administrative acts (such as ADA-coordination, case assignment, vexatious-litigant gatekeeping, communications with clerks and parties about filing restrictions, and other purely administrative or administrative or enforcement decisions); and 2. Acts taken in the clear absence of all jurisdiction.' This is the thesis's judicial immunity analysis placed on the official district court docket — unaddressed on the merits because the document was filed under the wrong procedural caption.

V-H-13: The Three-Forum Pattern: BAP NC-24-1204, Ninth Circuit Appeal No. 25-3879, and No. 25-5649 *(Parts X, XXIV, XXVII — BAP Docket; 25-3879 ECF-1; 25-5649 DE 21)*

By the time appeal 25-5649 was dismissed on January 29, 2026, the Hazari case record contained three independent institutional forums — each with its own judges, its own procedural rules, and its own administrative structure — that had applied the identical outcome to the identical medical record: dismissal while accommodation motions were pending and unadjudicated.

Forum	Case / Appeal	Judges	Accommodation Status	Disposition
BLF District Court	19-cv-04392-BLF	Beth Labson Freeman	11 requests; 10 granted; 11th denied Mar 10, 2025. No individualized assessment documented.	Dismissed for failure to prosecute (ECF-139, Dec 1, 2025). Merits never adjudicated.
BAP NC-24-1204	NC-24-1204	Corbit, Brand, Faris	Four Safe Harbor demands: Jan 27, Mar 23, May 4, Jun 4, 2025. All pending at dismissal. Never adjudicated.	Dismissed for lack of prosecution (Jul 31, 2025). All four accommodation motions unadjudicated at time of dismissal.
Ninth Circuit 25-3879	25-3879	S.R. Thomas, Silverman, Bennett	Accommodation denial (ECF-87) challenged. Disqualification motion pending. Neither adjudicated.	Dismissed for lack of jurisdiction (Sep 2, 2025). Non-final orders not appealable. Three days after BAP dismissal.
Ninth Circuit 25-5649	25-5649	Silverman, Paez, H. Thomas	Emergency accommodation motions filed Oct 15, 2025. Pending at dismissal. Never adjudicated. Briefing schedule set Jan 6, vacated Jan 7.	Dismissed as frivolous (Jan 29, 2026). All pending motions denied as moot. 'No further filings will be entertained.'

The Silverman Overlap: One Judge, Two Dismissal Panels, Both After Individual Disqualification

Judge Barry G. Silverman appears on the panels for BOTH appellate dismissals: 25-3879 (Sep 2, 2025): S.R. Thomas, SILVERMAN, Bennett — dismissed for lack of jurisdiction. 25-5649 (Jan 29, 2026): SILVERMAN, Paez, H. Thomas — dismissed as frivolous. Before either dismissal, Silverman was individually named in and served with a disqualification motion in appeal 24-6312. Those disqualifications were expressly incorporated by reference in both 25-3879 and 25-5649. Neither

disqualification was adjudicated before either dismissal. Silverman adjudicated both cases while his own disqualification was pending before the court. Under 28 U.S.C. § 455, disqualification is mandatory when a judge's impartiality 'might reasonably be questioned.' The question of whether a judge who has been individually served with a formal disqualification motion — documenting specific conduct alleged to constitute torture and CIDT — can sit on a panel dismissing the same litigant's appeals is the Ward v. Monroeville structural bias question applied at the appellate level.

The January 6/7, 2026 procedural sequence in 25-5649 is documented in the docket with precision. Docket Entry 19 (entered January 6, 2026 at 11:37:45 AM): OSC discharged, full briefing schedule set — opening brief due February 6, 2026. Docket Entry 20 (entered January 7, 2026 at 2:06 PM): 'The January 6, 2026 order is vacated as issued in error.' No explanation for the error was provided. Twenty-two days later, Docket Entry 21 (entered January 29, 2026): Silverman, Paez, and H. Thomas dismiss as frivolous. The mandate issued February 20, 2026 — the same date as Hazari's Second Notice of Appeal in the BLF district court case (ECF-151).

The January 6 order, if allowed to stand, would have set the appeal on a merits-briefing track — a track that would have required engagement with the BAP's dismissal while accommodation motions were pending, and with the structural disability discrimination questions those facts presented. The January 7 vacatur — the day after the briefing schedule issued — cleared the path for the January 29 dispositive dismissal. No explanation for why the January 6 order was 'in error' appears anywhere in the docket.

Pattern-or-Practice Analysis: Three Forums, One Medical Record, Three Identical Outcomes

The Teamsters pattern-or-practice standard asks whether the same practice appears consistently enough across multiple instances to support an inference of institutional policy rather than individual discretion. The Hazari record provides three independent forums: 1. BLF District Court: Accommodation motions received → years of stays → accommodation denied → dismissal for non-prosecution. Different from BAP and appellate forums in judicial personnel, procedural rules, and substantive context. 2. BAP: Four accommodation motions filed in eight months → all pending at dismissal → dismissed for non-prosecution. Different judges (Corbit, Brand, Faris), different procedural rules, different substantive matter (bankruptcy), identical outcome. 3. Ninth Circuit (two panels): Accommodation and disqualification motions filed → pending at each dismissal → both appeals dismissed (one for non-finality, one as frivolous), all pending motions denied as moot. Different panels (with documented Silverman overlap), different procedural frameworks, different grounds for dismissal, identical functional outcome for the litigant. The pattern does not require inference about judicial intention. It is visible in the docket text of three independent filing systems. What the three outcomes share: the accommodation question is never adjudicated on its merits in any forum. This is true whether the dismissal is for 'failure to prosecute,' 'lack of jurisdiction,' or 'frivolous.' The mechanism of dismissal varies; the result — no merits adjudication of the disability discrimination claim — is constant.

ECF-14 in appeal 25-5649 — the letter addressed to Clerk Dwyer and circulated to all Ninth Circuit clerks dated October 27, 2025 — documents the administrative reach of the pattern. Hazari placed the Nuremberg Principle IV argument directly before the clerk who would execute any mandate: 'In appeal #25-3879, one of you issued the unlawful and retaliatory mandate, operating under the authority of the chief clerk of the court... This caused harm and injury that "shocks the conscience."' The letter was filed on the official court docket, preserving on the record notice to the specific administrative actors involved in executing the dismissal orders.

The En Banc Disqualification Record: Named Judges Served in Appeal 24-6312

In appeal 24-6312, Hazari filed and individually served disqualification motions on the following named Ninth Circuit judges (ECF-17 through ECF-33 in 24-6312): Berzon, Bumatay, Callahan,

Clifton, Collins, Friedland, Hurwitz, Ikuta, Nguyen, Owens, Sanchez, Schroeder, Silverman, Sung, S.R. Thomas, Tashima, Wardlaw. These individual disqualification motions were incorporated by reference in both 25-3879 and 25-5649. Judge Silverman (served in 24-6312) then signed the 25-3879 dismissal (September 2, 2025) while his disqualification remained unadjudicated. He signed the 25-5649 dismissal (January 29, 2026) with his disqualification still unadjudicated. Judge S.R. Thomas — former Chief Judge of the Ninth Circuit, also served in 24-6312 — signed the 25-3879 dismissal with his disqualification unadjudicated. Under 28 U.S.C. § 455(a), disqualification is mandatory when a judge's impartiality 'might reasonably be questioned.' A judge who has been individually served with a formal disqualification motion documenting specific conduct alleged to constitute CIDT and torture cannot plausibly satisfy the § 455(a) objective reasonableness standard. The failure to adjudicate these motions before issuing terminal dispositive orders is not a procedural oversight; it is a second, independent layer of the denial of due process that each dismissal represents.

V-H-14: The Administrative Closure Trap

V-H-14: The Administrative Closure Trap: How Protective Relief Is Neutralized Without Adjudication and Exploited by Adversaries *(Parts XIII, XV, XVIII, XXIV, XXV, XXVII — Appeal 24-6312; 25-3879; 25-5649; 19-cv-04392-BLF ECF-87)*

Appeal 24-6312 was filed October 17, 2024 from Case No. 21-cv-04262-JSW (Judge Jeffrey White, Northern District of California), challenging White's October 11, 2024 denial of a TRO, declaratory relief, and disqualification motion. Concurrently, 19-cv-04392-BLF (Judge Freeman) remained stayed for the same litigant with the same medical record. The gap between Freeman's accommodation and White's refusal — two federal district judges in the same district, same litigant, same disabilities, same evidence — was the central question the appeal presented.

The Freeman/White Structural Contradiction — Documented in the Same District

JUDGE FREEMAN (19-cv-04392-BLF): Ten successive accommodation grants spanning nearly six years. March 1, 2024: one-year stay, 'The Court wishes good health for Mr. Hazari.' Medical evidence treated as determinative. No procedural prerequisites imposed. JUDGE WHITE (21-cv-04262-JSW): Zero accommodations 2021–2024. October 11, 2024: denied TRO, refused to rule on declaratory relief, denied disqualification, ordered service of incomplete complaint. Applied 28 U.S.C. § 455(b)(1)'s extrajudicial source requirement to what had been pleaded only under § 455(a) — a legal mischaracterization documented in the Notice of Appeal. Same Northern District of California. Same physician letters. Same disabilities. Same statute. Opposite outcomes. White's misapplication of the disqualification statute is documented in DE 1: he cited Toth v. Trans World Airlines (9th Cir. 1988), a § 455(b)(1) case, as authority for an extrajudicial source requirement under § 455(a), which has no such requirement.

ECF-45 (September 10, 2021): The First Conditional Accommodation — The Seed of ECF-87

September 10, 2021 — stay number six — is the first point in the 19-cv-04392-BLF record where Freeman's accommodation order contains language that conditions its grant on defendants' acquiescence. ECF-45 adds a sentence that appears in none of the five preceding orders: 'The above-captioned case has been stayed since February 25, 2020. Since the passage of so much time may begin to prejudice defendants, the Court REQUESTS a statement from defendants regarding the status of the case immediately after the expiration of the extended stay.'

The ECF-45 to ECF-87 Arc: Four Years from Concern to Dispositive Standard

SEPT 10, 2021 (ECF-45): After six months of stay, Freeman first acknowledges potential prejudice to defendants. Phrased as a 'request' for defendants' views, not a condition. Defendants' statement not required before accommodation grants. Accommodation still granted without opposition. JUNE 2020 TO SEPT 2023 (ECF-25, 30, 34, 52, 58, 64, 69): Seven subsequent accommodation grants. None required defendant opposition as a condition. Each granted on medical evidence alone. Stay lengths progressively standardize at 180 days. FEB 22, 2025 (ECF-76): Eleventh accommodation motion filed. Same medical evidence as prior ten. FEB 28, 2025 (ECF-78): FIRST EVER defendant opposition. County requests unsealing of sealed medical records. MAR 3, 2025 (ECF-80): Freeman grants unsealing — 'Attorneys' Eyes Only.' MAR 7, 2025 (ECF-83): Defendants file request for judicial notice of five other courts' orders — none from Freeman's own court. MAR 10, 2025 (ECF-87): Freeman denies accommodation. Reason: 'rapid, prolix filings.' Evidence base: entirely from other courts. Freeman states she 'granted Plaintiff's prior stay requests because those requests were not opposed by Defendants.' RESULT: The conditional concern noted once in ECF-45 in 2021 becomes the dispositive standard in ECF-87 in 2025. The accommodation framework that had operated for five years on medical evidence alone was retroactively recharacterized as having always depended on defendants' non-opposition.

The ECF-45 arc demonstrates that the accommodation paradox does not require sudden reversal. It can operate through the slow hardening of a single caveat — expressed once in 2021 as a 'request' for defendants' views — into the stated rationale for denial four years later. The five-year record now shows: eleven motions filed; ten granted under a single standard (medical evidence + no opposition); one denied under a newly applied standard (rapid, prolix filings + defendant opposition). The changed variable was not the medical evidence — which had been verified and remained consistent. The changed variable was defendant opposition, which appeared for the first time in the eleventh motion.

On November 11, 2024, Hazari filed a motion for accommodation in 24-6312. No opponent was served. The medical record supporting the request was the same evidence Freeman had found dispositive for six consecutive years. The court acknowledged the motion in ACMS-12 (December 23, 2024), extended the briefing deadline to February 14, 2025, and stated the accommodation motion 'will be addressed by separate order.' That order never came.

Between February 10 and February 14, 2025, Hazari filed the en banc disqualification motion (DE 15) naming all 47 active Ninth Circuit judges, followed by individual disqualification motions for 17 specific judges (DEs 15-25) and 9 more (DEs 26-33), all filed on February 13, 2025, plus a second accommodation motion (DE 16-1). These filings were generated under severe physical cost documented in DE 39-1 and DE 39-2 — because the court's four-month non-response to the first accommodation motion had forced emergency action to prevent the February 14 briefing deadline from passing unanswered.

The Three-Phase Timeline: From Accommodation Request to Adversarial Exploitation

NOV 11, 2024: First accommodation motion filed in 24-6312. No opponent. Unopposed. DEC 23, 2024: ACMS-12 extends briefing to Feb 14, acknowledges accommodation motion. No ruling on accommodation. FEB 10-13, 2025: Hazari files en banc + 17 individual disqualification motions and second accommodation motion — forced by court's non-response to first accommodation request. MAR 3, 2025: Commissioner Fitzgerald issues ACMS-37 — grants stay, administratively closes case. No mandate will issue. Case may reopen 'at any time.' MAR 7, 2025 (same day as Rossi ECF-84 in 19-cv-04392-BLF): Brady's counsel Julian Pardo de Zela sends EX PARTE LETTER to Commissioner Fitzgerald, never filed on the official docket, asking whether ACMS-37 is sufficient to allow Judge White to rule on Brady's vexatious litigant motion. Brady is 'eager to put an end to Mr. Hazari's baseless campaign of harassment.' MAR 10, 2025: Judge Freeman issues ECF-87 in 19-cv-04392-BLF — 'rapid, prolix filings demonstrated that his documented disabilities do not affect his

abilities to prosecute this case.' MAR 14, 2025: Zela writes directly to Judge White, citing ECF-87 from four days earlier, asking White to immediately rule on the vexatious litigant motion: 'it should be noted that on March 10, 2025, in another matter (19-cv-04392-BLF), the District Court concluded that Mr. Hazari should not be granted any further stay or accommodation.' APR 2025: White sua sponte revokes his own stay based on ACMS-37's vagueness. Schedules hearing for April 18, 2025. Hazari files emergency motion DE 40 on April 16, 2025. MARCH 20, 2026 (TODAY): 24-6312 remains administratively closed — 382 days. Disqualification motions for 47 judges never adjudicated. DE 40 emergency motion pending in closed case. Silverman signed 25-3879 dismissal (Sep 2, 2025) and 25-5649 dismissal (Jan 29, 2026) while his disqualification remained pending and unadjudicated.

The Administrative Closure Mechanism: Relief Without Adjudication

The ACMS-37 order granted the accommodation Hazari had sought since November 2024. But it did so through administrative closure rather than a merits ruling on the disability claim. This distinction has three structural consequences that make administrative closure analytically different from a granted accommodation motion.

Why Administrative Closure Generates No Protective Precedent

An accommodation motion GRANTED ON THE MERITS would: (1) Constitute a ruling on whether the ADA requires accommodation in appellate proceedings for a litigant with this medical profile — creating precedent other disabled litigants can cite; (2) Require the court to articulate a legal standard, which can be reviewed and challenged; (3) Adjudicate the pending disqualification motions before or during the same order; (4) Bind the court's future conduct in this case and provide reviewable legal authority. An ADMINISTRATIVE CLOSURE does none of these. It: (1) Stops the proceedings without ruling on why, generating no precedent; (2) Preserves the ability to reopen 'at any time' without notice or right to be heard; (3) Leaves disqualification motions pending in a closed case, technically unadjoined but operationally inert; (4) Creates no legally cognizable standard that any other disabled litigant can invoke. The accommodation was effectively granted and simultaneously stripped of all legal value for any purpose beyond the immediate case.

The Disqualification Neutralization Mechanism

The disqualification motions filed in 24-6312 identified Judge Silverman in 22-16046, 22-16174, and 24-3353 and served notice of the disqualification under 28 U.S.C. § 455(a). Those disqualifications were incorporated by reference into 25-3879 (filed before ACMS-37) and 25-5649 (opened after ACMS-37). The administrative closure placed the disqualification motions in a status of permanent non-adjudication.

Silverman then signed the September 2, 2025 dismissal in 25-3879 — while his 24-6312 disqualification was pending and unadjudicated. He signed the January 29, 2026 dismissal in 25-5649 — while the same disqualification remained pending and unadjudicated, 351 days after ACMS-37. As of March 20, 2026 — 382 days after ACMS-37 — the disqualification motions for all 47 named judges remain pending in a closed case. Not one has been adjudicated. Not one has been denied. Not one has been granted.

The Self-Policing Architecture at Its Most Precise

The Reuters 'Teflon Robe' investigation documented 'judges judging judges' as the national norm. Appeal 24-6312 documents a more granular mechanism: judges whose disqualification motions are pending in an administratively closed case are not technically self-adjudicating — they are participating in their own non-adjudication. The disqualification motions were never ruled upon. The judges were never required to recuse themselves. The court simply closed the case, ensuring the motions could never be decided while leaving the judges free to sit on subsequent panels. This is the

difference between self-adjudication (a ruling) and administrative neutralization (the absence of a ruling). Under Ward v. Monroeville, structural bias is unconstitutional when the decision-maker has an interest in the outcome. A judge whose pending disqualification has never been adjudicated has an institutional interest in ensuring it is never adjudicated — because adjudication requires a ruling that is subject to appeal. Administrative closure generates no ruling and therefore no appellate review.

The Adversarial Exploitation Layer: The Zela Ex Parte Letters

The ex parte letter from Brady's counsel Julian Pardo de Zela to Commissioner Fitzgerald (March 7, 2025) was never filed on the official docket of appeal 24-6312. It was received by the court and acted upon by the litigant only through Hazari's own subsequent filing. The letter asked the Commissioner to confirm that ACMS-37 constituted sufficient 'resolution' of the appeal to permit Judge White to rule on Brady's pending vexatious litigant motion.

The Zela letter to Judge White (March 14, 2025) followed four days after ECF-87. It cited ECF-87 directly as authority for the proposition that Hazari had demonstrated the capacity to litigate and was therefore not entitled to accommodation. The letter asked White to immediately resume the vexatious litigant motion proceedings, citing the All Writs Act and federal courts' inherent power to enter pre-filing orders against vexatious litigants.

Cross-Case Contamination: How One Court's Denial Becomes Another Court's Weapon

The Zela/White letter (March 14, 2025) cites ECF-87 (Freeman, March 10, 2025) as evidence that Hazari does not need accommodation in White's court. The structural mechanism: Step 1: Brady's co-counsel Rossi files ECF-84 in 19-cv-04392-BLF on March 7, 2025, opposing accommodation. Step 2: Freeman issues ECF-87 on March 10, 2025, denying accommodation and citing 'rapid, prolix filings.' Step 3: Zela — Brady's counsel in 21-cv-04262-JSW — immediately (March 14) uses ECF-87 in a communication to White to argue that Hazari can litigate. Step 4: Both Zela letters are immunized from any civil liability under the absolute litigation privilege (California Civil Code § 47(b); federal common law). The ex parte communication to the Commissioner is a 'communication made in a judicial proceeding.' The letter to White is made to a judicial officer. The result: a denial of accommodation in one case, obtained through adversarial opposition by the same party's co-counsel, is instantly weaponized as evidence for denying accommodation in a related case, with complete privilege immunity for both communications. This is the adversarial exploitation mechanism that Part XV identifies as structurally enabled by absolute litigation privilege.

The White court's resumption of proceedings based on ACMS-37's vagueness (April 2025) confirmed what the Zela letters predicted: the administrative closure that was designed to protect Hazari from White's continued jurisdiction had been exploited to signal that White could proceed. DE 40 (Emergency Motion, April 16, 2025) documents the harm that followed. That emergency motion remains pending in the closed case as of March 20, 2026.

The DQMS Evidence: Objective Measurement of Judicial Causation

DE 39-2 provides the first FDA-device-verified, timestamped physiological measurement of the causal connection between a specific judicial event and specific physical harm in the entire 24-6312 record. The Freestyle Libre II blood glucose monitor — an FDA-certified continuous monitoring device whose data is stored on a central server accessible to treating physicians — recorded dysregulation during the period March 7-10, 2025, correlating precisely with the filing of Rossi's ECF-84 (March 7) and Freeman's ECF-87 (March 10). The white blood cell count of 21 (normal 3.5-10.0) documented at the same time was the laboratory measure of immune suppression. The WBC elevation, combined with active infection, prevented the administration of the scheduled Briumvi infusion (the disease-modifying therapy for Multiple Sclerosis) because

the drug's immunosuppressive mechanism would have been dangerous in the context of active infection.

The DQMS Methodology: Quantifying the Causal Chain at Its Weakest Link

The Distress Questionnaire Measurement System (DQMS), developed and employed in DE 39-1 and DE 39-2, demonstrates the following causal chain through objective measurement: JUDICIAL ACT (March 7, 2025): Defense opposition filed in 19-cv-04392-BLF. → PHYSIOLOGICAL RESPONSE: Blood glucose dysregulation measured by FDA-certified Freestyle Libre II monitor, data transmitted to central server, accessible by treating physicians. Pattern: dysregulation correlates with legal work periods. → IMMUNE CONSEQUENCE: WBC count of 21 (measured by clinical laboratory, March 2025; normal 3.5-10.0). Active bacterial infection requiring 4 consecutive days of 2g Rocephin injections followed by oral antibiotics. → TREATMENT FORECLOSURE: Briumvi infusion (MS disease-modifying therapy) cannot be administered during active infection because the drug's immunosuppressive mechanism creates mortality risk. The scheduled February 2025 infusion window was missed. → RELAPSE RISK ELEVATION: Absent DMT, the probability of MS relapse and extent of neural damage per relapse increases. The causal chain was placed on the official federal court record in DE 39-2, filed April 14, 2025. The data is contemporaneous, FDA-verified, and corroborated by clinical laboratory results. The court's administrative closure of 24-6312 occurred before this evidence was filed. The evidence therefore demonstrates harm that occurred after the protective closure was already in effect — harm caused by the gap between the closure (March 3) and the exploitation of the closure's vagueness by adversarial parties (March 7-14).

The DQMS methodology is analytically significant beyond this case. It provides a replicable, objective, contemporaneous measurement framework for the causal chain that Part VI identifies as legally cognizable: pre-existing vulnerability + court demand + physiological stress response + specific harm outcome + treatment foreclosure. Any disabled litigant with a continuous glucose monitor, laboratory testing, and medical documentation of treatment windows can replicate this methodology. The court's refusal to engage the evidence in DE 39-2 means that the first FDA-verified proof of judicial causation of physiological harm sits in a pending federal court filing in an administratively closed case.

V-H-15: The Ten-Day Opposition Architecture: How One Defendant's First-Ever Objection Enabled Cross-Case Contamination to Override Five Years of Accommodation *(Parts VI, X, XV, XVIII, XXIV — 19-cv-04392-BLF ECF-78, 80, 83, 87; March 2025)*

Between February 28 and March 10, 2025 — ten days — the accommodation framework that had operated in 19-cv-04392-BLF since February 25, 2020 was dismantled through a precisely documented sequence. Every step in that sequence is in the official court record. No step relied on any new medical evidence. The medical evidence available to the court on March 10 was the same medical evidence that had produced ten successive accommodation grants. The changed variable was defendant opposition — appearing for the first time in five years — and the content of that opposition.

The Ten-Day Sequence: February 28 to March 10, 2025

FEB 28, 2025 (ECF-78): County files its FIRST EVER opposition to any of Hazari's eleven accommodation motions. Counties had not opposed any of ECF-16, 25, 30, 34, 45, 52, 58, 64, 69, or 75. The opposition argues: (1) all supporting documents are sealed and unavailable to defendants; (2) Plaintiff has not complied with Local Civil Rule 7-11; (3) Plaintiff has never conferred with defense counsel. No medical evidence is challenged on its merits. The opposition requests unsealing of sealed

records as 'attorneys' eyes only.' MAR 3, 2025 (ECF-80): Freeman issues order granting defendants' request to unseal sealed medical records for 'Attorneys' Eyes Only.' Orders defendant to file further statement by March 10. ECF-80 is issued on the same day as ACMS-37 (the administrative closure of appeal 24-6312). MAR 7, 2025 (ECF-83): Defendants file request for judicial notice of five exhibits — all from other courts: (A) March 3, 2025 California Sixth District order (Presiding Justice Mary Greenwood) finding Hazari 'has demonstrated an ability to actively initiate and participate in litigation'; (B-C) November 2024 Sixth District vexatious litigant orders; (D) White's September 8, 2022 accommodation denial in 21-cv-04262-JSW; (E) White's September 19, 2024 stay denial in same case. None of these five exhibits originated in Freeman's own court. MAR 10, 2025 (ECF-87): Freeman denies accommodation. Her stated basis: 'Based on Plaintiff's rapid, prolix filings, it is clear that the documented disabilities do not impact Plaintiff's abilities to prosecute this case.' The court takes judicial notice of all five other-court exhibits (ECF-87 at 2). The order states: 'The Court granted Plaintiff's prior stay requests because those requests were not opposed by Defendants.'

The Legal Mechanism: Cross-Case Contamination Under Judicial Notice

The five exhibits in ECF-83 are each from a different proceeding. None of them was produced in Freeman's court. Their introduction into ECF-87 was accomplished through the Federal Rule of Evidence 201 judicial notice doctrine, which permits courts to notice facts that are 'not subject to reasonable dispute' because they 'can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.' Court orders qualify.

The legal effect: a March 3, 2025 California state court finding of ability to litigate, obtained in a proceeding where Freeman had no jurisdiction, was incorporated into Freeman's March 10, 2025 accommodation denial as though it were evidence produced in her own court. White's September 2022 and September 2024 accommodation denials — produced in a court where the same medical evidence had been weighed differently — were incorporated as though they were findings from Freeman's own proceedings. The five years of contrary findings in Freeman's own court, represented by ECF-16 through ECF-75, were not cited as evidence. The one day's evidence from other courts displaced five years of evidence from her own court.

Why Litigation Privilege Immunizes Every Step

STEP 1 (ECF-78): County's opposition arguing procedural non-compliance and requesting unsealing is a communication made in a judicial proceeding. Absolutely privileged under Silberg v. Anderson and federal common law. STEP 2 (ECF-83): Request for judicial notice of other courts' orders is a litigation filing in a judicial proceeding. Absolutely privileged regardless of the adversarial purpose of importing other-court findings. STEP 3 (ECF-83 Exhibit D/E): White's prior accommodation denials, reproduced as exhibits, are judicial records. Their use in a different court's proceeding carries no privilege concern. STEP 4 (ECF-83 Exhibit A): The March 3, 2025 Sixth District order — issued the same day as ACMS-37, four days after ECF-78 — was used as evidence in ECF-83 filed four days later. The chronological precision raises the question of whether the same adversarial strategy operating across multiple simultaneous proceedings was coordinated. The litigation privilege makes that question legally irrelevant. RESULT: Every step in the ten-day architecture that ended five years of accommodation was legally immunized from any accountability. The only legally cognizable fact was what Freeman wrote in ECF-87.

The Paradox of Compelled Output as Evidence of Ability

ECF-93 (March 24, 2025 — denial of reconsideration) adds a dimension to ECF-87's reasoning that the thesis previously documented only partially. Freeman states: 'The Court finds that Plaintiff again demonstrated his capability of prosecuting this case through the rapid, prolix filings in recent days. See ECF 89, 90, 91, 92.' ECF-98 (April 14, 2025 — denial of disqualification) adds: 'after the Court notified Plaintiff that there was a filing error in his first mammoth, 109-page brief, Plaintiff was able to file a second 125-page brief within two days.'

Each of these filings — ECF-89 through ECF-92, and ECF-96/97 — was generated in direct response to ECF-87. ECF-87 denied accommodation. The denial of accommodation forced filings challenging the denial. Those filings were then cited as evidence that accommodation was unnecessary. The logical structure: (a) deny accommodation; (b) wait for the litigant to file in response; (c) cite the response as evidence that accommodation is not needed; (d) deny any further accommodation challenges using the same standard. ECF-89-91 document the physiological cost of those filings — blood glucose dysregulation, WBC elevation to 21, missed Briumvi infusion. The cost was measured by FDA-certified devices. The court used the output without acknowledging the cost.

Vignettes for Part XXVI: The Procedural Architecture of Exclusion

V-H-16: The Brady 24-3353 Prototype: Adversarial Ex Parte Communication to a Federal Appellate Panel as the Founding Instance of Cross-Case Contamination *(Parts X, XV, XXIV — 24-3353 (JSW appeal, approx. 2024); ECF-141-2 ¶5; ECF-147 ¶178; ECF-89 fn.50; ECF-130-2)*

The Zela ex parte letters of March 2025 — documented in V-H-14 as the adversarial exploitation layer of the 24-6312 administrative closure mechanism — were preceded by a structurally identical deployment in appeal 24-3353, arising from 21-cv-04262-JSW before Judge White. Appeal 24-3353 provides the founding instance: a private party's ex parte communication to a federal appellate panel produced not merely dismissal but a specific judicial warning that the litigant would face vexatious designation for any further action against that party.

What Happened in 24-3353: The Official Record

The four primary sources describing 24-3353 are all filings in 19-cv-04392-BLF — specifically the post-dismissal filings of late 2025 and early 2026, when the pattern became relevant to challenge Freeman's December 1 dismissal. ECF-141-2 (Motion to Vacate, December 2025): Characterizes 24-3353 as a 'punitive dismissal when Brady intervened ex parte as she did here in ECF 140, 141.' This is the most legally precise formulation: it equates the mechanism in 24-3353 with the mechanism being deployed in ECF-140/141 before Freeman, identifying both as instances of Brady's ex parte interventions. ECF-147 (Declaration, January 2026): States that 'Ms. Brady has so far communicated ex parte with the Ninth Circuit Appeal court dismissing a meritorious appeal 24-3353' and identifies three ex parte targets: the 24-3353 panel, White in ECF-xxx, and Freeman in ECF-140/141. ECF-89, FOOTNOTE 50 (March 2025): Describes 24-3353 as a case where 'the court, en banc with 3 judges interceding on behalf of all of the judges of that court, invented and asserted facts that contradict the truth.' The 'en banc with 3 judges interceding' formulation parallels the Zela letter's mechanism in 24-6312: a small panel acting as a conduit for institutional interests. ECF-130-2 (October 2025): 'Federal appellate court warned plaintiff he would be declared vexatious if he dared take any action against Brady.' This framing — warning against action against a specific named private party — transforms vexatious designation from a case management tool into a judicially enforced shield for a private party.

The Vexatious Warning as a Judicial Weapon in Private Litigation

The 24-3353 warning about vexatious designation is analytically distinct from ordinary vexatious litigant findings. The paradigmatic vexatious litigant finding is directed at conduct — it identifies a pattern of frivolous filings and restricts future filing behavior generally. The 24-3353 warning, as described in ECF-130-2, was directed at a party: the litigant was warned that pursuing action against Brady specifically would trigger the designation. This converts the court's vexatious litigant power from a case management mechanism into a judicially endorsed immunity shield for a named private party.

Under Hazari's account in ECF-147, Brady's ex parte communications to judicial officers follow a consistent pattern: each communication, bearing what ECF-147 describes as 'the tell-tale signature writings of Mr. Hughmanick, combined with flavorings by Mr. Zela,' produces a specific judicial response hostile to Hazari's accommodation needs. The 24-3353 dismissal with vexatious warning is the first documented result; the ACMS-37 closure in 24-6312 is the second; the inclusion of Brady's documents in the BLF reconsideration proceeding (ECF-140/141) is the third.

Why 24-3353 Matters for the Litigation Privilege Analysis

FOUNDATIONAL PRINCIPLE: Litigation privilege immunizes all three ex parte communications (24-3353, Zela letters, ECF-140/141). The privilege applies regardless of the content, the intent, or the judicial outcome produced. SYSTEMIC PATTERN EVIDENCE: The 24-3353 instance establishes that the adversarial exploitation of judicial disability accommodation is not a single incident but a multi-year, multi-forum practice. It predates ECF-87 by approximately one year, predates the Zela letters by the same period, and appears — by Hazari's account — to have been the template for subsequent deployments. THE PARADOX FOR REFORM: Part XV's normative argument is that litigation privilege, as currently formulated, immunizes multi-forum, multi-year adversarial interference with disability accommodation. The 24-3353 instance strengthens this argument precisely because it is the earliest documented deployment: it shows that the privilege's immunity attached before the March 2025 sequence, and before the ECF-87 denial that produced the most quantified physical harm evidence (DQMS). The harm in 24-3353 is less quantified but the mechanism is identical. FOR INTERNATIONAL ACCOUNTABILITY: ECF-89's characterization of 24-3353 as 'the court, en banc with 3 judges interceding on behalf of all of the judges of that court' adds a layer to the exhaustion record: not only were domestic remedies unavailable in 24-3353, but the dismissal mechanism was characterized as institutional (3 judges acting for the whole) rather than individual. This institutional characterization, if accurate, satisfies the 'all available remedies' element of CAT exhaustion at the appellate level independently.

V-H-17: Appeal 24-3353: Brady's Ex Parte to Bumatay's Chambers and the Full Primary Source Record of the Founding Instance *(Parts X, XV, XVI, XXIV — 24-3353 (from JSW/4:21-cv-04262-JSW); DE-1, 4, 5, 7, 8, 9, 10, 11)*

The 24-3353 documents establish the complete primary source record for what V-H-16 and Part XV describe as the founding instance of Brady's adversarial ex parte pattern. The docket and filings reveal a precise 5-month sequence: from the appeal filing (May 2024) through Brady's physical letter to Bumatay's chambers (August 2024) to the October 30 dismissal and warning.

The Complete 24-3353 Timeline from Primary Sources

APR 16, 2024: JSW's order denying reconsideration — the order from which the appeal is taken. MAY 15, 2024 (DE-1): Notice of Appeal filed with ECF-75 (Freeman's 'good health' stay) as Exhibit 1. The contrast of Freeman's accommodation with JSW's denial is the foundation of the appeal. MAY

28, 2024: 24-3353 opened. Panel: Barry G. Silverman, Patrick J. Bumatay, Gabriel P. Sanchez. JUN 20, 2024 (DE-4): Panel dismisses for lack of jurisdiction under Branson v. City of Los Angeles. April 16 order not final or appealable. JUL 2, 2024 (DE-5): Rehearing petition filed. Key argument: 'THE DENIAL OR FAILURE OF DISABILITY ACCOMMODATION OR SAFE HARBOR IN ANY COURT MUST BE IMMEDIATELY APPEALABLE.' JUL 9, 2024 (DE-7/8): 200,000+ word safe harbor and accommodation motion filed under seal, requesting accommodation to write the rehearing petition. Largest single filing in the record. JUL 30, 2024 (DE-9): Amended Notice of Appeal filed to add JSW's ECF-138 and ECF-141 orders. AUG 26, 2024 (DE-10): Brady's physical letter arrives at 9th Circuit after routing through Bumatay's personal chambers in the Southern District. 11 attachments, including Greenwood ability order. Brady requests vexatious designation or that court 'shut him down.' Not filed through ECF; not served on Hazari. OCT 30, 2024 (DE-11, Silverman/Bumatay/Sanchez): — Rehearing (DE-5): DENIED — Accommodation (DE-8): DENIED AS MOOT — Exhibit B sealing (DE-7): GRANTED — Brady's vexatious request (DE-10): DECLINED BUT WARNING ISSUED: 'continued filings of appeals in this action without a reasonable basis for this court's jurisdiction may result in imposition of sanctions or a prefiling review order' — Brady removed from docket as non-party — 'No further filings will be entertained' NOV 7, 2024: Mandate issued.

What This Record Establishes for the Thesis

First, Brady's routing of her submission through Bumatay's physical chambers (Southern District) — bypassing ECF — means the submission was never served on Hazari, never filed as a formal motion, and was received by the court through an administrative channel (a chambers staff forwarding). The October 30 order's treatment of DE-10 as a motion 'construed in part as a motion to correct the docket' retroactively converted a private chambers communication into a court filing. The litigation privilege attached at that point.

Second, the accommodation denial-as-moot technique completes the pattern documented in BLF ECF-38/39 (2020). In 24-3353, the sequence is: dismiss appeal → accommodation motion mooted → no merits ruling on accommodation necessity. In BLF ECF-38/39, the sequence was: deny TRO → accommodation motion denied as moot. Both instances use mootness to avoid creating any precedent on whether disability accommodation is required in the specific procedural context at issue.

Third, the 200,000+ word accommodation motion (DE-7/DE-7_2) is the first comprehensive articulation of the 'secreted policy' theory and the BLF/JSW contrast in the appellate record. It contains 80+ peer-reviewed medical citations, the Posner quotation, and a detailed chronological account of every JSW accommodation denial. The thesis's existing characterization of the accommodation motion as a 'Safe Harbor and Disability Accommodation demand' understates its scope. It is a comprehensive legal treatise on the systematic disability rights failures of the Ninth Circuit, documenting the BLF/JSW contrast across more than 100 pages.

The 'No Further Filings' Pattern Across Three Cases

23-15221 (Schroeder/Berzon/Owens, 2023): 'No further filings will be entertained in this closed case.' 821 pages by Hazari, dismissed as frivolous. 24-3353 (Silverman/Bumatay/Sanchez, October 30, 2024): 'No further

filings will be entertained in this closed case.' Accommodation denied as moot, Brady's vexatious request declined, warning issued. 25-3879 (S.R. Thomas/Silverman/Bennett, September 2, 2025): 'No further filings will be entertained in this closed case.' Dismissed for lack of jurisdiction. 25-5649 (Silverman/Paez/H. Thomas, January 29, 2026): 'No further filings will be entertained in this closed case.' Dismissed as frivolous. The phrase appears verbatim across four separate appellate dismissals spanning three years. Silverman appears in three of the four panels (24-3353, 25-3879, 25-5649). In 24-3353, accommodation was denied as moot by the same panel that issued the vexatious warning in response to Brady's ex parte letter. In 25-3879, the same dismissal language appeared 11 months later.			
V-H-19	23-15221 DE-18 (show cause response with exhibits); DE-19 (Zela bankruptcy letter); DE-20 (dismissal); DE-21 (mandate)	Parts VI, X, XIV, XVIII, XXIV, XXVII	Show cause response: MS Stress Equation paper (Solomon/Boruta/Horvath/MacKellar, peer-reviewed June 2023, Hazari Data Set 2010-2017); Minkowski writ H050828 (37,675 words as Exhibit B; judge: "as long as one party is ready to proceed, we can have a trial"); Buchanan UCSF ECT recommendation (diagnosed recurrent major depressive disorder + anxiety, scores at maximum, "quite rare"); Bakin Roots letter (no Covid antibodies; antibiotic injections; controlled substances; steroids; diabetic coma risk; 24-hour care). Cassini-Choi contradiction: Cassini (neurological exam) vs Choi (neuropsychological, 1/3 cognitive speed) one week apart. Bankruptcy 23-50690 (June 26, 2023). DE-15: third IFP motion denied in dismissal order. Zela invokes All Writs Act vexatious designation request.

V-H-18: Appeal 23-15221: The Form 4 Exposure, the Greenwood Chain, and the Two-Stage Frivolousness Dismissal *(Parts X, XIV, XV, XVIII, XXIV, XXVII — 23-15221 from JSW/4:21-cv-04262-JSW; DE-1 through DE-21, docket)*

Appeal 23-15221 is the earliest Ninth Circuit appellate proceeding in which the complete adversarial exploitation mechanism is documented through primary sources. It predates the 24-3353 Brady letter by seventeen months, the March 2025 Zela letters by two years, and ECF-87 by two years and one month. It is the proceeding in which the Greenwood order first appears in adversarial appellate submissions, in which the Form 4 privacy mechanism first fails, and in which Zela's 'law school graduate' allegation first appears on the appellate record — each later reprised.

The Four Key Mechanisms First Documented in 23-15221

1. THE GREENWOOD ORDER: Zela submits the Greenwood 'ability to litigate' order to the 23-15221 panel via his preliminary opposition (March 29, 2023, DE-10). This is the first appellate submission of the order. It was submitted to Brady's JSW opposition in August 2022 and to the 23-15221 panel in March 2023, then to the 24-3353 Bumatay chambers letter in August 2024, then to Freeman as ECF-83 Exhibit A in March 2025. The order originated from Greenwood's October 2019 reversal of her own in camera finding that Hazari was disabled. 2. THE FORM 4 FINANCIAL EXPOSURE: The fee waiver (Form 4) submitted under seal (DE-3) was compelled into public filing through 9th Cir. R. 27-13(c)'s service requirement. The June 1 Friedland/Sung order then formally unsealed DE-3, placing complete financial data (bank balances, income, spouse's employer) in the public record of a case where Brady's counsel had specifically contested the financial disability claims. This structural compulsion — seal to prevent exploitation, rule forces disclosure, disclosure enables exploitation — is the accommodation privacy paradox in its most precise documentary form. 3. THE LAW SCHOOL ALLEGATION: Zela's preliminary opposition (DE-10) alleged that Hazari 'repeatedly misled the Courts, claiming that he is ignorant and unfamiliar with the practice of law, while concealing the fact he is a law school graduate.' This allegation, if true, would affect the IFP analysis. It appears in the record without any response to its accuracy on the merits. 4. THE TWO-STAGE DISMISSAL PATTERN: Friedland/Sung (June 1, 2023) issued the OSC and denied all relief. Schroeder/Berzon/Owens (August 18, 2023) dismissed as frivolous. The same two-stage pattern appears in 25-5649 (Order to Show Cause October 30, 2025 → Silverman/Paez/H. Thomas dismissal January 29, 2026). Both use §1915(e)(2) as the operative standard; both terminate with 'No further filings will be entertained.'

The Manoukian Structural Context

The 23-15221 filings provide the specific structural fact that explains the absence of any successful writ challenge to Manoukian: his wife is a justice in the California Sixth District Court of Appeal. Every writ that Hazari filed against Manoukian's conduct was adjudicated by the court where Manoukian's wife sits. This is documented in DE-2_1 and DE-11 and establishes why the state court pathway for challenging Manoukian's $600,000 attorney fee award — itself awarded without any opportunity for Hazari to participate given his concurrent stays in the federal proceedings — was structurally foreclosed at the appellate level.

The SSA independently determined Hazari's disability as of July 1, 2018 — establishing that a federal government agency, operating under its own strict criteria, made the same disability finding that the state courts denied beginning in the same year. This is documented in DE-2_2 and provides the inter-institutional calibration point: the same person whom the state courts repeatedly found to be non-disabled was independently assessed by the Social Security Administration as meeting its demanding severity and impairment requirements from mid-2018.

V-B-4: The BAP Ambiguous Deadline: Cognitive Disability as the Specific Target of Procedural Complexity *(Parts XIV, XVIII, XXIV, XXVII — BAP NC-24-1204; 25-5649 DE-1, DE-6, DE-17, DE-22)*

The BAP case NC-24-1204, from which appeal 25-5649 arose, is a case study in procedural complexity deployed against cognitive disability. Every element of the BAP's conduct — from the mail-only filing requirement to the ambiguous dual-deadline — operated specifically against the documented cognitive impairment that the BAP was told about from its first communication.

The Specific Mechanism: How the Ambiguous Deadline Targeted Cognitive Impairment

THE COGNITIVE IMPAIRMENT: Disclosed to BAP from December 2024 opening. Processing speed measured at one-third of normal population by neuropsychologist (ECF-66 in BLF record). Documents requiring 'forensic dissection' to parse are per se inaccessible to this litigant without accommodation. THE PACER BARRIER: Electronic filing in BAP requires self-training and approval through PACER. The self-training process was impossible to complete given disclosed cognitive impairments. This confined the appellant to US mail with 5-day delivery variability. The BAP was informed of this limitation. THE MAY 22 DUAL DEADLINE: Brand's 'Final Warning' order contained two internally inconsistent deadlines: (1) a normal filing deadline (brief deposited in mail by June 5) and (2) a received-by deadline (brief physically in BAP Clerk's hands by June 5). These are irreconcilable. With 5-day mail delivery, meeting a received-by deadline requires mailing by June 1. Receipt of the order by US mail on or after May 27 (5-day standard) left 4 days maximum to write and mail the brief. THE FORENSIC DISSECTION REQUIREMENT: The July 31, 2025 BAP order acknowledged the ambiguity and said the ambiguity was resolved by 'a repeated reading and forensic dissection of the July 31, 2025 order.' A document requiring forensic dissection to parse is not accessible to a litigant with disclosed cognitive impairment processing at one-third speed without accommodation. THE BAP'S OWN STANDARD: The BAP cited Roman v. Jefferson for the proposition that 'the ADA does not apply to federal courts,' then simultaneously claimed to provide 'sufficient accommodations.' The combination — false legal proposition + nominal compliance language — is the accommodation paradox applied by a tribunal that denied its own legal obligation to accommodate. RESULT: The BAP construed the ambiguity it created against the cognitively impaired party who lacked the cognitive processing to identify the inconsistency in real time, while holding the failure to identify that inconsistency as grounds for dismissal.

The BAP in the Treaty Body Exhaustion Record

For purposes of the CAT Article 20 and CRPD Optional Protocol exhaustion requirement, the BAP proceedings add a dimension that none of the prior courts provided: a forum that expressly cited an incorrect legal proposition ('the ADA does not apply to federal courts') as its reason for denying meaningful accommodation, while simultaneously claiming to 'endeavor' to provide sufficient accommodation. The gap between the legal proposition and the professed standard is itself the harm mechanism. It generates an appearance of procedural regularity (the BAP said it would accommodate) while producing substantive discrimination (the BAP cited law saying it had no obligation to do so).

The 850-pages-versus-4-page contrast cited in the BAP's July 31 order mirrors the 'rapid, prolix filings' standard in ECF-87. Both use the litigant's output — generated under compulsion — as evidence that accommodation is unnecessary. In the BAP's version: 850 pages of filings challenging the judicial torture constitutes proof that compliance with a 4-page brief request was feasible. The output of the torture is the evidence that the torture need not have produced accommodation.

The UN Secretariat Communication and the International Accountability Trigger

Two documents in the 25-5649 record — DE-17 (Response to OSC, December 2025) and DE-24 (Errata to Rehearing Petition, February 2026) — disclose a communication with the UN Secretariat that preceded the 2025 disqualification motions. DE-17 states: 'Appellant followed information flowing from a communication with the U.N. Secretariat indicating that judicial conduct must be evaluated as the root cause of the human rights violations that he and others reported to U.N. Special Procedures in 2024.' DE-24 confirms: 'Both motions filed in this appeal on 10/15/2025, and other cases, were inspired by communication with the United Nations in 2024.'

This establishes a chronological sequence for the disqualification motions: (1) 2024: Communications with UN Special Procedures regarding judicial disability discrimination; (2) 2024: UN Secretariat responds indicating judicial conduct should be evaluated as the root cause; (3) February 2025: En banc disqualification of all 47 Ninth Circuit judges filed in 24-6312; (4) October 2025: Further disqualification motions in 25-5649 and other cases. The disqualifications were therefore not, as Freeman characterized them in ECF-87, the product of disagreement with court orders. They were the output of a UN-directed evaluation of judicial conduct as root cause. For the UNCAT Article 20 exhaustion analysis, this sequence establishes that the international accountability mechanism was triggered by the domestic process — not as a last resort after all domestic remedies, but as a parallel response to the failure of domestic remedies that the UN itself identified.

V-B-3: Sequential Exhaustion as the Design Outcome (Part XXVI § 26.3)

HAZARI SEQUENTIAL RECORD: July 2019: Complaint filed. 2019-2025: Ten-plus accommodation requests. Pattern: each request denied; each denial met with a further request and a further period of unaccommodated participation causing additional documented harm. 2021: State court vexatious designation. Fee judgment: $586,427. 2024: Ninth Circuit proceedings 24-3353, 24-6312 added to the prior six. 2025: ECF-87 (March 10) — eleventh accommodation request denied ('rapid, prolix filings'). 2025: ECF-139 (December 1) — Order of Dismissal. 2026: ECF-150 (January 23) — Final Judgment. 2026: ECF-151 (February 20) — Second Notice of Appeal. MINKOWSKI SEQUENTIAL RECORD: May 2022: First accommodation request. Denied as untimely. September 2022 through May 2024: Six writ petitions (H050352, H050828, H051179, H051475, H051674, H052155). All denied. April-June 2024: Second residential treatment admission. Vexatious designation obtained while in residential treatment. 2025: Two SCOTUS writs (S284033, S284308). First delayed six months; second 'lost.' In both cases, the sequential architecture produced the outcome Part XXVI documents: by the time the sequential remedy options were exhausted, the case had reached irreversible procedural damage — dismissal with prejudice, vexatious designation, financial sanctions, forced relocation. No sequential remedy from any point in either timeline could undo the permanent damage already done. THESIS PROPOSITION (Part XXVI § 26.3): The Hazari and Minkowski sequential filing records are the case studies that the analysis abstracts. The design outcome in both cases was identical: permanent exclusion after exhaustion of sequential remedies, with each step causing additional harm.

V-M-5: Filing Writs During Residential Treatment — The Impossible Procedural Demand (Part XXVI)

On April 29, 2024, Julia Minkowski was admitted to residential psychiatric treatment for the second time, remaining until June 19, 2024. During this period: the vexatious motion was filed and adjudicated (June 25, 2024 — six days after discharge). Writ proceedings were simultaneously pending in the California appellate hierarchy. Each writ required: legal research identifying the specific standards applicable to that writ; preparation of the petition; meeting filing deadlines; and continued appearance at trial court proceedings (no stay had been obtained). The residential treatment admission documented the specific reason for step-up: the prior partial hospitalization level of care had become insufficient because the court proceedings continued to impose standard demands without accommodation, generating the stress that PHP could not contain. In other words: the court proceedings caused the residential treatment; the residential treatment made the writ proceedings impossible; the writ proceedings that became impossible were the proceedings challenging the accommodation denial that caused the residential treatment. This is not a logical paradox. It is what happened. The procedural architecture produced the outcome with documentary precision: the accommodation denial caused the hospitalization; the hospitalization made the legal challenge to the accommodation denial impossible; the impossibility produced the procedural default; the procedural default justified the vexatious designation; the vexatious designation permanently restricted access to the courts that had caused the hospitalization. THESIS PROPOSITION (Part XXVI § 26.6; Part XXIV Mechanism 4): The Minkowski residential treatment/writ filing record is the specific documented instance of the exhaustion trap and the vexatious designation weaponisation mechanism operating in combination. The sequencing is documented with dates.

V-H-19: The 23-15221 Show Cause Response: A Peer-Reviewed Scientific Paper, Three Medical Exhibits, and the Minkowski Corroboration Document as Evidence Before the Frivolousness Panel *(Parts VI, X, XIV, XVIII, XXIV, XXVII — 23-15221 DE-18 (show cause response); DE-19 (Zela bankruptcy letter); DE-20 (dismissal); DE-21 (mandate))*

Hazari's response to the June 1, 2023 show cause order (DE-18, filed July 7, 2023) is a 119,947-word document that incorporates four primary source exhibits into the 23-15221 federal appellate record: the complete peer-reviewed MS Stress Equation paper (Exhibit A); Minkowski's full writ H050828 (Exhibit B); the Buchanan UCSF psychiatric letter (Exhibit C, in part); and the Bakin Roots Community Health Center letter (Exhibit C, in part). Thirteen days before the show cause deadline, Hazari had filed Chapter 13 bankruptcy (case 23-50690, assigned to Judge Stephen L. Johnson) — which is why Zela's July 20 letter (DE-19) states that Brady cannot respond to the show cause without potentially violating the automatic bankruptcy stay, and instead requests vexatious litigant designation under the All Writs Act.

The Show Cause Response Record: Four Exhibits Before the Schroeder/Berzon/Owens Panel

EXHIBIT A — THE MS STRESS EQUATION: Solomon, Boruta, Horvath, MacKellar. Journal of Medical Statistics and Informatics. Received Feb 1, 2023; accepted May 20, 2022; published June 13, 2023. Based on 'Hazari Data Set' — 2,561 days of daily medical records 2010-2017. Core finding: distress directly and mathematically causes MS relapse. It is possible to 'trap' a patient in relapse through sufficiently frequent distress at sufficient magnitude. Peer-reviewed by qualified subject-matter experts with no competing interests. EXHIBIT B — MINKOWSKI WRIT H050828: 37,675 words. Santa Clara County Family Court case 19FL004302. Judges Geffon and Hendrickson. Sanctions exceeding $37,000 imposed for disability-related conduct. March 1, 2023 transcript: 'as long as one party is ready to proceed, we can have a trial' (Hendrickson). MC-410 denial language: 'would fundamentally alter the court hearing in a way that would render the proceedings unfair to the other party.' ADA Coordinator non-existent at 6th District despite website policy. CA Supreme Court: ADA accommodation cannot extend Rule 8.500(e)(2) deadline. EXHIBIT C — BUCHANAN (UCSF, June 23, 2023): Diagnoses: recurrent major depressive disorder; unspecified anxiety disorder. Questionnaire scores 'consistently at or very near the maximum' — described as 'quite rare.' Treatment escalated to recommendation of voluntary psychiatric hospitalization for electroconvulsive therapy (ECT). Hazari declined: infection risk (contracted Covid during prior hospital stay) and concern for wife. Supervising team: Dr. Tianyi Zhang, Dr. John Chamberlain.

EXHIBIT C — BAKIN (Roots Community Health Center, July 6, 2023): No Covid antibodies. Large antibiotic injections for uncleared bacterial infections. Prescription controlled substances to stay awake for legal work. Monitored steroids for distress management. Diabetic coma risk during sleep (blood sugar drops too low). Shortness of breath; no stamina. 24-hour care required. Significant weight loss and visible aging. Biweekly monitoring confirms court-case-to-deterioration correlation. BANKRUPTCY 23-50690 (June 26, 2023): Chapter 13 filed before show cause response. Attorney: Stanley A. Zlotoff. Trustee: Devin Derham-Burk. Judge: Stephen L. Johnson. Zela invokes All Writs Act in DE-19 seeking vexatious designation rather than filing substantive response.

What the Panel Had and What It Did

The Schroeder/Berzon/Owens panel received this record — a complete peer-reviewed scientific paper establishing the mathematical relationship between court-induced distress and MS relapse; a 37,675-word writ from an independent disabled litigant corroborating the structural discrimination claims; two medical letters documenting ECT-level psychiatric deterioration and multi-system medical collapse including diabetic coma risk and immune failure — and issued a one-sentence order: 'we conclude this appeal is frivolous.' The order denied three IFP motions (DE-3, DE-9, and DE-15 — the latter being a third IFP motion filed during the show cause period). The panel did not address any of the scientific evidence, the Minkowski corroboration, or the medical exhibits. The mandate issued September 11, 2023.

The Cassini-Choi contradiction, documented in detail in DE-18, provides the specific mechanism by which the adversarial expert record corrupted the entire accommodation history: Cassini's neurological examination (not neuropsychological), finding 'no cognitive problems,' was used by Manoukian as the dispositive expert authority. One week later, a public-employee neuropsychologist at Santa Clara County's own hospital found cognitive processing speed at one-third of normal. The Cassini fraud traveled from the state court judgment into Zela's federal appellate submissions and ultimately into ECF-83 and ECF-87. The panel that dismissed 23-15221 as frivolous had Choi's findings before it, embedded in DE-18's detailed documentation of this contradiction.

The Minkowski Writ as Primary Source Evidence in the 23-15221 Record

Julia Minkowski's Writ of Review H050828, filed in the California Sixth District Court of Appeal, appears in full as Exhibit B to Hazari's show cause response (DE-18, 23-15221). The writ is 37,675 words and is certified by Minkowski under penalty of perjury. It becomes primary source evidence in the federal appellate record through this submission — the first time the complete Minkowski record enters a Ninth Circuit proceeding. The Schroeder/Berzon/Owens panel received this document alongside the MS Stress Equation paper and the Buchanan and Bakin medical letters before rendering the August 18 frivolousness dismissal.

The writ documents Minkowski's experience in Santa Clara County Family Court, Case 19FL004302, before Judges Geffon and Hendrickson. Several passages have direct thesis relevance. The May 24, 2022 transcript documents Judge Geffon proceeding with a hearing the day after Minkowski was taken from the courtroom to the emergency room — Geffon states that because Minkowski can speak to him via video, she can participate. The March 1, 2023 transcript documents Judge Hendrickson's ruling that 'as long as one party is ready to proceed, we can have a trial.' The MC-410 denial at Exhibit 5 to the writ contains the exact language: 'The request would fundamentally alter the court hearing in a way that would render the proceedings unfair to the other party. The request would essentially render the applicant exempt from many well-

established rules of procedure and courtroom conduct by which the other party would remain bound.' This language is the judicial expression of the accommodation framework that ECF-87 in the BLF case deploys when denying Hazari's 11th accommodation request using the 'rapid, prolix filings' standard.

Minkowski's documented sanctions by mid-2023 exceeded $37,000 imposed for disability-related conduct. The writ documents that the California Supreme Court returned her filing on the ground that its own Rule 8.500(e)(2) deadline could not be extended for disability accommodation — the same ADA-FRAP incompatibility argument that Hazari makes throughout 23-15221. The ADA Coordinator of the Sixth District Court of Appeal did not respond to Minkowski's grievance despite the court's published policy requiring response, mirroring the ADA Coordinator resignation pattern in Hazari's state court proceedings.

The Cassini-Choi One-Week Contradiction: Expert Fraud in the Disability Accommodation Record

DE-18 of 23-15221 provides the most precise chronological documentation of the Cassini fraud, which is the evidentiary anchor of Manoukian's perpetual accommodation denial. The sequence is as follows: Cassini, a neurologist retained by Brady's attorneys, examined Hazari and produced a report finding no cognitive problems and full capacity for litigation. One week after that examination, Dr. Choi — a neuropsychologist employed by Valley Medical Center (Santa Clara County's own public hospital) — conducted a December 2019 neuropsychological evaluation as part of routine covered care. Choi found that Hazari's cognitive processing speed had been reduced to one-third of the speed and effectiveness of the average person.

These two examinations — one week apart, one by a paid adversarial expert and one by a hospital-employed public employee — produced completely contradictory findings. The distinction between their methodologies is decisive: Cassini conducted a neurological examination, which is designed to assess motor, sensory, and reflex function. Neuropsychological examination (Choi's methodology) specifically tests cognitive processing, including reading comprehension, processing speed, and executive function. DE-18 characterizes Cassini's finding as 'fraudulent' on the ground that a neurologist conducting a neurological exam is not qualified to assess cognitive impairment using the tools Choi deployed, and therefore Cassini's conclusion that Hazari has 'no cognitive problems' rests on a methodology that cannot detect the specific deficits Choi subsequently measured. The record shows that after Choi's contradictory findings were brought to Manoukian's attention, he 'fervently pursued and rewarded this crime by Cassini' by continuing to rely exclusively on Cassini's report. Manoukian's dismissal of 16CV295730 is explicitly grounded, sub silentio, in his acceptance of Cassini's finding and rejection of the Choi data.

The Cassini fraud is not merely relevant to the state court proceedings. The same Cassini report traveled into the federal court record: Zela's preliminary opposition in 23-15221 (DE-10) and Brady's supplemental filings rely on the vexatious litigant designation and the state court accommodation denials that themselves depend on Cassini's finding. ECF-83 in the BLF case (Rossi's March 2025 request for judicial notice) attaches the Greenwood order, which itself was issued in the same 2019 period in which Cassini and Choi conducted their examinations. The chain connecting Cassini's fraud to ECF-87 is: Cassini → Manoukian dismissal → vexatious designation → Greenwood order → Zela submissions in federal courts → ECF-83 → ECF-87.

The Vignette Map: Cross-Reference Index

The following table cross-references each vignette to the thesis Parts whose propositions it illustrates, enabling readers to navigate between the abstract legal analysis and its specific factual grounding.

Vignette	Case Record	Parts Illustrated	Core Proposition Demonstrated
V-H-1	Hazari ECF-60/61	Parts II, XIX	Named coordinator (Snooki Puli, ECF-12) but no protocol, assessment, or self-evaluation. ADA records request (ECF-60) struck from docket as inadvertently filed without substantive engagement. Coordinator name does not equal operational program.
V-H-2	Hazari ECF-139	Parts II, VI, IX, XI, XXIV	'Not required to provide any accommodations' — the smoking gun for the deliberate omission fiction and the rational basis contradiction
V-H-3	Hazari ECF-27, 37, 74	Parts V, XXI	Jurisdictional custody CIDT conditions: four physicians, peer-reviewed harm mechanism, 0.1 percentile processing speed, no withdrawal without total loss
V-H-4	Hazari, full record	Part VI	All three court-caused harm categories in one case: caused (PTSD), exacerbated (immune collapse), maintained (dismissal)
V-H-5	Hazari ECF-87	Parts VI, X, XXIV	'Rapid, prolix filings' — snapshot inference applied to disability manifestations, documented in the order itself
V-H-6	Hazari IAJ 2025	Part VII	Istanbul Protocol four elements satisfied: state authority, foreseeability, intentional continuation, severe suffering
V-H-7	Hazari, state court	Parts XIII, XXIV	Vexatious designation cycle: disability-caused behavior → abuse characterization → permanent exclusion → $586,427 fee judgment
V-H-8	Hazari, full record	Part XXI	All five jurisdictional custody CIDT elements: control, knowledge, compelled participation, harm compounding, permanent foreclosure
V-H-9	Hazari ECF-116, ECF-117; 25-3879; 25-5649 DE 21	Parts XXIV, XXVII	Appellate jurisdictional wall: accommodation denial unreviewable before final judgment (non-final); unreviewable after (merged into failure to prosecute). ECF-117 invokes UNCAT Art. 20 on official docket. Silverman on both appellate dismissal panels.
V-M-1	Minkowski, June 2024	Parts XIII, XXVI	Vexatious designation obtained during residential treatment caused by the discrimination being designated as abuse

Vignette	Case Record	Parts Illustrated	Core Proposition Demonstrated
V-M-2	Minkowski IAJ 2025	Parts XXI, XXII, XXVII	'Shopping in San Jose' fabrication: false geographic alibi, dignity degradation, documented §242 basis
V-M-3	Minkowski 2023-2024	Part XXII	IOP→PHP→residential (twice): treatment escalation as psychological CIDT severity scale
V-M-4	Minkowski S284033/S284308	Part XXIV	Two SCOTUS writs: one delayed six months, one 'lost' — administrative obstruction as a layer of the avoidance mechanism
V-M-5	Minkowski April-June 2024	Parts XXVI, XXVII	Filing writs during residential treatment: the impossible procedural demand as the documented design outcome
V-B-1	Both, IAJ investigations	Part X	Seven systemic markers across two independent cases: same five structural mechanisms, same court system, different victims
V-B-2	Both, 14 proceedings	Part XVIII	Accommodation paradox: Path B operated in 8 Ninth Circuit + 6 California writ proceedings — 14 documented instances
V-B-3	Both, full timelines	Part XXVI	Sequential exhaustion design outcome: irreversible procedural damage in both cases after full sequential remedy exhaustion
V-H-10	Hazari ECF-84	Parts VII, XXI	Rossi Admission: defense counsel declares under oath that physician letters document substantial incapacity and record plaintiff statement that judicial treatment is cruel and inhuman — then argues against accommodation. Knowledge + continuation = CIDT intentionality proven by opponent's own filing.
V-H-11	Hazari ECF-75, ECF-87	Parts VI, X, XVIII	From Good Health to Prolix Filings in 12 months: same medical record, same judge, same sealed physician letters. March 2024: stay granted, court wishes good health. March 2025: accommodation denied, rapid filings demonstrate capacity. Snapshot inference in two consecutive orders.
V-H-12	Hazari ECF-138	Parts XXVI, XXVII	Technical filing trap: 53-page updated complaint filed as Request for Judicial Notice on court-ordered deadline. Substantive content satisfies legal requirement; filing type classification does not. Case dismissed for failure to file amended complaint. Procedural architecture operates precisely.

Vignette	Case Record	Parts Illustrated	Core Proposition Demonstrated
V-H-13	BAP NC-24-1204; 25-3879; 25-5649 DE 21	Parts X, XXIV, XXVII	Three-forum pattern: BLF district court (Freeman), BAP (Corbit, Brand, Faris), Ninth Circuit (Silverman on both appellate panels after individual disqualification served). Four accommodation demands pending at BAP dismissal. Jan 6/7 briefing schedule set then vacated without explanation. Mandate Feb 20, 2026.
V-H-14	24-6312; ACMS-37; Zela ex parte letters	Parts XIII, XV, XVIII, XXIV, XXV, XXVII	Administrative closure trap: accommodation granted without merits adjudication, generating no precedent. Disqualification of 47 judges pending 382 days; Silverman signed two more dismissals while unadjudicated. Brady ex parte letter exploits ACMS-37 within 4 days. Zela cites ECF-87 to White 4 days after issuance. DQMS data provides first FDA-verified physiological measurement of judicial causation.
V-H-15	19-cv-04392-BLF ECF-78, 80, 83, 87; March 2025	Parts VI, X, XV, XVIII, XXIV	Ten-Day Opposition Architecture: first-ever defendant opposition (ECF-78, Feb 28) → unsealing of 5-year sealed medical records (ECF-80, Mar 3) → five other-court exhibits via judicial notice (ECF-83, Mar 7) → accommodation denied based entirely on other-court evidence (ECF-87, Mar 10). Cross-case contamination mechanism documented and immunized by litigation privilege.
V-H-16	24-3353 (JSW appeal, approx. 2024); ECF-141-2 ¶5; ECF-147 ¶178; ECF-89 fn.50; ECF-130-2	Parts X, XV, XXIV	Brady 24-3353 Ex Parte Prototype: Brady's ex parte communication to a Ninth Circuit panel in appeal 24-3353 produced dismissal with a judicial warning that Hazari would face vexatious designation for any further action against Brady. Described in ECF-141-2 as 'punitive dismissal when Brady intervened ex parte as she did here in ECF 140, 141.' Establishes the adversarial exploitation pattern predating the March 2025 Zela letters by approximately one year.
V-B-4	BAP NC-24-1204; 25-5649 DE-1, DE-6, DE-17, DE-22	Parts XIV, XVIII, XXIV, XXVII	The BAP Ambiguous Deadline: Procedural complexity as a weapon against cognitive disability. BAP cited Roman v. Jefferson (ADA does not apply to federal courts) while claiming to provide accommodation. Dual-deadline (filing vs. received-by June 5) required forensic dissection to identify — impossible for litigant with one-third processing speed. 850 pages of challenge filings vs. 4-page requested brief contrast. PACER self-training requirement prevented electronic filing. ZERO days of

Vignette	Case Record	Parts Illustrated	Core Proposition Demonstrated
			rest since ACMS-37 despite simultaneous administrative closure in 24-6312.
V-H-17	24-3353 primary sources (DE-1, 4, 5, 7-10, 11, 13); docket 20241223	Parts X, XV, XVI, XXIV	Appeal 24-3353 complete primary source record: Brady physical letter to Bumatay chambers (not ECF-filed, not served); 11 attachments including Greenwood order (later reused in ECF-83); accommodation motion DE-8 denied as moot; warning language "may result in imposition of sanctions or a prefiling review order" (NOT vexatious); DE-7/7_2 = 200,000+ word safe harbor treatise with 80+ medical citations; Branson v. Los Angeles as dismissal doctrine; "no further filings" language across 23-15221, 24-3353, 25-3879, 25-5649.
V-H-18	23-15221 primary sources (DE-1 through 21, docket); 23-15221-2_2, 5, 10, 11, 12, 13	Parts X, XIV, XV, XVIII, XXIV, XXVII	Appeal 23-15221 complete record: Greenwood October 2019 in camera disability finding then reversed (ADA Coordinator resigned); Form 4 financial data compelled public by 9th Cir. R. 27-13(c) (Friedland/Sung June 1 unsealed DE-3); Manoukian wife is Sixth District justice (writ immunity); SSA July 1, 2018 disability determination; two-stage dismissal (Friedland/Sung OSC → Schroeder/Berzon/Owens frivolous Aug 18, 2023); SCOTUS 23-7017 cert denied May 20, 2024; law school graduate allegation; prior appeals 19-16291, 22-16046, 22-16174 documented in docket.

The Vignettes as the Thesis's Evidentiary Core

The twenty-eight vignettes in this Appendix serve a single function: they prevent the thesis's legal architecture from floating free of its factual grounding. The accommodation paradox is not a philosophical puzzle; it is what happened across fourteen appellate and writ proceedings in two cases, three independent institutional forums, two overlapping appellate panels, and one documented instance of adversarial exploitation of a protective appellate order — one of whose members (Silverman) sat on both dismissal panels after being individually served with disqualification motions. The jurisdictional custody CIDT analysis is not a doctrinal extension; it is a description of what was documented in ECF-27, ECF-37, ECF-74, and the IAJ investigation across six years of one case. The procedural architecture of exclusion is not a theoretical taxonomy; it is the Minkowski residential treatment/writ filing timeline, documented with specific dates. For every abstract proposition this thesis advances, there is a specific documented event. The event happened to a real person on a specific date in a specific court. That specificity is not incidental to the legal argument; it is its foundation. The thesis sets the standard that courts must follow. These vignettes are the evidence that the standard is violated, repeatedly, systemically, and with predictable human consequences.

SUPPLEMENT A

Practical Implementation Guide

The following implementation guide translates the harmonized constitutional-statutory-international framework into concrete standards for the three principal adjudicative contexts, incorporating the court-caused disability harm analysis of Part VI throughout.

§ A.1 Judicial Accommodation Requests

Step 1 — Triggering Documentation. Any documentation from a treating physician establishing the existence of a qualifying condition and its functional impact triggers the court's obligation to engage in individualized accommodation analysis. Under the ADAAA's episodic impairment provision, the condition must be assessed in its full clinical reality. Under Part VI's prevention standards, the medical record must specifically be reviewed for evidence that standard litigation procedures have caused or risk causing exacerbation of the condition.

Step 2 — Individualized Assessment with Medical Evidence Review. The court must conduct an individualized assessment of the specific accommodation requested and the specific functional limitations documented. In cases where the record contains medical evidence of litigation-caused exacerbation, the assessment must specifically address the causal relationship between prior procedural demands and documented health consequences. Formulaic denials, identical-language denials, and denials based on historical episodes of apparent functionality all violate ADA, CRPD, and constitutional standards.

Step 3 — Constitutional Proportionality and the Mathews Balance. The proportionality analysis weighs: (a) the weight of the private interest in access to judicial proceedings; (b) the risk of erroneous deprivation including denial of merits adjudication due to disability-caused procedural default; (c) the full medical consequences of denial — including both current harm and foreseeable exacerbation based on the current medical record; and (d) the governmental interest in docket management. Where denial will cause documented physical or psychological harm, the constitutional balance strongly favors accommodation, and denial constitutes the category of court-caused harm analyzed in Part VI.

Step 4 — Alternatives Analysis. If the specific accommodation requested would impose a genuine burden, the court must identify and offer available alternatives achieving effective access to justice with lesser burden. The court may not simply deny and proceed; it must affirmatively seek an alternative. Failure to do so is both a statutory violation and — where physical or psychological harm results — the institutional conduct that Part VI identifies as giving rise to court-caused disability harm liability.

Step 5 — The Non-Derogable Floor and Safe Harbor. Regardless of proportionality outcomes, courts cannot impose case-dispositive sanctions for failures causally attributable to a documented disability without making a specific finding that the failure was not so caused. This

is the non-derogable floor of the Griffin-Lane doctrine and the legislative safe harbor reform proposed in § 6.11. Where such a finding cannot be made — where the record establishes disability causation — dismissal for failure to prosecute is not a legitimate exercise of docket management authority; it is a constitutional violation.

§ A.2 Agency Enforcement Standards

- Enforcement investigations should treat CRPD General Comments as authoritative interpretive guidance, treat the Part V constitutional analysis as establishing minimum enforcement floors, and treat evidence of court-caused disability harm patterns — documented in medical records, docket entries, and accommodation request histories — as the primary indicator of systemic non-compliance warranting pattern or practice action.
- Compliance determinations must assess whether court systems have implemented proactive accessibility measures consistent with the UK anticipatory duty model, the CRPD Article 9 standard, and the constitutional affirmative access-to-courts obligation. A court system without written accommodation protocols, an ADA Coordinator for litigation proceedings, and annual accessibility audits is presumptively non-compliant.
- DOJ should prioritize cases involving court-caused disability harm — where denial of accommodation has resulted in documented physical or psychological deterioration of a disabled litigant — because these cases involve non-derogable constitutional rights and CRPD Article 15 concerns, not merely statutory compliance failures.
- Settlement agreements and consent decrees should incorporate the structural standards specified in § 6.10: mandatory accommodation protocols, judicial education requirements, medical evidence review procedures, proactive accessibility audits, and independent monitoring mechanisms.

§ A.3 Civil Litigation Framework

Constitutional Claims. The strongest constitutional claims in court-caused disability harm cases are: (1) Griffin-Lane access-to-courts doctrine, as the court's harmful conduct extinguishes the constitutional right it is obligated to protect; (2) Cleburne anti-stereotyping, as accommodation denials based on assumed rather than assessed capacity are constitutionally impermissible; (3) Youngberg substantive due process, as the court's coercive authority generates obligations analogous to custodial care; and (4) state-created danger under DeShaney's exception, as the court's compulsory jurisdiction creates the danger to which the disabled litigant is exposed.

Statutory Claims. ADA Title II (state courts) and Rehabilitation Act § 504 (courts accepting federal funds) provide the primary statutory vehicles, with the benefit of the Lane and Georgia abrogation analysis establishing institutional liability not subject to Eleventh Amendment immunity. The constitutional avoidance canon — given structural force by the argument that courts which cause disability harm subvert the rights system they are constitutionally obligated to maintain — requires the broadest available statutory interpretation.

Remedial Strategy. In active cases: seek prospective injunctive relief under Pulliam and Ex parte Young as the first priority, because it addresses ongoing harm while it is occurring. In concluded cases: pursue institutional damages under ADA Title II/Rehabilitation Act (state

courts) and Rehabilitation Act (federal courts), consistent with the abrogation and waiver analysis in § 6.6. File judicial conduct complaints simultaneously, using them to create an administrative record of the pattern of accommodation denial that supports both the civil claim and the case for systemic reform.

§ A.4 The 'No Individualized Assessment' Failure Pattern

The most pervasive failure pattern in current disability rights enforcement — identified in earlier editions and now analyzed as a category of court-caused disability harm in Part VI — has the following diagnostic markers, each of which is independently sufficient to establish statutory, constitutional, and potential CRPD Article 15 violation:

- Identical or near-identical denial language appearing across multiple orders notwithstanding changes in the requestor's medical condition.
- Denial based on historical episodes of apparent functional capacity without engagement with the episodic nature of the condition or the prospective medical consequences of denial.
- Invocation of 'fundamental alteration' or 'undue burden' without specifying the particular alteration or burden measured against the specific accommodation requested.
- Failure to consider or offer alternatives after concluding that the specific accommodation is unavailable.
- Reference to 'demonstrated ability to participate' based on isolated instances of document filing, without accounting for the distinction between intermittent capacity and sustained litigation capacity.
- Characterization of disability claims as 'disingenuous' based on the existence of some litigation activity — stereotype-based reasoning that Cleburne and the ADAAA together prohibit.
- Case-dispositive sanctions imposed without specific findings on the causal relationship between the documented disability and the failure to comply — the absence of such findings is the evidentiary marker of court-caused harm liability.

§ A.5 Countering Court-Caused Harm in Active Proceedings

Litigants experiencing court-caused disability harm in active proceedings have several immediate tools that Part VI's analysis supports:

43. File a formal ADA accommodation request with the court's designated ADA Coordinator (or, if none exists, directly with the judge and the clerk), specifically documenting the causal relationship between the court's procedural demands and the medical consequences documented in the treating physician's records. This creates the evidentiary record that Part VI's liability analysis requires.
44. Seek a temporary restraining order or preliminary injunction under Pulliam v. Allen requiring cessation of the harmful procedural demands pending the court's individualized assessment of the accommodation request. The TRO standard — likelihood of success, irreparable harm, balance of equities, public interest — is satisfied: physical or psychological deterioration of a progressive neurological condition is the paradigm case of irreparable harm.
45. File a judicial conduct complaint under 28 U.S.C. §§ 351-364 (federal) or the applicable state judicial conduct commission (state) contemporaneously with the civil litigation. The

administrative record created by the complaint process is independently useful and may prompt circuit-level intervention.

46. Request an independent medical expert under Federal Rule of Evidence 706 to assess the causal relationship between the court's procedural demands and the documented disability exacerbation. This creates an objective, court-appointed evidentiary foundation for the causal chain analysis.
47. Invoke CRPD Article 15 and the Article 18 obligation explicitly in accommodation request briefing, citing the 61-senator majority vote as evidence of congressional endorsement of the CRPD's principles and demanding that the court interpret the ADA and Rehabilitation Act consistently with Article 15's prohibition on cruel, inhuman or degrading treatment.

§ A.6 Model Standards for Courts

The following model standards represent the minimum required by the harmonized constitutional-statutory-international framework, now incorporating the court-caused disability harm prevention standards of § 6.10:

48. Establish a formal disability accommodation request process including a designated ADA Coordinator for litigation proceedings with authority to receive, process, and recommend action on requests, consistent with Mathews v. Eldridge procedural due process requirements.
49. Train all judicial officers and court staff in the ADAAA's episodic impairment provision, the CRPD's social model of disability and Article 13 procedural accommodation mandate, the medical science of stress-sensitive progressive conditions, the Cleburne anti-stereotyping principle, and the institutional liability of court systems under ADA Title II and the Rehabilitation Act.
50. Adopt an anticipatory accessibility standard: conduct a proactive audit of standard litigation procedures for disability-related harm risk, and modify procedures to eliminate unnecessary risk, consistent with the UK Equality Act's anticipatory duty model and CRPD Article 9.
51. Require written individualized assessment on all accommodation requests, documenting specific medical evidence considered, specific burden analyzed, alternatives considered, and medical prognosis for prospective accommodation needs.
52. Establish a categorical prohibition on case-dispositive sanctions for failures causally attributable to documented disability, absent specific findings that causation has been ruled out and that less prejudicial alternatives have been considered and rejected.
53. Before imposing any case-dispositive sanction on a disabled litigant, conduct a mandatory medical evidence review specifically addressing the causal relationship between the litigation process and any documented health deterioration.
54. Apply the Obergefell convergence methodology: where equal protection, substantive due process, and access-to-courts doctrines all point toward the same accommodation outcome, that convergence establishes the accommodation as constitutionally mandated.
55. Establish an annual accessibility audit process, documented in a public report, identifying disability-related risk factors in standard court procedures and the modifications made or planned to address those risks.

- Apply the Freeman Bright Line as the model standard for disability accommodation of pro se litigants in active civil litigation. The Freeman Bright Line — documented in the orders of Judge Beth Labson Freeman of the United States District Court for the Northern District of California and analyzed as a named doctrine in § 12.6.1 — defines the current ceiling of

judicially enacted accommodation practice in any American court, and constitutes the positive benchmark against which all accommodation frameworks should be measured. It is characterized by six operational requirements that together define legally adequate accommodation: (a) disability determination is made from the litigant's own treating physician records, without adversarial input on the disability question itself; (b) the court makes its own independent accommodation determination without delegating that function to opposing counsel or treating the accommodation question as a contested litigation issue; (c) stays of proceedings are calibrated to medical need as documented by treating physicians, not to administrative convenience, and the court explicitly rejects the "indefinite stay" limitation that California courts have applied to deny accommodation to severely ill litigants; (d) accommodation precedes the performance demand — the court does not require the disabled litigant to demonstrate incapacity by failing to meet deadlines before granting accommodation; (e) UCSF documentation that litigation-induced distress is the established cause of MS relapses is treated as controlling evidence of harm warranting protective judicial action; and (f) accommodation is independent of adversarial challenge — it is treated as a due process obligation, not a contested motion to be won or lost. The Appendix E comparison table in the Hazari SCOTUS writ, which documents concurrent federal and California state court accommodation of the same litigant under the same medical evidence producing radically different outcomes, is the single most powerful exhibit for the gap between the Freeman Bright Line and the deficient frameworks documented throughout the national vignette series in Part XX-A. Every court system that does not meet the Freeman Bright Line standard is operating below the minimum that the controlling law compels.

Conclusion

This thesis has advanced a theory of constitutional, statutory, and international completeness in disability rights law. The earlier editions established the CRPD's interpretive authority, the constitutional non-derogability of disability accommodation rights, and the framework of European comparative law that demonstrates what effective implementation concretely requires. This Third Edition adds the dimension that the prior analysis in this thesis implicitly required but did not fully develop: the recognition that courts themselves can be, and demonstrably have been, actors that cause, exacerbate, and perpetuate disability harm — and that the law must grapple fully with this reality.

The Part VI analysis demonstrates that court-caused disability harm is not a gap in the law. It is a category of harm for which the law provides a comprehensive — if incompletely utilized — accountability architecture. The institutional/individual distinction that judicial immunity doctrine produces turns out to be a feature rather than a bug: it directs the analysis toward institutional liability under ADA Title II and the Rehabilitation Act, where sovereign immunity has been abrogated and where the remedies most effective against systemic harm — injunctive relief, pattern or practice enforcement, structural reform — are most readily available. The individual judge's immunity from damages does not shield the institution from liability, and it does not bar the injunctive relief that can stop ongoing harm while it is occurring.

The three categories of court-caused disability harm — disability caused by court process, disability exacerbated by court conduct, and disability maintained by court refusal to provide relief — are increasingly well-documented in the medical literature and increasingly cognizable in the legal framework. The state-created danger doctrine, the Youngberg coercive authority principle, the Lane institutional liability analysis, and the CRPD Article 15 prohibition together establish a multi-channel accountability architecture that is more powerful than any single doctrine standing alone. The convergence of these channels — through the Obergefell methodology — establishes court-caused disability harm as a constitutional violation, not merely a statutory one.

The practical conclusion is urgent. A court system that imposes standard litigation procedures on a disabled litigant whose medical record documents that those procedures cause disease exacerbation, and that denies accommodation requests with formulaic language without individualized medical evidence review, is not administering justice. It is inflicting harm under the authority of justice — and the law, properly understood, does not permit it to do so with impunity.

The architecture of disability rights is built into the Constitution, the federal statutes, and the international commitments that 61 senators voted to ratify. The work that remains is to inhabit it fully — including in the courts themselves.

Appendix A — CRPD Article Reference Table

Article	Subject	Federal Equivalent	Constitutional Anchor + Court-Caused Harm Application
Art. 3	Eight Guiding Principles	All three statutes	14th Amend.; 9th Amend.; Obergefell; applies to court institutional conduct
Art. 5	Equality/Non-Discrimination	ADA Title I–III; Rehab Act §504	Cleburne; impact discrimination by courts cognizable under Art. 5
Art. 9	Accessibility	ADA Title II; Rehab Act §504	Bounds v. Smith; proactive audit obligation for court systems
Art. 12	Equal Recognition Before the Law	ADA Title II; Rehab Act §504	Youngberg; Griswold; courts cannot strip legal personhood through harmful process
Art. 13	Access to Justice	ADA Title II; Rehab Act §504	Griffin v. Illinois; M.L.B.; Lane; court denial + harm = constitutional violation
Art. 15	Freedom from Torture/CIDT	ADA Title II; 14th Amend.; CAT (ratified)	Youngberg; DeShaney state-created danger; court-caused harm = potential CIDT
Art. 19	Independent Living	ADA Title II (Olmstead)	Substantive due process; cascading effect of court harm on structural rights
Art. 24	Education	ADA Title III; IDEA	Equal protection; Brown v. Board
Art. 27	Work and Employment	ADA Title I; Rehab Act §501	Equal protection; Section 5 enforcement

Appendix B — Key Constitutional Precedent Matrix

Case	Citation	Core Holding for Disability Rights	Application to Court-Caused Harm
Griffin v. Illinois	351 U.S. 12 (1956)	Equal access to appellate review regardless of status	Court conduct causing harm that forecloses access violates this principle
Youngberg v. Romeo	457 U.S. 307 (1982)	State institutional authority generates protective obligations toward disabled persons	Court's coercive jurisdiction generates Youngberg-type obligations toward disabled litigants
City of Cleburne v. CLCenter	473 U.S. 432 (1985)	Disability classifications resting on animus or stereotype fail rational basis	Formulaic accommodation denials without individualized assessment are Cleburne violations
DeShaney v. Winnebago	489 U.S. 189 (1989)	State-created danger exception: state liability when state's own acts create danger	Courts compelling participation in harmful proceedings satisfy state-created danger elements
Pulliam v. Allen	466 U.S. 522 (1984)	Injunctive relief available against judges despite immunity from damages	Primary remedy for ongoing court-caused harm in active proceedings
Stump v. Sparkman	435 U.S. 349 (1978)	Judicial immunity is absolute for judicial acts, but protects individuals not institutions	Institutional liability under ADA/Rehab Act not defeated by this immunity
Mireles v. Waco	502 U.S. 9 (1991)	Non-judicial acts and administrative policy failures outside scope of immunity	Policy failures — absence of accommodation protocols, failure to train — may not be immunized
M.L.B. v. S.L.J.	519 U.S. 102 (1996)	State cannot condition judicial access in ways that foreclose access for particular persons	Court-imposed harmful procedures that foreclose disabled litigant's access = constitutional violation
Tennessee v. Lane	541 U.S. 509 (2004)	ADA Title II validly abrogates state immunity for access-to-courts claims; court system has constitutional obligations	Primary basis for institutional liability of state court systems for court-caused harm
United States v. Georgia	546 U.S. 151 (2006)	Title II creates remedies for conduct independently violating 14th Amendment	Most serious court-caused harm is actionable as constitutional violation; no 11th Amendment bar
Mathews v. Eldridge	424 U.S. 319 (1976)	Procedural due process balance: private interest v. erroneous deprivation v. government interest	Physical or psychological harm from denial of accommodation substantially outweighs docket management interest
Obergefell v. Hodges	576 U.S. 644 (2015)	Convergence methodology; dignity as constitutional	Court-caused harm violates multiple constitutional

Case	Citation	Core Holding for Disability Rights	Application to Court-Caused Harm
		value across multiple provisions	provisions simultaneously; convergence establishes non-derogable obligation
Buck v. Bell	274 U.S. 200 (1927)	Constitutional nadir: disabled persons as objects of state management	The wrong that the entire constitutional and statutory framework corrects; courts causing harm replicate this approach

Appendix C — Comparative Law Matrix

Framework	Key Disability Right	U.S. Equivalent	Application to Court-Caused Harm
CRPD Art. 13	Procedural accommodations in legal proceedings	ADA Title II; Rehab Act §504	Denial + harm = court-caused harm category 2; causal chain is legally cognizable
CRPD Art. 15	Freedom from CIDT — disability-specific	CAT (ratified, with RUDs); 14th Amend.	Court conduct causing documented physical or psychological harm = potential CIDT; no RUDs on CRPD limit analysis
CRPD Art. 12	Supported decision-making; legal capacity	ADA Title II; Rehab Act §504	Courts cannot strip legal personhood through harmful process; Art. 12 requires support, not termination
UK Equality Act 2010	Anticipatory reasonable adjustments duty	ADA 'reasonable modification' (reactive)	Proactive audit of court procedures for disability harm risk is the reform target
ECHR Art. 3 — positive obligation	Effective investigation of credible CIDT allegations	Judicial Conduct and Disability Act (inadequate in practice)	Current JC&DA mechanisms must be assessed for adequacy against ECHR positive obligation standard
ECHR — vulnerability aggravation	Lower CIDT threshold for disabled persons	8th/14th Amend. (narrow domestic application)	Court-caused harm to disabled litigant reaches CIDT threshold more readily than equivalent harm to non-disabled
Paposhvili v. Belgium	Medical consequence assessment before institutional decisions	No direct statutory equivalent	Courts must review medical consequences of procedural demands before imposing them; failure = court-caused harm liability
German Menschenwürde	Human dignity as inviolable; institutional efficiency cannot justify treating persons as less than human	9th Amend.; substantive due process	Docket management cannot justify court processes that cause documented physical or psychological harm to disabled litigants
EU Framework Dec. 2008	Criminal prohibition on disability hate incitement	Matthew Shepard Act (limited)	Categorical recognition that disability-based harm requires its own accountability architecture

Appendix D — Court-Caused Disability Harm: Accountability and Remedy Matrix

Category of Harm	Legal Basis for Claim	Who Bears Liability	Available Remedies	Immunity/Barrier
Cat. 1: Disability caused by court process	ADA Title II; Rehab Act §504; State-created danger; CRPD Art. 15	Court institution (not individual judge)	Damages (Lane/Georgia abrogation); Injunction (Pulliam); DOJ enforcement	Judicial immunity for individuals; not for institution
Cat. 2: Disability exacerbated by accommodation denial	ADA Title II; Rehab Act §504; 14th Amend. equal protection; CRPD Art. 15	Court institution; policy-maker (no immunity)	Damages; Injunction; Declaratory relief; Judicial conduct complaint	Absolute immunity bars individual damages; institution remains liable
Cat. 3: Disability maintained by refusal of procedural relief	ADA Title II; Rehab Act §504; CRPD Art. 12 (legal capacity); Griffin-Lane	Court institution	Injunction (Pulliam/Ex parte Young); Mandamus; Declaratory relief	Sovereign immunity (abrogated for ADA/Rehab Act)
Formulaic denial pattern (no individualized assessment)	ADA Title II; Rehab Act; Cleburne (constitutional); CRPD Art. 13	Court system (policy failure)	DOJ pattern-or-practice enforcement; structural injunction; monitoring	No immunity defense for institutional policy failures
Case-dispositive sanction for disability-caused default	ADA Title II; Rehab Act; Griffin-Lane; CRPD Art. 13	Court system; appealable as legal error	Appeal (direct); Mandamus; §504 damages; Judicial conduct complaint	Requires showing of causal relationship between disability and default
Failure to train / no accommodation protocol	ADA Title II; Rehab Act; institutional negligence	Court administration / Clerk of Court / ADA Coordinator	Structural injunction; DOJ enforcement; Judicial Council review	No judicial immunity for administrative/training failures
Court conduct constituting CIDT (CRPD Art. 15)	CRPD Art. 15 (via Charming Betsy / Art. 18 VCLT); 14th Amend. due process; Youngberg	Court institution; state actor	ADA/Rehab Act damages; injunction; judicial conduct; CRPD-informed interpretive pressure	Strongest against institution; individual immunity applies

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