

United States Court of Appeals

For the First Circuit

No. 20-1777

GLEN PLOURDE,

Plaintiff - Appellant,

v.

KNOX COUNTY, ME; UNKNOWN KNOX COUNTY, SHERIFF'S OFFICE SUV DRIVER; ALICIA GORDON, Knox County Sheriff's Office Patrol Deputy; NATHANIAL JACK, Knox County Sheriff's Department Deputy; SGT. JOHN PALMER, Knox County Sheriff's Department; PATRICK POLKY, Knox County Sheriff's Department Lieutenant; DONNA DENNISON, Knox County Sheriff,

Defendants - Appellees,

UNITED STATES; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; NATIONAL SECURITY AGENCY; CENTRAL INTELLIGENCE AGENCY; FEDERAL BUREAU OF INVESTIGATION; OFFICE OF HOMELAND SECURITY; US DEPARTMENT OF HOUSING & URBAN DEVELOPMENT; SUSAN M. COLLINS, OFFICE OF SENATOR SUSAN M. COLLINS United States Senator for Maine; ANGUS KING, OFFICE OF THE MAINE STATE GOVERNOR; United States Senator for Maine; OFFICE OF THE MAINE STATE GOVERNOR JANET T. MILLS, Office of The Maine State Governor; AARON M. FREY, Office of the Maine State Attorney General; MAINE HUMAN RIGHTS COMMISSION; MAINE GOVERNMENT OVERSIGHT COMMITTEE; MAINE OFFICE OF PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY; STATE OF MAINE; KNOX COUNTY SHERIFF'S DEPARTMENT; KNOX COUNTY ADMINISTRATOR'S OFFICE; KNOX COUNTY MAINE TRINITY ON THE OCEAN; FREEPORT MAINE POLICE DEPARTMENT; TOWN OF FREEPORT, MAINE; PENOBCOT COUNTY SHERIFF'S OFFICE; PENOBCOT COUNTY ME; AMERICAN CIVIL LIBERTIES UNION OF MAINE; AMERICAN CIVIL LIBERTIES UNION; MOHLAR LAW OFFICE; VERRILL DANA; MAINE AMERICAN RED CROSS; NATIONAL AMERICAN RED CROSS; INTERNATIONAL RED CROSS; MICHELLE MICHAUD, Executive Assistant to Susan Collins; MARK WINTER, Executive Assistant to Susan Collins; MICHAEL NOYES, Executive Assistant to Susan Collins; SARAH GRAETTINGER, Constituent Service Represenative, Maine State Senator Angust King, Suspected FBI Agent; PAUL R. LEPAGE, Maine State Governor (Retired); SUZANNE BROCHU, Executive Assistant to Governor Paul LePage; ADAM CREPEAU, Executive Assistant to Governor Paul LePage; AMY M. SNEIRSON, Executive Director of Maine Human Rights Commission; BARBARA L. ARCHER HIRSCH, Lead Counsel for Maine Human Rights Commission; RICHARD KATZ, Senate Chair, Maine Government Oversight Committee; ETTA CONNERS,

Committee Clerk, Maine Government Oversight Committee; SCOTT FARWELL, Senior Analyst, Office of Program Evaluation and Government Accountability; BETH ASHCROFT, Office of Program Evaluation and Government Accountability; DREW GRAHAM, Knox County Sheriff's Officer (Rank Unknown; UNKNOWN KNOX COUNTY SHERIFF'S SECRETARY #1, #2, and #3; TAYLOR BENZINE, Knox County Sheriff's Department Dispatch Operator; JESSICA WARD, Knox County Sheriff's Department Dispatch Operator; ANDREW HART; OFFICER CAVANAUGH Freeport Maine Police Department, (Rank Unknown); EDWARD TOULOUSE, Penobscot County Sheriff's Department Officer; STEVEN BELYEAE, Manager Trinity on the Ocean, Suspected FBI Agent; DONNA BELYEAE, Co-Manager Trinity on the Ocean, Suspected FBI Agent; RACKLIFF, Occupant of Apartment 18B, Suspected FBI Agent; UNKNOWN AMERICAN CIVIL LIBERTIES UNION, Intake Specialist; ZACHARY HEIDEN, Legal Director, ACLU of Maine; UNKNOWN MOHLAR LAW OFFICE, SECRETARY; PHILIP MOHLAR, Attorney, Mohlar Law Office, Suspected FBI Agent; UNKNOWN VERRILL DANA, Secretary; NICHOLAS KNOWLES, Suspected to be Bill Knowles of Verrill Dana, Attorney and/or General Counsel and Loss Prevention Partner, the Law Firm of Verrill Dana, Suspected FBI and/or CIA Agent; UNKNOWN FBI AGENT #1 AND #2; UNKNOWN AUGUSTA FBI SUPERVISORY SPECIAL AGENT; CRAIG HARVEY, FBI Special Agent; MARK ATLEY, FBI Special Task Force Commander; HAROLD H. SHAW, FBI Special Agent in Charge, Boston (Retired); JOSEPH R. BONAVOLONTA, FBI Special Agent in Charge, Boston; JOHN BOND, Homeland Security Agent (Rank Unknown); TALIS JORDAN, Homeland Security Agent (Rank Unknown); CATE HAIDEN, CIA Agent (Rank Unknown); ERIC HAIDEN, CIA Agent (Rank Unknown); PAT MURTAGH, Director of American Red Cross (Maine); UNKNOWN MAINE AMERICAN RED CROSS, SECRETARY; UNKNOWN MAINE AMERICAN RED CROSS, WORKER; SALOMON CHAQUIAR-RABINOVICH, HUD Intake Specialist; STACY GREENDLINGER, HUD Acting Intake Branch Chief; KRISTEN LOUISE FILIPIC, HUD Special Investigator; DANIEL WEAVER, HUD Enforcement Branch Chief, Boston Division; SUSAN FORWARD, HUD Director, Boston Division; DAN COATS, Director of National Intelligence (Retired); JOSEPH MAGUIRE, Director of National Intelligence (Retired); UNKNOWN AMERICAN CIVIL LIBERTIES UNION INTAKE SPECIALIST, Suspected FBI Agent,

Defendants.

Before

Thompson, Selya and Barron,
Circuit Judges.

JUDGMENT

Entered: June 3, 2021

Pro se appellant Glen Plourde seeks review of the dismissal of his second amended complaint on preliminary review pursuant to 28 U.S.C. § 1915(e)(2). After careful review of the record and appellant's arguments on appeal, we conclude that appellant has failed to show that the

district court abused its discretion and affirm, essentially for the reasons discussed in the magistrate judge's May 15, 2020 recommended decision, and in the district court's July 3, 2020 order affirming the magistrate judge's recommendation. All of appellant's pending motions are denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Glen Plourde
Julia M. Lipez
Aaron M. Frey
Susan P. Herman

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GLEN PLOURDE,)
Plaintiff,)
v.) No. 2:19-cv-00532-JAW
UNITED STATES OF AMERICA)
et al.,)
Defendants.)

**ORDER AFFIRMING THE RECOMMENDED DECISIONS OF THE
MAGISTRATE JUDGE**

On November 19, 2019, Glen Plourde filed a complaint against ninety-two defendants seeking to recover damages for constitutional violations he alleges occurred during and following an illegal entry into his residence. *Compl.* (ECF No. 1). Mr. Plourde applied to proceed in forma pauperis, and the Court granted the application. *Appl. to Proceed in District Ct. Without Prepaying Fees or Costs* (ECF No. 5); *Order Granting Motion for Leave to Proceed in Forma Pauperis* (ECF No. 7). On December 10, 2019, Mr. Plourde filed an amended complaint with three hundred counts. *Am. Compl.* (ECF No. 8). The United States Magistrate Judge filed with the Court on December 12, 2019, his Recommended Decision on the Amended Complaint, in which he recommended that the Court dismiss the matter. *Recommended Decision After Review of Pl.'s Compl. at 1* (ECF No. 9) (*Recommended Decision*). Mr. Plourde objected to the Recommended Decision on January 2, 2020. *Obj. and Mem. to Recommended Decision* (ECF No. 12).

On January 24, 2020, Mr. Plourde filed a second amended complaint. *Am.*

Compl. (ECF No. 15) (Second Am. Compl.). The United States Magistrate Judge filed with the Court on May 15, 2020, his Supplemental Recommended Decision. *Suppl. Recommended Decision After Review of Pl.'s Second Am. Compl. (ECF No. 19) (Suppl. Recommended Decision)*. Mr. Plourde objected to the Supplemental Recommended Decision on June 1, 2020. *Obj. and Mem. to Recommended Decision (ECF No. 21)* (Pl.'s Obj.). On the same day, Mr. Plourde filed a motion for leave to file another amended complaint, *Mot. for Leave to Amend Compl. Pursuant to Federal Rule of Civil Procedure 15(a)(2) (ECF No. 22)*, which the Magistrate Judge denied. *Order on Mot. for Leave to Amend Compl. (ECF No. 23)*.

In his objection to the Supplemental Recommended Decision, Mr. Plourde argues that the facts in *Golden v. Coleman*, 429 Fed. App'x 73 (3rd Cir. 2011), *Flores v. U.S. Atty. Gen.*, No. 2:13-cv-00053-BDH, 2013 WL 1122719 (D. Me. Feb. 26, 2013), adopted by No. 2:13-cv-53-DBH, 2013 WL 1122635 (D. Me. Mar. 18, 2013), and *Denton v. Hernandez*, 504 U.S. 25 (1992), are distinguishable from the present case and that his claims are “clearly not baseless, not by any stretch of the imagination.” *Pl.'s Obj.* at 5-10. He references the exhibits he attached to his second amended complaint and highlights Exhibit M as proof that the facts he alleges are not clearly baseless. *Id.* at 9-10; *see also Second Am. Compl.*, Attach. 13, *Ex. M*. Mr. Plourde also suggests that the Magistrate Judge, in recommending dismissal of his claims, is “attempt[ing] to suppress” complaints against law enforcement. *Id.* at 9.

The Court acknowledges that Mr. Plourde does not view his claims as frivolous or clearly baseless; however, the Court agrees with the Magistrate Judge, for the

reasons the Magistrate Judge discussed, that Mr. Plourde's material factual allegations "can reasonably be viewed as the type that warrant dismissal under the Supreme Court's analysis in *Denton*." *Suppl. Recommended Decision* at 3-4 (citing *Flores*, 2013 WL 1122719, at *2). The Court reviewed and considered the Magistrate Judge's Recommended Decision and Supplemental Recommended Decision, together with the entire record; made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision and Supplemental Recommended Decision; concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision and Supplemental Recommended Decision; and determines that no further proceeding is necessary.¹

1. The Court AFFIRMS the Recommended Decision of the Magistrate Judge (ECF No. 9).
2. The Court AFFIRMS the Supplemental Recommended Decision of the Magistrate Judge (ECF No. 19).
3. The Court DISMISSES the Plaintiff's Second Amended Complaint (ECF No. 15).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of July, 2020

¹ The Court notes that there appears to be one small error in the Magistrate Judge's Recommended Decision. In listing some of the statutes Mr. Plourde cited in his Amended Complaint, the Magistrate Judge includes 17-A M.R.S. § 57. See *Recommended Decision* at 3 n.2. The Court could not locate this citation in Mr. Plourde's Amended Complaint. This citation, however, does not change the outcome. The Court agrees with the Recommended Decision and Supplemental Recommended Decision in all other respects.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GLEN PLOURDE,)
v. Plaintiff) 2:19-cv-00532-JAW
UNITED STATES OF AMERICA,)
et al., Defendants)

**SUPPLEMENTAL RECOMMENDED DECISION AFTER REVIEW OF
PLAINTIFF'S SECOND AMENDED COMPLAINT**

After I recommended the Court dismiss Plaintiff's first amended complaint (Recommended Decision, ECF No. 9), Plaintiff filed a second amended complaint, through which he seeks to recover damages for constitutional violations he maintains occurred during and following an illegal entry into his residence. In the second amended complaint, Plaintiff removed most of the ninety-two defendants named in his first amended complaint, which defendants included the United States government, the state of Maine, law enforcement officers, government officials, private citizens and various organizations. (Second Amended Complaint, ECF No. 15.)

Plaintiff also filed an application to proceed in forma pauperis (ECF No. 5), which application the Court granted. (ECF No. 7.) In accordance with the in forma pauperis

statute, a preliminary review of Plaintiff's second amended complaint is appropriate.¹ 28 U.S.C. § 1915(e)(2).

Following a review of the second amended complaint, I recommend the Court dismiss the matter.

STANDARD OF REVIEW

The federal *in forma pauperis* statute, 28 U.S.C. § 1915, is designed to ensure meaningful access to the federal courts for those persons unable to pay the costs of bringing an action. When a party is proceeding *in forma pauperis*, however, “the court shall dismiss the case at any time if the court determines,” *inter alia*, that the action is “frivolous or malicious” or “fails to state a claim on which relief may be granted” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). “Dismissals [under § 1915] are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

¹ Plaintiff filed his original complaint in November 2019. (Complaint, ECF No. 1.) In accordance with his right under Federal Rule of Civil Procedure 15(a), Plaintiff filed an amended complaint in December 2019. (First Amended Complaint, ECF No. 8.) After an unfavorable recommended decision on his first amended complaint, Plaintiff filed an objection to the recommended decision but also sought leave to file another amended complaint. (Recommended Decision, ECF No. 9; Objection, ECF No. 12; Motion for Leave to Amend, ECF No. 13.) The Court granted leave to amend, and Plaintiff filed a new complaint in January 2020. (Order, ECF No. 14; Second Amended Complaint, ECF No. 15.) The second amended complaint is thus the operative pleading for this supplemental section 1915 review.

DISCUSSION

In his second amended complaint, Plaintiff has outlined a series of events that allegedly began with his decision to lease a residence in Owls Head (Knox County) in 2017. Plaintiff describes his interactions with some of the named defendants prior to and following a series of alleged illegal entries into the residence during his absence and while he was sleeping. Plaintiff also asserts someone hacked his electronic accounts and video games to alter their content and claims to have narrowly avoided a police vehicle attempting to ram his vehicle.

Section 1915 provides a court with “the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327. “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *Golden v. Coleman*, 429 Fed. App’x 73, 74 (3rd Cir. 2011) (dismissing complaint because the allegations were “fantastic, delusional, and simply unbelievable.”)

Plaintiff’s second amended complaint, which is less voluminous than the first amended complaint and eliminates some of counts that were based on federal and state criminal statutes, arguably addresses some of the deficiencies of the first amended complaint. Despite the modifications, Plaintiff’s material factual allegations and the circumstances Plaintiff cites in support of his claims can reasonably be viewed as the type

that warrant dismissal under the Supreme Court's analysis in *Denton*. See *Flores v. U.S. Atty. Gen.*, No. 2:13-CV-00053-DBH, 2013 WL 1122719, at *2 (D. Me. Feb. 26, 2013), report and recommendation adopted, No. 2:13-CV-53-DBH, 2013 WL 1122635 (D. Me. Mar. 18, 2013).

CONCLUSION

Based on the foregoing analysis and the analysis set forth in the prior Recommended Decision (ECF No. 9), after a review in accordance with 28 U.S.C. § 1915, I recommend the Court dismiss Plaintiff's second amended complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 15th day of May, 2020.

United States Court of Appeals

For the First Circuit

No. 20-1777

GLEN PLOURDE,

Plaintiff - Appellant,

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Defendants - Appellees,

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Analyst, Office of Program Evaluation and Government Accountability; BETH ASHCROFT, Office of Program Evaluation and Government Accountability; DREW GRAHAM, Knox County Sheriff's Officer (Rank Unknown; UNKNOWN KNOX COUNTY SHERIFF'S SECRETARY #1, #2, and #3; TAYLOR BENZINE, Knox County Sheriff's Department Dispatch Operator; JESSICA WARD, Knox County Sheriff's Department Dispatch Operator; ANDREW HART; OFFICER CAVANAUGH Freeport Maine Police Department, (Rank Unknown); EDWARD TOULOUSE, Penobscot County Sheriff's Department Officer; STEVEN BELYEA, Manager Trinity on the Ocean, Suspected FBI Agent; DONNA BELYEA, Co-Manager Trinity on the Ocean, Suspected FBI Agent; RACKLIFF, Occupant of Apartment 18B, Suspected FBI Agent; UNKNOWN AMERICAN CIVIL LIBERTIES UNION, Intake Specialist; ZACHARY HEIDEN, Legal Director, ACLU of Maine; UNKNOWN MOHLAR LAW OFFICE, SECRETARY; PHILIP MOHLAR, Attorney, Mohlar Law Office, Suspected FBI Agent; UNKNOWN VERRILL DANA, Secretary; NICHOLAS KNOWLES, Suspected to be Bill Knowles of Verrill Dana, Attorney and/or General Counsel and Loss Prevention Partner, the Law Firm of Verrill Dana, Suspected FBI and/or CIA Agent; UNKNOWN FBI AGENT #1 AND #2; UNKNOWN AUGUSTA FBI SUPERVISORY SPECIAL AGENT; CRAIG HARVEY, FBI Special Agent; MARK ATLEY, FBI Special Task Force Commander; HAROLD H. SHAW, FBI Special Agent in Charge, Boston (Retired); JOSEPH R. BONAVOLONTA, FBI Special Agent in Charge, Boston; JOHN BOND, Homeland Security Agent (Rank Unknown); TALIS JORDAN, Homeland Security Agent (Rank Unknown); CATE HAIDEN, CIA Agent (Rank Unknown); ERIC HAIDEN, CIA Agent (Rank Unknown); PAT MURTAGH, Director of American Red Cross (Maine); UNKNOWN MAINE AMERICAN RED CROSS, SECRETARY; UNKNOWN MAINE AMERICAN RED CROSS, WORKER; SALOMON CHAQUIAR-RABINOVICH, HUD Intake Specialist; STACY GREENDLINGER, HUD Acting Intake Branch Chief; KRISTEN LOUISE FILIPIC, HUD Special Investigator; DANIEL WEAVER, HUD Enforcement Branch Chief, Boston Division; SUSAN FORWARD, HUD Director, Boston Division; DAN COATS, Director of National Intelligence (Retired); JOSEPH MAGUIRE, Director of National Intelligence (Retired); UNKNOWN AMERICAN CIVIL LIBERTIES UNION INTAKE SPECIALIST, Suspected FBI Agent,

Defendants.

Before

Howard, Chief Judge,
Selya, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: August 13, 2021

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of the court and

a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Glen Plourde
Julia M. Lipez
Aaron M. Frey
Susan P. Herman

organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

(1) an offender is a national of the United States (as defined in¹ 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(2) an offender is a stateless person whose habitual residence is in the United States;

(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

(4) the offense occurs in whole or in part within the United States;

(5) the offense occurs in or affects interstate or foreign commerce; or

(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

(c) DEFINITIONS.—As used in this section—

(1) the term “military-type training” includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2));²

(2) the term “serious bodily injury” has the meaning given that term in section 1365(h)(3);

(3) the term “critical infrastructure” means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transpor-

tation systems and services (including highways, mass transit, airlines, and airports); and

(4) the term “foreign terrorist organization” means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.

(Added Pub. L. 108-458, title VI, § 6602, Dec. 17, 2004, 118 Stat. 3761.)

REFERENCES IN TEXT

Sections 101, 212, and 219 of the Immigration and Nationality Act, referred to in subsecs. (a), (b)(1), and (c)(4), are classified to sections 1101, 1182, and 1189, respectively, of Title 8, Aliens and Nationality.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (a), is classified to section 2656(d)(2) of Title 22, Foreign Relations and Intercourse.

CHAPTER 113C—TORTURE

Sec.

2340. Definitions.

2340A. Torture.

2340B. Exclusive remedies.

AMENDMENTS

2002—Pub. L. 107-273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, repealed Pub. L. 104-294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501. See 1996 Amendment note below.

1996—Pub. L. 104-132, title III, § 303(c)(1), Apr. 24, 1996, 110 Stat. 1253, redesignated chapter 113B as 113C. Pub. L. 104-294, title VI, § 601(j)(1), Oct. 11, 1996, 110 Stat. 3501, which made identical amendment, was repealed by Pub. L. 107-273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, effective Oct. 11, 1996.

§ 2340. Definitions

As used in this chapter—

(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-415, § 1(k), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103-429,

¹ So in original. The word “section” probably should appear after “in”.

² So in original. Probably should be section “2232a(c)(2)”.

§ 2(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 108-375, div. A, title X, § 1089, Oct. 28, 2004, 118 Stat. 2067.)

AMENDMENTS

2004—Par. (3). Pub. L. 108-375 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “United States” includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.”

1994—Par. (1). Pub. L. 103-415 substituted “within his custody” for “with custody”.

Par. (3). Pub. L. 103-429 substituted “section 46501(2) of title 49” for “section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38))”.

EFFECTIVE DATE

Section 506(c) of Pub. L. 103-236 provided that: “The amendments made by this section [enacting this chapter] shall take effect on the later of—

“(1) the date of enactment of this Act [Apr. 30, 1994]; or

“(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” [Convention entered into Force with respect to United States Nov. 20, 1994, Treaty Doc. 100-20.]

§ 2340A. Torture

(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) CONSPIRACY.—A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103-322, title VI, § 60020, Sept. 13, 1994, 108 Stat. 1979; Pub. L. 107-56, title VIII, § 811(g), Oct. 26, 2001, 115 Stat. 381.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107-56 added subsec. (c).

1994—Subsec. (a). Pub. L. 103-322 inserted “punished by death or” before “imprisoned for any term of years or for life”.

§ 2340B. Exclusive remedies

Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.

(Added Pub. L. 103-236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 464.)

CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO

Sec.

2341.	Definitions
2342.	Unlawful acts.
2343.	Recordkeeping, reporting, and inspection.
2344.	Penalties.
2345.	Effect on State and local law.
2346.	Enforcement and regulations.

AMENDMENTS

2006—Pub. L. 109-177, title I, § 121(g)(3), (4)(A), Mar. 9, 2006, 120 Stat. 224, substituted “TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO” for “TRAFFICKING IN CONTRABAND CIGARETTES” in chapter heading, added items 2343 and 2345, and struck out former items 2343 “Recordkeeping and inspection” and 2345 “Effect on State law”.

§ 2341. Definitions

As used in this chapter—

(1) the term “cigarette” means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term “contraband cigarettes” means a quantity in excess of 10,000 cigarettes, which bear no evidence of the payment of applicable State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having posses-

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall 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. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17