

U.S. Prosecution of Overseas Torture

May 27, 2025

On April 15, 2025, the United States Department of Justice (DOJ) [announced](#) the conviction of Michael Sang Correa by a federal court in Colorado for torture committed in the African country of The Gambia (hereinafter Gambia). The statute under which he was convicted is one of the rare examples of a federal crime which can *only* be committed outside of the territory of the [United States](#).

Federal jurisdiction in the case rests on [Correa's presence](#) in this country, a [jurisdictional foundation](#) Congress may consider enlarging or contracting within constitutional limits.

Background

The DOJ alleged that, prior to his 2016 arrival in the United States, [Correa](#) tortured, conspired to torture, and aided and abetted the 2006 torture in Gambia of the participants in an unsuccessful coup against the government there. Between 2019 and 2025, federal authorities arrested, tried, and convicted Correa under [18 U.S.C. § 2340A](#), which prohibits torture committed outside the United States. The DOJ [states](#) that Correa is the first non-U.S. national to be convicted under the statute. Correa faces a sentence of imprisonment for not more than 20 years for each of the five counts of conviction and an additional 20-year maximum term for conspiracy.

18 U.S.C. § 2340A

Crime is [ordinarily](#) a matter of the law of the place where it is committed. [Federal](#) and [state](#) laws proscribe torture committed in the United States. Subject to constitutional limitations, Congress may proscribe criminal conduct abroad (see generally CRS Report 94-166, *Extraterritorial Application of American Criminal Law*). When it has done so, Congress has usually elected to make federal criminal laws that apply in the United States also applicable overseas. The [statute](#) that outlaws treason, for example, condemns the misconduct whether committed “within the United States or elsewhere.”

Section 2340A of Title 18 of the United States Code is somewhat unique in that it reaches only misconduct occurring outside the United States' territory. The Constitution's due process condemnation of secret laws and hidden punishment [requires](#) notice of potential criminal liability. In the case of Section 2340A, the international repudiation of torture and its condemnation by the United States, reflected in obligations of the United States under the [Convention Against Torture and Other Cruel, Inhuman or](#)

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LSB11315

[Degrading Treatment or Punishment](#) (Torture Convention), provides the announcement of the provision's extraterritorial reach.

Section 2340A proscribes committing, or attempting or conspiring to commit, torture outside the United States. The preceding section, Section 2340, [defines](#) torture for purposes of Section 2340A as "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." As amended, Section 2340 defines the "United States" as "the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States."

Prosecution requires either that the defendant be a [national](#) of the United States or be present in the United States. Violations carry a [term](#) of imprisonment for not more than 20 years and a [fine](#) of not more than \$250,000 (not more than \$500,000 for an organization), the same penalties that attend the federal [offense](#) of torture occurring within the special maritime and territorial jurisdiction of the United States. Correa's conduct would have been a [capital](#) offense had he killed any of his victims.

Options for Congress

Subject to constitutional limitations, Congress is free to adjust § 2340A's penalty structure, for example, by eliminating the death penalty or modifying the base 20-year penalty. The [Eighth Amendment](#) to the Constitution prohibits imposition or execution of cruel and unusual punishment. A punishment [may be](#) cruel and usual when it is disproportionate to the seriousness of the offense or the culpability of the offender. Several death-resulting federal crimes are capital offenses, such as death resulting from the commission of [violence](#) at international airports; several others, such as [hate](#) crimes, are not.

As for the 20-year maximum term of imprisonment, other federal 20-year felonies include [maiming](#), [attempted kidnapping](#), [bank robbery](#), and [assault](#) with intent to murder. The penalties for other assaults vary widely, often [calibrated](#) to reflect the extent of the resulting injury, but rarely exceed imprisonment for not more than ten years.

Congress is also free to limit jurisdiction over U.S. prosecution to offenses committed by U.S. citizens, relying to the extent possible on deportation or extradition of offenders for foreign prosecution in other cases.

On the other hand, Congress may wish to expand jurisdiction. Jurisdiction now exists when:

1. The offender is a U.S. national, or
2. The offender is present in the United States.

Jurisdiction might be expanded to include instances when:

1. The offender is a U.S. national,
2. The offender is present in the United States, or
3. The victim is a U.S. national.

In a similar vein, Congress has proscribed [foreign murder](#) of United States nationals by other United States nationals.

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