

**Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 26-0710.01 Conrad Imel x2313

SENATE BILL 26-005

SENATE SPONSORSHIP

Weissman and Gonzales J., Coleman, Hinrichsen, Jodeh, Kipp, Marchman, Rodriguez, Wallace

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Mabrey and Zokaie,

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A BILL FOR AN ACT

101 **CONCERNING STATE COURT REMEDIES FOR VIOLATIONS OF FEDERAL**
102 **CONSTITUTIONAL RIGHTS OCCURRING DURING IMMIGRATION**
103 **ENFORCEMENT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a statutory cause of action for a person who is injured during a civil immigration enforcement action by another person who, whether or not under color of law, violates the United States constitution while participating in civil immigration enforcement. A person who violates the United States constitution while participating in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

civil immigration enforcement is liable to the injured party for legal or equitable relief or any other appropriate relief. The action must be commenced within 2 years after the cause of action accrues.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Since the earliest days of the nation, the United States supreme
5 court has held, in cases such as *Little v. Barreme*, 6 U.S. 170 (1804), and
6 *Murray v. The Charming Betsey*, 6 U.S. 64 (1804), that federal officials
7 may be liable in damages for violations of federal laws;

8 (b) The United States supreme court has long held that federal
9 employees are not inherently beyond the reach of state laws simply
10 because they are federal employees. For example, in *Johnson v.*
11 *Maryland*, 254 U.S. 51 (1920), the court noted, "[A]n employee of the
12 United States does not secure a general immunity from state law while
13 acting in the course of his employment", and in *Colorado v. Symes*, 286
14 U.S. 510 (1932), the court stated, "Federal officers and employees are not,
15 merely because they are such, granted immunity from prosecution in state
16 courts for crimes against state law".

17 (c) Decades later, the United States supreme court continued to
18 recognize the role of state law in holding federal officials accountable for
19 legal violations, noting in *Wheeldin v. Wheeler*, 373 U.S. 647 (1963),
20 "[w]hen it comes to suits for damages for abuse of power, federal
21 officials are usually governed by local law";

22 (d) When the United States supreme court recognized a federal
23 law cause of action for violation of certain constitutional rights in *Bivens*
24 *v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), that cause

1 of action was in addition to, rather than instead of, traditional state law
2 remedies. Even one of the dissenting justices in *Bivens* noted the ongoing
3 role of state law, writing, "The task of evaluating the pros and cons of
4 creating judicial remedies for particular wrongs is a matter for Congress
5 and the legislatures of the States".

6 (e) More recently, congress has made federal statutory law the
7 exclusive remedy for certain claims sounding in tort, but this exclusivity
8 specifically "does not extend or apply to a civil action against an
9 employee of the Government [. . .] which is brought for a violation of the
10 Constitution of the United States", 28 U.S.C. sec. 2679. The prime
11 sponsor of legislation amending the federal "Tort Claims Act" to provide
12 for limited exclusivity took pains to clarify, "We make special provisions
13 here to make clear that the more controversial issue of constitutional torts
14 is not covered by this bill. If you are accused of having violated
15 someone's constitutional rights, this bill does not affect it", 134 Cong.
16 Rec. 15963 (1988).

17 (f) In 2022, in declining to extend the scope of the *Bivens* action
18 in *Egbert v. Boule*, 596 U.S. 482 (2022), the United States supreme court
19 observed that legislatures, not courts, are the better branches of
20 government to fashion damages remedies;

21 (g) In its most recently completed term, the United States supreme
22 court declined, in *Martin v. United States*, 145 S. Ct. 1689 (2025), to
23 extend the doctrine of supremacy clause immunity beyond its traditional
24 criminal law context;

25 (h) Violating the federal constitutional rights of residents of the
26 United States has never been and can never be "necessary and proper" to
27 the execution of the laws and powers of the United States within the

1 meaning of article I, section 8, clause 18 of the United States constitution;
2 and

3 (i) In enacting this act, the Colorado general assembly affirms its
4 longstanding and rightful role as a sovereign state in providing forum in
5 its courts for adjudication of claims of federal constitutional violations.

6 **SECTION 2.** In Colorado Revised Statutes, **add** 13-20-1302 as
7 follows:

8 **13-20-1302. Civil action for violation of constitutional rights**
9 **during immigration enforcement - relief - attorney fees - time limit to**
10 **commence action - definition.**

11 (1) A PERSON WHO IS INJURED DURING CIVIL IMMIGRATION
12 ENFORCEMENT BY ANOTHER PERSON WHO, WHETHER OR NOT UNDER
13 COLOR OF LAW, VIOLATES THE UNITED STATES CONSTITUTION WHILE
14 PARTICIPATING IN CIVIL IMMIGRATION ENFORCEMENT MAY BRING A CIVIL
15 ACTION AGAINST THE OTHER PERSON. A PERSON FOUND TO HAVE
16 VIOLATED THE UNITED STATES CONSTITUTION WHILE PARTICIPATING IN
17 CIVIL IMMIGRATION ENFORCEMENT IS LIABLE TO THE INJURED PERSON FOR
18 LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF.

19 (2) (a) IN AN ACTION BROUGHT PURSUANT TO THIS SECTION, A
20 COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A
21 PREVAILING PLAINTIFF. IN ACTIONS FOR INJUNCTIVE RELIEF, A COURT
22 SHALL DEEM A PLAINTIFF TO HAVE PREVAILED IF THE PLAINTIFF'S SUIT WAS
23 A SUBSTANTIAL FACTOR OR SIGNIFICANT CATALYST IN OBTAINING THE
24 RESULTS SOUGHT BY THE LITIGATION.

25 (b) WHEN A JUDGMENT IS ENTERED IN FAVOR OF A DEFENDANT,
26 THE COURT MAY AWARD REASONABLE COSTS AND ATTORNEY FEES TO THE
27 DEFENDANT FOR DEFENDING ANY CLAIMS THE COURT FINDS FRIVOLOUS.

1 (3) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER THE UNITED
2 STATES CONSTITUTION, A GRANT OF IMMUNITY TO A DEFENDANT,
3 INCLUDING, BUT NOT LIMITED TO, SOVEREIGN IMMUNITY; OFFICIAL
4 IMMUNITY; INTERGOVERNMENTAL IMMUNITY; QUALIFIED IMMUNITY;
5 SUPREMACY CLAUSE IMMUNITY; STATUTORY IMMUNITY, INCLUDING THE
6 "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24;
7 OR COMMON LAW IMMUNITY, DOES NOT APPLY IN AN ACTION BROUGHT
8 PURSUANT TO THIS SECTION.

9 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
10 REQUIRES, "CIVIL IMMIGRATION ENFORCEMENT" MEANS AN ACTION TO
11 INVESTIGATE, QUESTION, DETAIN, TRANSFER, OR ARREST A PERSON FOR
12 THE PURPOSE OF ENFORCING FEDERAL CIVIL IMMIGRATION LAW. "CIVIL
13 IMMIGRATION ENFORCEMENT" DOES NOT INCLUDE AN ACTION COMMITTED
14 BY A PEACE OFFICER WHO IS ACTING WITHIN THE SCOPE OF THE PEACE
15 OFFICER'S DUTIES CONSISTENT WITH STATE LAW.

16 (5) PURSUANT TO SECTION 13-80-102, A CIVIL ACTION DESCRIBED
17 IN THIS SECTION MUST BE COMMENCED WITHIN TWO YEARS AFTER THE
18 CAUSE OF ACTION ACCRUES.

19 **SECTION 3.** In Colorado Revised Statutes, 13-80-102, **amend**
20 (1)(k); and **add** (1)(l) as follows:

21 **13-80-102. General limitation of actions - two years.**

22 (1) The following civil actions, regardless of the theory upon
23 which suit is brought, or against whom suit is brought, must be
24 commenced within two years after the cause of action accrues, and not
25 thereafter:

26 (k) All actions brought ~~under~~ PURSUANT TO section 13-21-109 (2);

27 AND

1 (1) AN ACTION ALLEGING A VIOLATION OF CONSTITUTIONAL RIGHTS
2 DURING CIVIL IMMIGRATION ENFORCEMENT BROUGHT PURSUANT TO
3 SECTION 13-20-1302.

4 **SECTION 4. Safety clause.** The general assembly finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, or safety or for appropriations for
7 the support and maintenance of the departments of the state and state
8 institutions.