

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

HOUSE SPONSORSHIP

Mabrey and Zokaie,

Senate Committees

Judiciary
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House Committees

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) In later 19th century cases as well, the United States supreme
9 court held that federal officials could be liable for damages even for
10 reasons relating to but beyond the lawful scope of federal duties, *Mitchell*
11 *v. Harmony*, 54 U.S. 115 (1851), and in particular that state courts
12 possessed jurisdiction to consider such damages claims, *Teal v. Felton*,
13 53 U.S. 284 (1852);

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

23 (d) Decades later, the United States supreme court continued to
24 recognize the role of state law in holding federal officials accountable for

1 legal violations, noting in *Wheeldin v. Wheeler*, 373 U.S. 647 (1963),
2 "[w]hen it comes to suits for damages for abuse of power, federal
3 officials are usually governed by local law";

4 (e) When the United States supreme court recognized a federal
5 law cause of action for violation of certain constitutional rights in *Bivens*
6 *v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), that cause
7 of action was in addition to, rather than instead of, traditional state law
8 remedies. Even one of the dissenting justices in *Bivens* noted the ongoing
9 role of state courts, writing, "The task of evaluating the pros and cons of
10 creating judicial remedies for particular wrongs is a matter for Congress
11 and the legislatures of the States".

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

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

27 (h) In its most recently completed term, the United States supreme

1 court declined, in *Martin v. United States*, 145 S. Ct. 1689 (2025), to
2 extend the doctrine of supremacy clause immunity beyond its traditional
3 criminal law context;

4 (i) Violating the federal constitutional rights of residents of the
5 United States has never been and can never be "necessary and proper" to
6 the execution of the laws and powers of the United States within the
7 meaning of article I, section 8, clause 18 of the United States constitution;
8 and

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

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

14 **13-20-1302. Civil action for violation of constitutional rights
15 during immigration enforcement - relief - attorney fees - time limit to
16 commence action - definition.**

17 (1) A PERSON WHO HAS THEIR RIGHTS THAT ARE GUARANTEED BY
18 THE UNITED STATES CONSTITUTION VIOLATED BY ANOTHER PERSON WHO,
19 ACTING UNDER COLOR OF ANY FEDERAL, STATE OR LOCAL LAW, IS
20 PARTICIPATING IN CIVIL IMMIGRATION ENFORCEMENT, MAY BRING A CIVIL
21 ACTION AGAINST THE OTHER PERSON. A PERSON FOUND TO HAVE
22 VIOLATED THE UNITED STATES CONSTITUTION WHILE PARTICIPATING IN
23 CIVIL IMMIGRATION ENFORCEMENT IS LIABLE TO THE PERSON WHOSE
24 RIGHTS ARE VIOLATED FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER
25 APPROPRIATE RELIEF.

26 (2) (a) IN AN ACTION BROUGHT PURSUANT TO THIS SECTION, A
27 COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A

1 PREVAILING PLAINTIFF. IN ACTIONS FOR INJUNCTIVE RELIEF, A COURT
2 SHALL DEEM A PLAINTIFF TO HAVE PREVAILED IF THE PLAINTIFF'S SUIT WAS
3 A SUBSTANTIAL FACTOR OR SIGNIFICANT CATALYST IN OBTAINING THE
4 RESULTS SOUGHT BY THE LITIGATION.

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

8 (3) TO THE MAXIMUM EXTENT PERMISSIBLE UNDER THE UNITED
9 STATES CONSTITUTION AND 42 U.S.C. SEC. 1983, A GRANT OF IMMUNITY
10 TO A DEFENDANT, INCLUDING, BUT NOT LIMITED TO, SOVEREIGN
11 IMMUNITY; OFFICIAL IMMUNITY; INTERGOVERNMENTAL IMMUNITY;
12 QUALIFIED IMMUNITY; SUPREMACY CLAUSE IMMUNITY; STATUTORY
13 IMMUNITY, INCLUDING THE "COLORADO GOVERNMENTAL IMMUNITY
14 ACT", ARTICLE 10 OF TITLE 24; OR COMMON LAW IMMUNITY, DOES NOT
15 APPLY IN AN ACTION BROUGHT PURSUANT TO THIS SECTION.

16 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
17 REQUIRES, "CIVIL IMMIGRATION ENFORCEMENT" MEANS AN ACTION TO
18 INVESTIGATE, QUESTION, DETAIN, TRANSFER, OR ARREST A PERSON FOR
19 THE PURPOSE OF ENFORCING FEDERAL CIVIL IMMIGRATION LAW. "CIVIL
20 IMMIGRATION ENFORCEMENT" DOES NOT INCLUDE AN ACTION COMMITTED
21 BY A PEACE OFFICER WHO IS ACTING WITHIN THE SCOPE OF THE PEACE
22 OFFICER'S DUTIES CONSISTENT WITH STATE LAW.

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

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

1 **13-80-102. General limitation of actions - two years.**

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

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

7 AND

8 (l) AN ACTION ALLEGING A VIOLATION OF CONSTITUTIONAL RIGHTS
9 DURING CIVIL IMMIGRATION ENFORCEMENT BROUGHT PURSUANT TO
10 SECTION 13-20-1302.

11 **SECTION 4. Severability.** If any provision of this act or the
12 application of this act to any person or circumstance is held invalid, the
13 invalidity does not affect other provisions or applications of the act that
14 can be given effect without the invalid provision or application, and to
15 this end the provisions of this act are declared to be severable.

16 **SECTION 5. Safety clause.** The general assembly finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety or for appropriations for
19 the support and maintenance of the departments of the state and state
20 institutions.