

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 26-005

BY SENATOR(S) Weissman and Gonzales J., Coleman, Hinrichsen, Jodeh, Kipp, Marchman, Rodriguez, Wallace, Amabile, Ball, Bridges, Cutter, Danielson, Exum, Kolker, Lindstedt, Snyder, Sullivan;
also REPRESENTATIVE(S) Mabrey and Zokaie, Bacon, Boesenecker, Brown, Duran, English, Froelich, Garcia, Gilchrist, Jackson, Joseph, Lindsay, McCormick, Nguyen, Paschal, Rutinel, Rydin, Sirota, Smith, Story, Titone, Velasco, Willford, Woodrow.

CONCERNING STATE COURT REMEDIES FOR VIOLATIONS OF FEDERAL CONSTITUTIONAL RIGHTS OCCURRING DURING IMMIGRATION ENFORCEMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

(f) More recently, congress has made federal statutory law the exclusive remedy for certain claims sounding in tort, but this exclusivity specifically "does not extend or apply to a civil action against an employee of the Government [. . .] which is brought for a violation of the Constitution of the United States", 28 U.S.C. sec. 2679. The prime sponsor of legislation amending the federal "Tort Claims Act" to provide for limited exclusivity took pains to clarify, "We make special provisions here to make clear that

the more controversial issue of constitutional torts is not covered by this bill. If you are accused of having violated someone's constitutional rights, this bill does not affect it", 134 Cong. Rec. 15963 (1988).

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

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

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

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

SECTION 2. In Colorado Revised Statutes, **add** 13-20-1303 as follows:

13-20-1303. Civil action for violation of constitutional rights during immigration enforcement - relief - attorney fees - time limit to commence action - definition.

(1) A PERSON WHO HAS THEIR RIGHTS THAT ARE GUARANTEED BY THE UNITED STATES CONSTITUTION VIOLATED BY ANOTHER PERSON WHO, ACTING UNDER COLOR OF ANY FEDERAL, STATE, OR LOCAL LAW, IS PARTICIPATING IN CIVIL IMMIGRATION ENFORCEMENT, MAY BRING A CIVIL ACTION AGAINST ANOTHER PERSON WHOSE CONDUCT WAS THE PROXIMATE CAUSE OF THE VIOLATION. A PERSON FOUND TO HAVE VIOLATED THE UNITED STATES CONSTITUTION WHILE PARTICIPATING IN CIVIL IMMIGRATION ENFORCEMENT IS LIABLE TO THE PERSON WHOSE RIGHTS ARE VIOLATED FOR LEGAL OR EQUITABLE RELIEF OR ANY OTHER APPROPRIATE RELIEF.

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

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

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

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

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

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

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

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

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

(l) AN ACTION ALLEGING A VIOLATION OF CONSTITUTIONAL RIGHTS DURING CIVIL IMMIGRATION ENFORCEMENT BROUGHT PURSUANT TO SECTION 13-20-1303.

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

SECTION 5. Appropriation. For the 2026-27 state fiscal year, \$125,604 is appropriated to the department of law. This appropriation is from the legal services cash fund created in section 24-31-108 (4), C.R.S., from revenue received from the department of personnel that is continuously appropriated to the department of personnel from the risk management fund created in section 24-30-1510 (1)(a), C.R.S. The appropriation to the department of law is based on an assumption that the department of law will require an additional 0.5 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of personnel.

SECTION 6. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO