



National Police Accountability Project

## **Frequently Asked Questions: State Regulation of ICE Agents and Other Federal Cops**

In the wake of unprecedented federal law enforcement violence and misconduct, many state lawmakers are introducing legislation to create transparency and accountability standards for federal agents conducting raids on behalf of United States Immigration and Customs Enforcement (“ICE”) and other enforcement operations in their state. California and Illinois have already passed laws creating state-law liability for federal immigration officers,<sup>1</sup> with a number of other states introducing similar legislation for consideration during their current sessions.<sup>2</sup> The Trump Administration has opposed these efforts by filing legal challenges to enjoin California and Illinois<sup>3</sup> from enforcing their laws and threatening to withhold federal funding from other jurisdictions considering similar bills.<sup>4</sup> The Administration’s legal efforts to oppose such legislation may make state lawmakers who seek to regulate ICE more hesitant to pursue efforts to hold ICE and other federal cops accountable. This memo answers common legal questions that arise regarding state and local legislative efforts aimed at regulating federal law enforcement.

### **1. What Legal Remedies Do People Currently Have When They Are Harmed by Federal Law Enforcement Officers?**

In theory, people harmed by federal law enforcement violence have both criminal and civil remedies available to them. As discussed in more detail below, federal law enforcement officers can be criminally prosecuted by federal and state prosecutors. It is important to acknowledge, however, that criminal prosecution of *any* law

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<sup>1</sup> See Illinois Bivens Act, 2025 Ill. HB 1312; 2025 Cal SB 627.

<sup>2</sup> See, e.g., Washington HB 2173, New Jersey A6236, Florida S136.

<sup>3</sup> *United States v. State of Illinois, et. al.*, 25-cv-2220, Doc. 1 (S.D. Ill. 2025); *United States v. California*, 2:25-cv-10999, Doc 1 (C.D. Cal.).

<sup>4</sup> See Protecting the American People Against Invasion, Jan. 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.



enforcement officer is rare<sup>5</sup> and not all types of federal law enforcement misconduct violate criminal law. People can also pursue civil claims in federal court by filing what is called a *Bivens* action or a lawsuit under the Federal Tort Claims Act (“FTCA”).<sup>6</sup> A *Bivens* action allows people to sue individual federal officers for violating the Constitution. The FTCA allows people to sue the United States government for torts committed by its employees.<sup>7</sup> Both *Bivens* and FTCA lawsuits are complex and riddled with opportunities for the federal government to escape liability. With respect to *Bivens* actions, the Supreme Court has significantly narrowed the types of claims that plaintiffs can bring against federal law enforcement officers, essentially limiting suits to those involving specific factual scenarios and types of claims.<sup>8</sup> Lawsuits brought under the FTCA are often thwarted by courts applying overbroad interpretations of the statute’s exceptions.<sup>9</sup>

## **2. Can State and Local Prosecutors File Criminal Charges Against Federal Officers for Violating State Laws?**

Yes, depending on the circumstances. The Supremacy Clause of the United States Constitution, which makes federal law “supreme” over state and local laws,<sup>10</sup> prohibits states from prosecuting federal employees for acts committed while discharging their federal duties, even if such acts are deemed criminal under state law.<sup>11</sup> Accordingly, “Supremacy Clause immunity” is a legal doctrine federal officers can use to dismiss state criminal charges if: (1) the charges stem from an act that

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<sup>5</sup> German Lopez, *Police officers are prosecuted for murder in less than 2% of cases*, Vox, Apr. 2, 2021, <https://www.vox.com/21497089/derek-chauvin-george-floyd-trial-police-prosecutionsblack-lives-matter> (accessed Jun. 30, 2024) (“Police officers today get away without even an arrest for murder or manslaughter in more than 98 percent of fatal shootings.”).

<sup>6</sup> Michael Avery, et al., *Police Misconduct Law and Litigation*: 3d. Edition, § 5:1.

<sup>7</sup> *Id.*

<sup>8</sup> See James E. Pfander & Rex Alley, *Federal Tort Liability After Egbert v. Boule: A Textual Case for Restoring the Officer Suit at Common Law*, 138 HARV. L. REV. 985, 989 (2025) (explaining the current state of *Bivens* actions).

<sup>9</sup> See, e.g., *S.R.P. v. United States*, 676 F.3d 329, 336-38 (3d Cir. 2012) (recognizing courts apply overbroad construction of discretionary function exception).

<sup>10</sup> U.S. Const., art. VI, cl. 2.

<sup>11</sup> ARTICLE: SOLIDIFYING SUPREMACY CLAUSE IMMUNITY, 30 Wm. & Mary Bill of Rts. J. 567, 581(March 2022); *Martin v. United States*, 605 U.S. 395, 411 (2025)



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federal law “authorized” the officer to undertake, and (2) in doing that act, the officer did only what the officer reasonably believed was necessary and proper to fulfill their federal responsibilities.<sup>12</sup> Importantly, asserting Supremacy Clause immunity allows a federal officer to remove the case to federal court even if the charges were filed in state court.<sup>13</sup>

Although the Supremacy Clause limits prosecution of federal law enforcement officers for violations of state law committed while carrying out duties authorized by federal law,<sup>14</sup> courts have permitted state prosecutions against federal officers when their conduct exceeds federal constitutional limits.<sup>15</sup> For instance, if a federal law enforcement officer is being prosecuted for state law crimes in relation to using force that allegedly violated the Fourth Amendment, the prosecution could proceed.<sup>16</sup> It is important to note, however, that even though local prosecutors may have authority to file charges against federal law enforcement officers, there are no prominent examples of these prosecutions leading to convictions. These cases are often removed to federal court where officers are able to get the charges thrown out under Supremacy Clause theories.<sup>17</sup>

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<sup>12</sup> See *Cunningham v. Neagle*, 135 U.S. 1 (1890); see also Seth P. Waxman & Trevor W. Morrison, What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause, 112 YALE L.J. 2195,2233-34 (2003).

<sup>13</sup> 28 U.S.C. 1442(a)(1).

<sup>14</sup> *Supra*, note 11.

<sup>15</sup> Vikram David Amar, *Absent Federal Consent, California Cannot Regulate California's Use of Masks* Verdict, Sept. 24, 2025, <https://verdict.justia.com/2025/09/24/absent-federal-consent-california-cannot-regulate-ices-use-of-masks> (analyzing *Maryland v. McCulloch* to conclude that alleged misconduct outside the bounds of federal constitution is prosecutable under state law).

<sup>16</sup> *Idaho v. Horiuchi*, 253 F.3d 359, 374 (9th Cir. 2001) (en banc), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001) (en banc).

<sup>17</sup> Radley Balko, *Trump's Immigration Nightmare: It Is Happening Here*, THE NEW REPUBLIC, Dec. 24, 2025, <https://newrepublic.com/article/204227/trump-immigration-nightmare-happening-here>.



### **3. Can States Create a Private Cause of Action for Residents to File Civil Lawsuits Against Federal Officers for Violating State Laws?**

Yes. States can enact legislation that permit individuals to sue federal officers in state court for conduct that also violates federal law. While the Supremacy Clause could prohibit a state from creating a private cause of action to sue federal officers for state law violations that do not match existing federal laws, a law that allows people to sue federal officers for violations of the United States Constitution in state court would be permissible under the Supremacy Clause.

### **4. What Restrictions Can States Impose on Federal Law Enforcement Conduct Through State Legislation?**

States can create laws that allow for state criminal prosecutions and state civil suits against federal law enforcement officers for conduct that violates federal law.<sup>18</sup> There is less legal support for legislation that criminalizes or creates liability for conduct that is permissible under federal law.<sup>19</sup> For example, bills creating civil or criminal liability for ICE agents for wearing masks while on duty or for arresting individuals in courthouses may face legal challenges because these actions are generally authorized under federal law. The Trump Administration has sued to block California's anti-mask bill<sup>20</sup> and Illinois' Bivens Act for violations of the Supremacy Clause. These cases are still pending and legal experts are split on whether the legislation will be enjoined to the extent it allows prosecutors to press charges and civilians to file private lawsuits for conduct that is permitted under federal law.<sup>21</sup>

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<sup>18</sup> *Supra*, note 15; see also Harrison Stark, *State Created Damages Remedies*, State Democracy Research Institute, Aug. 1, 2025, <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/> (explaining that state laws that do not create new obligations for federal officers and simply “enforce[] the federal Constitution against individuals already duty-bound to follow it” do not run afoul to the Supremacy Clause).

<sup>19</sup> *Id.*

<sup>20</sup> *The United States of America v. State of California, et al.*, No. 2:25-cv-10999 (C.D.Cal. 2025), complaint available at [https://www.justice.gov/opa/media/1418431/dl?inline=&utm\\_medium=email&utm\\_source=govdelivery](https://www.justice.gov/opa/media/1418431/dl?inline=&utm_medium=email&utm_source=govdelivery).

<sup>21</sup> *Supra*, note 15.



## 5. Can the Trump Administration Defund States That Pass Legislation Creating Criminal and Civil Liability for ICE Agents?

Probably not. Federal courts have rejected prior attempts by the Trump Administration to withhold funding from jurisdictions that have passed laws protecting communities from federal immigration operations.<sup>22</sup>

## 6. What Other Policies Are Available to Help Protect Against Federal Law Enforcement Harm?

The National Police Accountability Project has proposed a number of policy recommendations to limit federal law enforcement violence and misconduct for communities impacted by ICE raids and federal takeovers. Check out our [Choosing Resistance](#) and [Disrupting the Arrest-to-Deportation Pipeline](#) guide.

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<sup>22</sup> *Disrupting the Arrest-to-Deportation Pipeline: Solutions to Protect Communities and Local Governments From The Trump Administration's Mass Deportation Agenda*, National Police Accountability Project, Jan. 2025, at \*8-9, <https://engage.nlg-npap.org/system/files/2025-03/NPAP%20ICE%20Noncompliance%20White%20Paper.pdf>.