



INSTITUTE FOR JUSTICE

**Testimony in Support of SB 26-005
Colorado Senate Committee on Judiciary**

February 1, 2026

Dear Chair Gonzales and Members of the Committee:

Thank you for the opportunity to testify today in support of SB 26-005. My name is Meagan Forbes, and I am the Legislative Director and Senior Legislative Counsel at the Institute for Justice. The Institute for Justice is a nonprofit public interest law firm that works to protect civil liberties and to increase government accountability. This bill responds to a serious problem: When a person’s constitutional rights are violated by federal officials, as opposed to state or local officials, there is no meaningful legal remedy in either state or federal courts.

This bill supports the Constitution. Under our legal system, constitutional rights are supposed to come with enforcement mechanisms. If a right does not have a remedy, it is not much of a right at all.

Over the last several decades, federal law has greatly limited the ability of people to recover damages when federal officials act unconstitutionally.ⁱ This bill restores a basic accountability mechanism that was once available at common law and under U.S. Supreme Court precedent but that now has been largely gutted.ⁱⁱ It does not expand rights or federal immigration policy; it also does not limit or impede lawful immigration policy. It simply enforces the Constitution, and it fits squarely within federal law.

Federal supremacy is not threatened by this bill. The Westfall Act explicitly allows this kind of state action. In 1988, the Westfall Act was enacted to protect federal employees from personal liability for torts committed within the scope of their employment. It allows suits against the federal government in federal court and makes the Federal Tort Claims Act the exclusive remedy available for people when federal actors commit torts. However, the Westfall Act has an important exception: It “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”ⁱⁱⁱ This bill is therefore consistent with the Westfall Act and furthers federal law by upholding the Constitution.

SB 26-005 is also consistent with history and founding-era practices in our nation. For most of the country’s history, constitutional violations by federal officials were handled at common law in state courts.^{iv} And while framed as torts, they often involved constitutional claims, such as a trespass suit challenging the legality of a search under the Fourth Amendment.



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In 1971, the U.S. Supreme Court also recognized a federal cause of action against federal agents for constitutional violations in *Bivens v. Six Unknown Federal Narcotics Agents*.^v It was clear in this case that the cause of action was supplemental and not intended to replace what states had allowed at common law. However, over a series of subsequent cases, the Supreme Court has severely limited what can be brought as a *Bivens* action in federal court, but again, *Bivens* itself was not intended to foreclose state action. Therefore, federal jurisprudence does not create a problem here.

The state plays an important role in safeguarding constitutional rights. States have a responsibility to protect their citizens and should not wait for changes in federal law to act. A few states already have state causes of action authorizing suits for damages for violations of the U.S. Constitution, including California, Illinois, Maine, Massachusetts and New Jersey.^{vi}

These laws help maintain law and order. In the United States, no one should be above the law. Regardless of one's view on immigration enforcement, like all types of law enforcement, it should be done in a constitutional way.

Research shows that a lack of accountability causes unrest and even harms law enforcement officers.^{vii} Trust is a critical part of law enforcement. When people think government agents can act with impunity, it breaks down trust. State and local officers are also held to a higher standard in the law, though the public may not know it. When federal officers abuse the law with no accountability, it affects the public's perception of all law enforcement officers. This makes law enforcement encounters more confrontational and less effective. It also affects the professional reputation of officers and increases risks to officers and the public

In closing, the Constitution matters. It is essential for maintaining the rule of law, preventing government abuse, and protecting the everyday freedoms we have and enjoy.

We encourage the committee to stand with the Constitution and state rights with this bill. Thank you for your time, and I'm happy to answer any questions you may have.

Sincerely,

Meagan Forbes
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ⁱ Harrison Stark, *Explainer: State-Created Damages Remedies Against Federal Officials*, State Research Democracy Initiative, p. 1 (Aug. 1, 2025), <https://statedemocracy.law.wisc.edu/featured/2025/explainer-state-created-damages-remedies-against-federal-officials/>.

ⁱⁱ See *Hernandez v. Mesa*, 589 U.S. 93, 115-16 (2020) (Thomas, J., concurring).

ⁱⁱⁱ 28 U.S.C. sec. 2679(b)(2)(A).

^{iv} Jennifer L. Mascott, *Egbert v. Boule: Federal Officer Suits by Common Law*, Cato Supreme Court Review, p. 112 (2022),

<https://scholarship.law.edu/cgi/viewcontent.cgi?article=2162&context=scholar#:~:text=For%20many%20decades%20after%20the,remained%20available%20against%20federal%20officers> (explaining that “[f]or many decades after the ratification of the U.S. Constitution, federal officers faced lawsuits for damages under state common law when they allegedly engaged in unlawful acts, as multiple scholars have explained. A not-uncommon fact pattern included an individual suing a federal officer for trespass connected with a search, seizure, or arrest, to which the officer would plead the defense of lawful federal authority connected with a federally authorized act. Constitutional questions sometimes arose because the contours of the federal officer's defense were subject to the constraint that the federal officer carrying out a search could not do so unreasonably under the Constitution's Fourth Amendment.”).

^v *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

^{vi} See Cal. Civ. Code § 52.1 (enacted in 1987); *Illinois Bivens Act*, Ill. Public Act 104-0440 (enacted in 2025); Mass. Gen. Laws ch. 12, § 11I (enacted in 1979); Me. Stat. tit. 5, § 4682 (enacted in 1991); and N.J. Stat. Ann. § 10:6-2.

^{vii} James Craven, Jay Schweikert, and Clark Neily, *How Qualified Immunity Hurts Law Enforcement*, Cato Institute, (Feb. 15, 2022), <https://www.cato.org/study/how-qualified-immunity-hurts-law-enforcement>.



LCS Committees <committees.lcs.ga@coleg.gov>

SB 26-005 For the Amendment

Alexis Bauer <alexisisgood@gmail.com>

Mon, Feb 2, 2026 at 12:21 PM

To: "committees.lcs.ga@coleg.gov" <committees.lcs.ga@coleg.gov>

Hello and thank you for reading this input.

I am writing today because I am in favor of Bill SB 26-005. I believe the lack of pathways for people to sue against ICE abuse, overreach or other situations is a big gap in our important constitutional rights. Rights that are there for all people. I believe in accountability for the government services, ICE is no exception.

I believe real pain and psychological torture is happening due the gap in our legal system and I am so relieved that this bill is being introduced to remedy this.

Government accountability is not a partisan issue. When we have the tools to hold our government accountable for their actions, we have seen better outcomes.

Also, in Colorado we have strong "Don't tread on me" and second ammendment groups, many of whom are outraged by the narrative that Alex Pretti got shot 'because he was carrying a gun.' If Alex had been in Colorado, we would not have had the tools to hold ICE accountable for his death. With the occurrence of "death cards" appearing on cars in Vail, we are already seeing abuses performed by ICE. We need to get tools for the people so that we, the people can get real protection from the law.

Thank you so much for your efforts to create these tools. It makes me happy to know we are showing up for all of my neighbors when we commit to change our legal system for the best outcomes.

Thank you,

Alexis Bauer
Mesa, Colorado





SUPPORT: SB5, a bill concerning state court remedies for violations of federal constitutional rights occurring during immigration enforcement
Written Testimony of Lauren Bonds, the Executive Director of the National Police Accountability Project
Senate Judiciary Committee-February 2, 2026

I write on behalf of the National Police Accountability Project (“NPAP”), a nonprofit organization of civil rights attorneys dedicated to holding law enforcement officers accountable to constitutional and professional standards. NPAP has approximately 550 attorney members practicing in every region of the United States, including more than a dozen attorneys in Colorado. Because of our work, we have a first-hand understanding of how difficult it is to sue federal law enforcement officers when they violate the Constitution. That is why we urge you to vote yes on SB 5. This bill will create a path for victims of government abuse—particularly those committed by agents enforcing the Trump administration’s reign of terror against immigrant communities — to hold officers accountable in state court by eliminating the unjustifiable restrictions created by federal case law and statutes.

1. Federal Court Remedies for Victims of ICE Violence Are Inadequate.

Currently, there are two ways that people injured by federal law enforcement violence can pursue civil claims in federal court. First, by filing what is called a *Bivens* action.¹ Second, by filing a lawsuit under the Federal Tort Claims Act (“FTCA”).² Unfortunately, both *Bivens* and FTCA cases are riddled with barriers that block many plaintiffs from seeking justice even if their rights were clearly violated.

***Bivens* Suits**

A *Bivens* action allows people to sue individual federal officers under 42 USC §1983 for violating the Constitution. The action is named after *Bivens v. Six Unknown Fed. Narcotics Agents*,³ the Supreme Court case that first recognized the right of a person to sue federal law enforcement officers under Section 1983. However, a plaintiff cannot sue federal law

¹ Michael Avery, et al., *Police Misconduct Law and Litigation*: 3d. Edition, § 5:1.

² *Id.*

³ 408 U.S. 388 (1971)



enforcement officers for any constitutional violation. Since originally deciding *Bivens*, the Supreme Court has imposed a number of restrictions on when a plaintiff can sue, disfavoring a remedy in cases that involve “new contexts” and creating broad special factors like national security interests that counsel against permitting a case.⁴ In 2022, the Supreme Court decided *Egbert v. Boule*. The *Egbert* case severely limited the availability of *Bivens* actions by declining to allow the plaintiff to sue for his First Amendment retaliation and Fourth Amendment excessive force claims and holding “if we were called to decide *Bivens* today, we would decline to discover any implied causes of action in the Constitution.”⁵ Since *Egbert*, experts have found that the vast majority of *Bivens* claims are quickly dismissed at the earliest stage of the litigation (i.e. motion to dismiss) with one scholar declaring “*Bivens* is effectively dead.”⁶

FTCA Suits

The FTCA allows people to sue the United States government for torts committed by its employees.⁷ Plaintiffs can sue the government for specific law enforcement intentional torts but some lawsuits brought under the FTCA are often thwarted by courts applying overbroad interpretations of the statute’s exceptions.⁸ The FTCA also has a number of procedural hurdles including the requirement that plaintiffs file an administrative claim and statutory caps on attorneys fees that can make the cases more difficult to pursue.⁹

2. SB5 Will Ensure That People Harmed by Federal Law Enforcement Violence Can Sue for Their Injuries.

The bill will create an important accountability mechanism for federal law enforcement officers to deter future misconduct and compensate victims for their injuries. Courts have recognized that civil legal liability serves two important functions: deterrence and making the wronged party whole.¹⁰ By creating a private cause of action to sue federal law

⁴See Eg. *Ziglar v. Abassi*, 582 U.S. 120, 166 (2017)

⁵ 596 U.S. 482, 502 (2022)

⁶ Danielle Jeffries, *RIP Bivens*, 103 Neb. L. Rev. 1, 11 (2024); *See also*, 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).

⁷ 28 U.S.C. §2680 et. seq.

⁸ *See, e.g., S.R.P. v. United States*, 676 F.3d 329, 336-38 (3d Cir. 2012) (recognizing courts often apply overbroad construction of discretionary function exception).

⁹ 28 USCA §2678

¹⁰ *See eg. Cary v. Phipus*, 435 U.S. 247 (1978).



enforcement officers for constitutional violations in state court—without the unjustifiable hurdles created by federal *Bivens* jurisprudence—SB 5 increases the likelihood that ICE agents and other federal cops will have legal consequences for their misconduct. Raising the legal stakes of misconduct for agents will hopefully have the effect of increasing their prudence in carrying out their duties. The bill will also ensure that Coloradans harmed by misconduct can be compensated for their injuries.

3. SB 5 Would Not Violate the Supremacy Clause.

States can unquestionably enact legislation that permit individuals to sue federal officers in state court for conduct that also violates federal law.¹¹ While the Supremacy Clause could arguably 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 U.S. Constitution in state court would be permissible under the Supremacy Clause.

We urge you to support SB5 and enable Coloradans whose civil rights have been violated by ICE agents and other federal law enforcement to hold those officers accountable in court for their misconduct.

¹¹ 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); 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).

SB 26-005

Rights Violation in Immigration Enforcement Remedy

Good afternoon, Chair and members of the committee.

My name is Marcella Schieffelin. I am a caregiver and disability advocate here in Colorado, and I'm speaking in support of this bill.

This legislation matters because people with disabilities and mixed-status families are especially vulnerable during civil immigration enforcement actions.

People with disabilities often communicate, move, or respond differently in high-stress situations. These differences are frequently misunderstood as resistance or noncompliance, leading to escalation, denial of medical care, and inadequate accommodations.

We have seen individuals restrained for not understanding commands, people denied medication in detention, and families separated unexpectedly.

These harms are not hypothetical in Colorado.

Families have been detained outside immigration court during routine check-ins. Communities in Aurora have experienced apartment raids separating families. In Durango, children and a parent were taken outside a school, leaving families traumatized.

In rural communities, limited oversight and fewer legal resources make it even harder to challenge constitutional violations.

Many families, especially in rural areas and those supporting people with disabilities, also face barriers accessing due process through USCIS online systems. Digital-only processes, limited broadband access, system errors, and a lack of support can delay filings and increase enforcement risk, even when families act in good faith.

When a caregiver is removed without due process, the harm spreads immediately.

In many mixed-status families, the caregiver supports a child with autism, an adult with disabilities, or an aging parent with dementia.

When care is disrupted, medications are missed, appointments are lost, and daily living needs go unmet, leading to medical crises and trauma.

This bill is not about stopping immigration enforcement.

It is about ensuring enforcement is constitutional, humane, and accountable.

By creating a clear pathway for relief when rights are violated, this bill helps protect families and encourages safer practices.

I urge you to support this legislation.

Thank you.

ATTACHMENT A

Topic	Key Data	Why It Matters
Immigrant Population	~598,000 immigrants (10% of CO population)	Immigration affects a large share of communities
Households with Immigrants	About 14% of households	Enforcement impacts entire families
Mixed-Status Families	Tens of thousands of U.S.-born children live with undocumented family members	Harm ripples across citizens & non-citizens
Undocumented Population	~230,000 people	Significant population affected by enforcement
Disability Prevalence	335,000+ adults unable to work due to disability	Many rely on caregiving
Disability Care Needs	327,000+ need disability-competent care	Disruption causes crises

ATTACHMENT B

FACT SHEET

Immigrant Population in Colorado

- **598,000** immigrants
- **10%** of the state population
- **14%** of households

Mixed-Status Families

- **Tens of thousands** of U.S.-born children live with undocumented family members
- **About 230,000** undocumented residents

Disability Prevalence

- **335,000** adults are unable to work due to disability
 - **327,000+** need daily care and disability-competent health services
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Impact in Plain Language

When constitutional rights are violated during civil immigration enforcement, the harm extends beyond one person. In many mixed-status families, the individual impacted is also a caregiver for a child with disabilities, an aging parent, or someone who relies on daily medical and behavioral support. Sudden removal or denial of due process can disrupt care, lead to medical crises, and cause lasting trauma across entire families. This bill helps create accountability and prevent cascading harm.

Sources

- **FWD.us (2025), Colorado Immigration Fact Sheet**
 - **Migration Policy Institute, Unauthorized Immigrant Population in Colorado**
 - **Colorado Fiscal Institute, Mixed-Status Family Demographics**
 - **Colorado Health Institute, Colorado Health Access Survey**
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LCS Committees <committees.lcs.ga@coleg.gov>

Senate Judiciary SB26-005 Written Testimony

Sean C <seanclark91@gmail.com>

Mon, Feb 2, 2026 at 10:34 AM

To: "committees.lcs.ga@coleg.gov" <committees.lcs.ga@coleg.gov>

Good Afternoon,

I have lived in Colorado for 9 out of the last 10 years. Twice, I voted for Jared Polis. I voted for the wave of progressive City council in Aurora recently. I have consistently held the line in doing my part as an American by voting for people that would protect our tired, our poor, the huddled masses yearning to breathe. And while I've done that, we see a wordless conspiracy between the judiciary, the legislative, and executive branches of the federal government to knowingly enact concentration camps in American cities. Rip law-abiding citizens and immigrants who are doing it the 'right way' out of their houses and lure them out with their five year old children. We've seen Trump's version of the Brown shirts tear gas peaceful protestors, initiate and engage in fights with law-abiding citizens, we've seen them execute American citizens for leveraging their constitutionally protected rights. The executive branch then slanders these people as 'domestic terrorists', refuses to investigate these crimes, and wipe their hands of it. It is now time for the State government I voted for to step up and force these out of control and lawless thugs into line.

I did not grow up in a world where this was as the America we projected to immigrants or citizens. I grew in an environment that explicitly taught me about the horrors of th concentration camps, fascism, and Nazism. I want to believe that's still the America we live in.

Thank you.

-In Peace

Sean Clark