



FAVORABLE - SB 346

Written Testimony of National Lawyers Guild-National Police Accountability Project, Keisha James, Staff Attorney

Senate Judicial Proceedings Committee – Tuesday, February 10, 2026

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Committee,

The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization 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 a dozen in Maryland. 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 a favorable review on SB 346. 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 that “*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 attorney’s fees, that can make the cases more difficult to pursue.⁹

2. SB 346 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

⁴ See, e.g., *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, e.g., *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 346 increases the likelihood that ICE agents and other federal law enforcement agents will face 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 Maryland residents harmed by misconduct can be compensated for their injuries.

3. SB 346 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 Constitution in state court would be permissible under the Supremacy Clause.

We urge you to give SB 346 a favorable review and enable Maryland residents whose civil rights have been violated by ICE agents and other federal law enforcement agents to hold those officers accountable in court for their misconduct. I am happy to answer questions. You can contact me at keisha.npap@nlg.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Keisha James', written over a horizontal line.

Keisha James
National Police Accountability Project

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 the 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 of the Supremacy Clause).