

NOTE: This is the presented and final version of Senate Bill 26-001 as presented to the Governor for approval. No gubernatorial action has been recorded at this time.

An Act

SENATE BILL 26-001

BY SENATOR(S) Virgil Murillo, Albert Petty
also REPRESENTATIVE(S) Howard Ballard, Jamie Barnes,
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CONCERNING STATE COURT REMEDIES FOR VIOLATIONS
OF FEDERAL CONSTITUTIONAL RIGHTS OCCURRING
DURING CIVIL IMMIGRATION ENFORCEMENT.

*Be it Enacted by the General Assembly of the State of San
Andreas:*

In the San Andreas Revised Statutes, **ADD** section 13-25-1840 as follows:

SECTION 1. SHORT TITLE. This act shall be known and cited as the “Immigration Enforcement Accountability Act”.

SECTION 2. LEGISLATIVE DECLARATION. (a) The General Assembly finds and declares that: (I) Since the founding of the United States, courts have recognized that federal officials may be held liable for violations of federal law and constitutional rights, including in *Little v. Barreme* and *Murray v. The Charming Betsey*; (II) The United States Supreme Court has long held that federal officers and employees are not categorically immune from the operation of state law, consistent with the Supremacy Clause of the United States Constitution, solely by virtue of their federal employment, including liability under state civil and criminal law

where applicable; (III) The Supreme Court has repeatedly recognized that, in suits for damages arising from abuses of power, federal officials are ordinarily governed by local law, and that state courts provide an appropriate forum for such claims; (IV) When the Supreme Court recognized a federal judicial remedy for certain constitutional violations in *Bivens v. Six Unknown Named Agents*, that remedy was understood to supplement, not displace, traditional state-law causes of action, including common law tort remedies; (V) Congress has expressly preserved the availability of civil actions for violations of the United States Constitution against federal employees, notwithstanding statutory limitations on other tort remedies; (VI) In *Egbert v. Boule*, the Supreme Court emphasized that legislatures, including state legislatures, rather than courts, are better suited to determine whether and how damages remedies should be provided for constitutional violations; (VII) In *Martin v. United States*, the Supreme Court declined to extend supremacy-clause immunity beyond its traditional criminal-law context; (VIII) Violations of the constitutional rights of persons within the United States are neither “necessary” nor “proper” to the execution of federal powers as interpreted under the Necessary and Proper Clause of the United States Constitution; and (IX) The State of San Andreas, as a sovereign state, possesses the authority and responsibility to provide remedies in its courts for violations of federal constitutional rights occurring within its jurisdiction, consistent with the United States Constitution.

SECTION 3. AMENDMENT TO THE REVISED STATUTES. In the San Andreas Revised Statutes, add Section 13-20-1401 as follows: 13-20-1401. Civil action for violation of constitutional rights during civil immigration enforcement — relief — attorney fees — immunity — statute of limitations — definitions. (a) A person injured within the State, regardless of the citizenship or immigration status of the injured person, including actions occurring in detention facilities or during transport, during civil immigration enforcement by another person who, acting under color of federal or state authority, whether acting individually or as part of a joint task force, knowingly or recklessly violates rights secured by the Constitution of the United States may

bring a civil action under the laws of this State for damages, declaratory relief, injunctive relief, or other appropriate relief, including compensatory damages, punitive damages where appropriate, and equitable remedies, including nominal damages where no actual damages are proven, Nothing in this section shall be construed to regulate federal immigration policy or operations, but rather to provide remedies for unlawful conduct occurring within the State. Liability shall attach only where the defendant acted knowingly or with reckless disregard for clearly established constitutional rights, as determined by controlling federal or state precedent. (a.5) Venue for actions brought under this section shall lie in the county where the alleged violation occurred or where the plaintiff resides. (a.6) A plaintiff bringing an action under this section shall not be required to exhaust administrative remedies prior to filing suit. (b) Attorney fees and costs: In an action brought pursuant to this section, a court shall award reasonable attorney fees and costs, including fees incurred on appeal, to a prevailing plaintiff as determined under a totality of the circumstances, except where special circumstances would render such an award unjust. In actions seeking injunctive or declaratory relief, a plaintiff shall be deemed to have prevailed if the action was a substantial factor or significant catalyst, even if no final judgment on the merits is entered, in obtaining the relief sought. A court may reduce attorney fee awards where damages are nominal or where equitable relief substantially exceeds demonstrated injury. (c) When judgment is entered in favor of a defendant, the court may award reasonable attorney fees and costs only for claims the court finds to be frivolous or brought in bad faith, and such awards shall be narrowly tailored to deter abusive litigation, and the court shall make written findings supporting such determination. (d) To the maximum extent permitted under the United States Constitution, and consistent with binding precedent of the United States Supreme Court, immunity defenses shall not bar an action brought pursuant to this section where the challenged conduct exceeds lawful authority or violates clearly established constitutional protections, including protections against unreasonable searches and seizures and due process violations. Nothing in this subsection shall be interpreted to waive immunities required by federal law or

binding federal precedent. (e) Definitions. As used in this section, unless the context otherwise requires: (I) “Civil immigration enforcement” means an action taken to investigate, question, detain, transfer, or arrest a person for the purpose of enforcing federal civil immigration law. (II) ‘Civil immigration enforcement’ includes participation in joint federal-state operations where the primary purpose is enforcement of federal civil immigration law. (III) Statute of limitations: An action brought pursuant to this section must be commenced within two years after the cause of action accrues. (IV) ‘Reckless disregard’ means conscious disregard of a substantial risk that conduct will violate constitutional rights. (e.5) A cause of action accrues when the plaintiff knew or reasonably should have known of the violation and the injury. (f) This section shall not be construed to limit the ability of a defendant to seek removal or federal judicial review where authorized under federal law, including removal under applicable federal statutes, provided that such removal does not delay or impair timely adjudication of claims. (g) It shall be an affirmative defense, which shall be proven by a preponderance of the evidence, that the defendant reasonably relied in good faith upon: (I) A facially valid judicial warrant; (II) Binding federal statute or regulation; or (III) Direct supervisory instruction not known to be unlawful, and where reliance was objectively reasonable under the circumstances; (IV) Written guidance or policy formally adopted by a federal agency, provided such reliance was objectively reasonable; or (V) A facially valid administrative warrant issued under federal immigration law, provided such warrant is supported by probable cause or its equivalent standard under existing state law. (h) Actions brought pursuant to this section shall proceed against defendants in their individual capacity, except where a court determines that official-capacity claims are necessary to afford complete relief, unless otherwise authorized by law. Personal liability shall not be avoided solely by virtue of federal employment status. (i) Nothing in this section requires indemnification by the State or any political subdivision, except where indemnification is otherwise required by law or contract, for conduct determined by a court to be outside lawful authority or undertaken in bad faith. (j) Nothing in this

section shall be construed to create liability for lawful cooperation with federal authorities that does not involve direct participation in civil immigration enforcement. (k) Courts shall construe this section liberally to effectuate its remedial purposes while remaining consistent with federal constitutional requirements.

SECTION 4. IN THE SAN ANDREAS REVISED STATUTES, SECTION 13-80-102, ADD A NEW SUBSECTION TO READ: 13-80-102. General limitation of actions — two years. An action alleging a violation of constitutional rights during civil immigration enforcement brought pursuant to Section 13-20-1401 must be commenced within two years subject to equitable tolling where justice so requires after the cause of action accrues.

SECTION 5. SEVERABILITY. If any provision of this Act or its application, including partial invalidation of specific remedies or defenses is held invalid, such invalidity shall not affect remaining provisions that may be given effect without the invalid portion.

SECTION 6. SAFETY CLAUSE - EFFECTIVE DATE. The General Assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety, and the protection of constitutional rights within the State. Therefore, this act shall take effect immediately upon being signed into law by the Governor, however, this act shall apply only to causes of action arising on or after such date.

Brooklynn Suarez
SPEAKER OF THE HOUSE OF
REPRESENTATIVES

Benjamin Harrison
PRESIDENT OF THE
SENATE

Gabriella Spears
CLERK OF THE HOUSE OF
REPRESENTATIVES

Estella Newman
SECRETARY OF THE
SENATE

APPROVED:

(Date and Time)

Isabel R. Payne
GOVERNOR OF THE STATE OF SAN
ANDREAS