

N.Y.'s Bivens Act can fight against federal abuse

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White House border czar Tom Homan is interviewed by Stuart Varney, on the Fox Business Network, in New York, Tuesday, Jan. 13, 2026. (AP Photo/Richard Drew)

A few weeks ago [Border Czar Tom Homan threatened to deploy](#) “more ICE agents than you’ve ever seen in New York City.” He did so in retaliation against a provision of New York’s recent budget bill that limits local law enforcement’s cooperation with ICE.

Homan threatened Gov. Hochul that he would deal with New York “how we dealt with Minnesota,” where federal agents shot Renee Good, Alex Pretti, and Julio Cesar Sosa-Celis and illegally arrested thousands.

As Homan threatens New York with a similarly cruel campaign, he should beware of another provision of the same legislation: the [New York State Bivens Act](#). The act undercuts federal agents’ impunity by allowing New Yorkers the same right to sue federal officials as they have long had to sue local police and other officials who violate their civil rights.

The right to sue local officials for civil rights violations dates to the Reconstruction Era following the Civil War. When newly freed slaves began to vote and build political power, former members of the Confederacy used their control of state and local governments to reclaim racial dominance, often through lethal violence. They trumpeted “states’ rights.” In response, Congress expanded federal power by enacting the [Ku Klux Klan Acts of 1870 and 1871](#).

These laws, still on the books, allow the federal government to criminally prosecute civil rights violations by local officials. They also allow private individuals to sue such officials for money damages under a crucial provision known as Section 1983. The authors of this piece — a former federal civil rights prosecutor and a private civil rights attorney — have used both causes of action to punish state officials who trample our rights.

In recent decades, private individuals have used Section 1983 to obtain redress for wrongful convictions, false arrests, and police brutality, among other illegal acts. Monetary awards compensate these victims, deter future transgressions, and, by exposing systemic abuses of power, sometimes bring about meaningful reform.

But what happens when the federal government not only abandons its role as a guardian of civil rights against the states, but itself becomes the perpetrator of civil rights violations on a mass scale?

Until now, virtually nothing. There was effectively no way for the families of victims like Good and Pretti to seek recompense or policy change for the deaths of their loved ones. But New York has just turned the tables.

[Bivens was a once-significant U.S. Supreme Court decision](#) creating a right to sue federal officials for constitutional violations, but the [Supreme Court has gutted it](#). New York’s Bivens Act remedies this by extending the protections of Section 1983 to all individual government wrongdoers — including federal ones.

Previously, when an FBI agent used falsified evidence to arrest an anti-ICE protester in New York, threw her violently to the ground, detained her, and initiated her criminal prosecution, no federal law permitted the victim to sue the agent. But now, under the Bivens Act, the protester can sue the federal agent for false arrest, malicious prosecution, evidence fabrication, and excessive force.

Civil rights firms like ours will be able to afford handling such suits because the act requires a federal agent who loses such a case to pay the plaintiff’s legal fees.

Following New York's lead, other states are considering similar legislation. This is the final irony for the traditional advocates of "states' rights": they sought to limit federal power and empower the states, but now the states are coming for them. Homan should take notice.

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