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State Challenges to Immigration Enforcement Practices

Recent lawsuits in Wisconsin, New York, and California explore questions about the role of state law in federal immigration enforcement.

By Alicia Bannon | **Published:** November 20, 2025

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Immigration enforcement is usually characterized as a federal issue. But the work of the U.S. Immigration and Customs Enforcement agency is intertwined with state law

in a variety of ways, prompting new state litigation that will shape the relationship between ICE and the states and localities in which it operates.

One area where state law plays a big role is in the use of immigration detainers, which are voluntary, warrantless requests by ICE to other law enforcement agencies. These detainers ask law enforcement to notify ICE before an individual in their custody is set to be released — even if the charges were dropped or the individual is acquitted — and to keep them in jail for additional time so that ICE can take them into immigration custody.

During the first Trump administration, state supreme courts in **Massachusetts** and **Montana** and an appellate court in **New York** ruled that state law barred law enforcement officers from complying with immigration detainers. (An appellate court in **Minnesota** also found that a similar legal challenge was likely to succeed.) These courts all concluded that complying with a detainer constituted a new arrest under state law. And nothing in their states' laws authorized law enforcement to make immigration arrests, which, these courts emphasized, are civil in nature, not criminal.

In September, a similar case, ***Voces de la Frontera v. Gerber***, was filed in the Wisconsin Supreme Court. The petition argues that the state legislature "has clearly laid out the complete extent of state and local law enforcement officers' arrest authority in great detail," and that this authority doesn't include civil immigration arrests. The lawsuit asks the state's high court to hear the case as an original action, bypassing the lower courts and allowing for statewide resolution more quickly. The court has not yet decided whether to accept the case.

Another source of conflict arises from states or localities entering into so-called 287(g) agreements with ICE. These agreements, which reference Section 287(g) of the 1996 Immigration and Nationality Act, allow ICE to delegate immigration investigation, apprehension, and detention to state and local law enforcement — a major amplification of enforcement capacity. ICE has now entered into more than 1,000 of these agreements, a **historic high**.

Under **federal law**, the U.S. attorney general can enter into such agreements, but only "to the extent consistent with State and local law." Last year, a Colorado appellate

court **ruled** that a 2019 state law barring law enforcement officials from arresting or detaining individuals based on immigration detainers meant that a county could not enter into a 287(g) agreement to execute such detainers.

In June, a **lawsuit** was filed in New York challenging the Nassau County Police Department's 287(g) agreement, which gives the police broad authority over immigration arrests and detention. The lawsuit, which is still pending and is the first legal challenge to these agreements in New York, points to earlier immigration detainer litigation and argues that New York law prevents the police from arresting or detaining people for civil violations of federal immigration law. The lawsuit further claims that the 287(g) agreement will result in illegal racial profiling. For all these reasons, the plaintiffs argue, New York localities can't enter into 287(g) agreements.

Outside of activities by law enforcement, state law can also put constraints on ICE contractors. In California, a group of community-based organizations and activists has **sued** Clearview AI, a company that offers a facial recognition database with billions of images scraped from websites like Facebook and Venmo.

The plaintiffs say that Clearview has provided services to ICE as well as local police departments, allowing them to "conduct arbitrary digital searches" without any privacy safeguards. The filing points to state constitutional privacy rights as well as state common law protections against the "appropriation of likeness," and seeks both damages and an order requiring Clearview to comply with state law. In a *State Court Report* article this summer, Nicole Ozer **argued** that "Clearview's surveillance practices are at the core of what the California constitutional right to privacy was designed to protect against."

Finally, as these lawsuits proceed, new laws are asserting even more significant state powers. California recently passed a set of **laws** that limit immigration arrests at schools, universities, and hospitals, bar law enforcement from wearing facial coverings, and require officers to identify themselves. In Illinois, the legislature recently passed a **bill**, which is awaiting the governor's signature, that bans ICE arrests in and around state courthouses and puts in place greater protections at hospitals, day care centers, and public hospitals. (Just this week, a New York federal court **rejected** a legal challenge by the Trump administration to New York's Protect

Our Courts Act, which offers similar courthouse protections. Disclosure: the Brennan Center filed an amicus brief in this case.)

The Illinois bill would also create a state law cause of action against any person who knowingly violates the Illinois or U.S. Constitution while conducting civil immigration enforcement. Harrison Stark from the State Democracy Research Initiative recently **made the case** that "converse § 1983s," which create state remedies when federal officers violate U.S. constitutional rights, are permissible under federal law.

Look for more state litigation as the contours of state powers with respect to immigration enforcement continue to be tested.

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Suggested Citation: Alicia Bannon, *State Challenges to Immigration Enforcement Practices*, STATE COURT REPORT(Nov. 20, 2025), **https://statecourtreport.org/our-work/analysis-opinion/state-challenges-immigration-enforcement-practices**

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