State Democracy Research Initiative
UNIVERSITY OF WISCONSIN LAW SCHOOL

Explainer: Can States Prosecute Federal Officials?

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As state and local officials increasingly clash with federal officials over immigration enforcement,[1] policing of protests,[2] and much more,[3] they could soon turn to a long-used tactic of state pushback: prosecuting federal agents or officials for violations of state laws.[4]

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[1] Alanna Durkin Richer & Tim Sullivan, *Justice Department Orders Investigation of Local Compliance with Trump Immigration Crackdown*, Associated Press (Jan. 22, 2025, 6:30 PM CDT), https://apnews.com/article/justice-department-immigration-enforcement-f0e3fc616da9746796378d1cd6385b1b; Sophia Tareen, *Trump Administration Sues Chicago in Latest Crackdown on 'Sanctuary' Cities*, Associated Press (Feb. 6, 2025, 5:09 PM CDT), https://apnews.com/article/trump-immigration-chicago-arrests-sanctuary-immigrants-enforcement-df278eba554406c6703bb362d9b09844; Martin Kaste, *As Courts Review Military in LA, Immigration Enforcement Accelerates*, NPR (June 19, 2025, 12:10 PM ET), https://www.npr.org/2025/06/19/g-s1-73569/as-courts-review-military-in-l-a-immigration-enforcement-accelerates.nyt.

[2] Amanda Holpuch, *California Officials Criticize President's National Guard Deployment*, N.Y. Times (June 8, 2025), https://www.nytimes.com/2025/06/08/us/california-trump-national-guard-protests.html?searchResultPosition=8.

[3] *See, e.g.*, Collin Binkley, *Democratic-Led Cities and States Push Back on Threats to Cut U.S. School Funding Over DEI*, Associated Press (Apr. 8, 2025, 2:27 PM CDT), https://apnews.com/article/dei-trump-administration-certification-letter-b79551813a611ba6301f3f48252357ac; Rachel Frazin, *Governors Push Back as Trump Directs the Justice Department to Go After State Climate Laws*, The Hill (Apr. 9, 2025, 1:19 PM ET), https://thehill.com/policy/energy-environment/5240623-democrat-governors-push-trump-climate-order/; Joseph De Avila, *Group of 21 States Sues Trump Administration over Federal Funding Cuts*, Wall St. J. (June 24, 2025, 3:20 PM ET), https://www.wsj.com/politics/policy/group-of-21-states-sues-trump-administration-over-federal-funding-cuts-bc7d2ad1?mod=author_content_page_1_pos_4; Adam Edelman, *To Fight Trump's Funding Freezes, States Propose a New Gambit: Withholding Federal Payments*, NBC News (June 29, 2025, 4:30 AM CDT), https://www.nbcnews.com/politics/politics-news/trumps-funding-freezes-states-new-gambit-withholding-federal-money-rcna215212.

[4] *See, e.g.*, Michael Casey, *Federal Judge Drops Contempt Case Against ICE Agent over Arrest Outside Boston Courthouse*, Associated Press (Apr. 15, 2025, 11:46 AM), https://apnews.com/article/ice-immigration-arrest-trial-contempt-8b35498ddd96ccf1bc3ff772e6ef5106; Dave Min, et al., Letter Re: Paul, Weiss, Rifkind, Wharton & Garrison LLP Agreement with the Trump Administration (Apr. 24, 2025),

This practice stretches back to at least the early 1800s, and it comes with a mixed track record. Some state prosecutions of federal actors are relatively non-controversial, like charging postal workers for reckless driving while on the job.[5] Others involve core disputes between states and the federal government, including on desegregation,[6] slavery,[7] and prohibition.[8]

The bottom line is that states are legally permitted to prosecute federal officials for state crimes—within limits. The limits stem from the federal constitutional principle that states should not be able to undermine federal policy via targeted criminal prosecutions, a doctrine known as Supremacy Clause immunity.[9] But this principle only applies when federal officials are reasonably acting within the bounds of their lawful federal duties.[10] When federal officials act beyond the scope of their duties, violate federal law, or behave in an egregious or unwarranted manner, state prosecutions can move forward. Even where charges are ultimately dismissed, states have occasionally used prosecutions as a form of pushback against controversial federal actions.

This explainer explores when states can or cannot pursue prosecutions against federal officials and what that has looked like in practice. This explainer details the relevant history and law; it does not advocate for or against any particular course of action. It also does not address the related but distinct question of when federal officials can face civil (rather than criminal) suits under state law for violating the federal constitution—a separate explainer on that issue is available here.

Part I lays out examples of state criminal cases against federal officials stretching back to the early 1800s. Part II outlines the legal hurdles to pursuing such charges—specifically, federal officials are sometimes immune from state criminal prosecutions for actions carried out as part of their federal duties. Part III then explains why these cases often end up in federal court, rather than state court. Finally, Part IV identifies several types of state criminal laws that may be most relevant to federal officials' conduct.

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available at https://min.house.gov/sites/evo-subsites/min.house.gov/files/evo-media-document/04.24.25-letters-to-law-firms-on-trump-administration-agreements-all.pdf (questioning whether law firms' agreements with the Trump Administration violate state anticorruption laws).

[5] Mesa v. California, 489 U.S. 121 (1989); *see also* Seth P. Waxman, *Federalism, Law Enforcement, and the Supremacy Clause: The Strange Case of Ruby Ridge*, 51 U. Kan. L. Rev. 141, 145 (2002) ("[T]he mere fact of federal employment surely does not confer blanket immunity from state law. Why, for example, should a postal worker be able to escape state liability for a death caused while driving under the influence, simply because he was delivering mail?").

[6] Petition of McShane, 235 F. Supp. 262 (N.D. Miss. 1964).

[7] *See infra* Part I.

[8] *See infra* Part I.

[9] *See* In re Neagle, 135 U.S. 1 (1890).

[10] *See infra* Part II.

I. Past state prosecutions of federal officials

States have a long history of prosecuting federal officials. They have done so with a variety of motives and with mixed success. At one end of the spectrum, some state prosecutions of federal actors have overtly aimed to frustrate federal policy. Such prosecutions have served as a way for state-level actors to express resistance and generate friction, but they generally have not resulted in valid convictions. At the other end of the spectrum, states have at times successfully prosecuted federal actors who committed on-the-job crimes that had little to do with the proper performance of their federal duties. Other cases fall somewhere in between, with state prosecutors contending that federal officers acted egregiously or used excessive force and officers responding that they were lawfully carrying out their duties. This Part provides an overview of some of these cases, stretching from the early 1800s to today.[11]

On the overt resistance end of the spectrum, many cases in the 1800s stemmed from states' disagreements with federal policies and represented outright efforts to obstruct federal action. For example, during the War of 1812, some New England states openly resisted federal trade embargoes, including by pursuing state criminal actions against federal customs officers for

[11] This discussion does not address instances in which state or local prosecutors have pursued charges against individuals who happen to work for the federal government but who are alleged to have committed crimes in a purely personal capacity. Such individuals have no special defenses to state criminal prosecution merely by virtue of their federal employment status. The discussion also doesn't address the recent high-profile New York and Georgia prosecutions of President Donald Trump. The New York prosecution—which resulted in felony convictions for falsifying business records related to hush-money payments to Stormy Daniels—hinged principally on non-official conduct. *See* Ximena Bustillo & Hilary Fung, *Trump is Found Guilty on 34 Felony Counts. Read the Counts Here*, NPR (May 30, 2024), https://www.npr.org/2024/05/30/g-s1-1848/trump-hush-money-trial-34-counts; New York v. Trump, 683 F. Supp. 3d 334 (S.D.N.Y. 2023), *appeal dismissed sub nom.* People v. Trump, No. 23-1085, 2023 WL 9380793 (2d Cir. Nov. 15, 2023). The Georgia prosecution involves actions Trump took while in office as part of an effort overturn the results of the 2020 election. In *Trump v. United States*, 603 U.S. 593 (2024), which involved a federal prosecution of Trump for his conduct relating to the 2020 election, the U.S. Supreme Court held that presidents, due to their unique constitutional status, are immune from prosecution for acts within their core constitutional powers and are at least presumptively immune with respect to other official acts. The Georgia case has largely been on hold due to ongoing litigation over whether the prosecutor can stay on the case. Danny Hakim, *Atlanta D.A. Asks Georgia Court to Review Decision Kicking Her Off Trump Case*, N.Y. Times (Jan. 8, 2025), https://www.nytimes.com/2025/01/08/us/trump-fani-willis-appeal-georgia.html. If the case goes ahead after that is resolved, then the Georgia judge will have to address Trump's immunity claim, parsing out which conduct qualifies as official versus unofficial conduct under *Trump v. United States*. Danny Hakim, *Supreme Court's Immunity Ruling Adds Major Hurdle for Georgia Trump Case*, N.Y. Times (July 2, 2024), https://www.nytimes.com/2024/07/02/us/georgia-trump-case-immunity.html.

seizing goods.[12] In the mid-1800s, some Northern states opposed to the Fugitive Slave Act[13] charged U.S. marshals for capturing or failing to release previously enslaved individuals. In some of these cases, state courts first ordered the marshals to release captured individuals under a writ of habeas corpus, and the marshals were then charged with criminal contempt and taken into custody if they disobeyed.[14] The marshals typically then sought relief in federal court, also under writs of habeas corpus.[15] In one prominent episode, Wisconsin authorities arrested an enslaver and two U.S. deputy marshals, charging them with kidnapping and assault and battery for capturing and jailing a previously enslaved person.[16] A federal court ultimately ordered release of the trio, however, on the ground that they were acting in accordance with federal law.[17]

In the late-1800s and early 1900s, state prosecutions often centered on federal officers' enforcement of revenue and prohibition laws.[18] In an 1898 case, for example, Virginia prosecutors charged a federal tax collector's posse with killing several cattle during a shoot-out.[19] According to the federal officers, the shoot-out ensued after they were ambushed by a group defending violators of the tax laws.[20] In other examples, states charged federal officers with murder or

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[12] Charles Warren, *Federal Criminal Laws and the State Courts*, 38 Harv. L. Rev. 545, 584 (1925); *see also* David N. Goldman, *The Neglected History of State Prosecutions for State Crimes in Federal Courts*, 52 Tex. Tech L. Rev. 783, 784 (2020).

[13] Fugitive Slave Act of 1850, ch. 60, 9 Stat. 462.

[14] John S. Strayhorn, Jr., *The Immunity of Federal Officers from State Prosecutions*, 6 N.C. L. Rev. 123, 128 (1928).

[15] *Id.*; *see, e.g.*, Ex parte Jenkins, 13 F. Cas. 445 (C.C.E.D. Pa. 1853); Ex parte Robinson, 20 F. Cas. 969 (C.C.S.D. Ohio 1855); Ex parte Robinson, 20 F. Cas. 965 (C.C.S.D. Ohio 1856); Ex parte Sifford, 22 F. Cas. 105 (S.D. Ohio 1857).

[16] John J. Gibbons, *Federal Law and the State Courts–1790–1860*, 36 Rutgers L. Rev. 399, 441 (1984).

[17] *Id.* at 442.

[18] Strayhorn, *supra* note 14, at 131–32; *see, e.g.*, Georgia v. O'Grady, 10 F. Cas. 245 (C.C.N.D. Ga. 1876) (federal jury finding defendant not guilty of homicide under Georgia law for a killing that occurred during enforcement of federal revenue laws); State v. Hoskins, 77 N.C. 530 (1877) (allowing removal to federal court of assault and battery case against revenue officers); Georgia v. Port, 3 F. 117 (C.C.N.D. Ga. 1880) (allowing removal to federal court of murder case against revenue officers involved in illicit distillery seizure); Alabama v. Peak, 252 F. 306 (S.D. Ala. 1918) (allowing removal in grand larceny case against revenue officer for taking property he intended to use as evidence of violation of internal revenue laws); Georgia v. Bolton, 11 F. 217 (C.C.N.D. Ga. 1882) (involving case against U.S. marshals for killing someone they were attempting to arrest for illicit distilling); Oregon v. Wood, 268 F. 975 (D. Or. 1920) (allowing removal of involuntary manslaughter case against revenue officers who killed a man while enforcing prohibition laws); Virginia v. De Hart, 119 F. 626 (C.C.W.D. Va. 1902) (allowing removal of assault charges against "posseman" of revenue officer for actions while carrying out an arrest); Virginia v. Felts, 133 F. 85 (C.C.W.D. Va. 1904) (involving murder charges against deputy U.S. marshal for killing person he was seeking to arrest).

[19] Virginia v. Bingham, 88 F. 561 (C.C.W.D. Va. 1898).

[20] *Id.*

attempted murder for using lethal force while carrying out arrests or other enforcement actions,[21] such as seizing equipment from an illicit distillery.[22] The federal officers typically claimed they were reasonably performing their federal duties and/or were acting in self-defense.[23] At times, federal courts agreed and ordered the officers to be released from state custody[24]; in other instances, federal courts allowed the state prosecutions to go ahead, such as where the officers' use of force appeared to be unreasonable[25] or where the charged crime was not integral to the effective discharge of federal duties.[26]

Many prosecutions since the mid-1900s similarly have centered on alleged misconduct by federal law enforcement officers and include charges for assault and battery, burglary, manslaughter, and murder.[27] Some of these cases played out amid wider disagreements and flashpoints between state officials and the federal government.[28] A case in the 1960s, for example, stemmed from a segregationist riot at the University of Mississippi, where U.S. Marshals were seeking to

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[21] *See, e.g.*, Castle v. Lewis, 254 F. 917 (8th Cir. 1918); Oregon v. Wood, 268 F. 975 (D. Or. 1920); Ex parte Huston, 282 F. 723 (S.D. Fla. 1922); Massachusetts v. Bogan, 285 F. 668 (D. Mass. 1923); Smith v. Gilliam, 282 F. 628 (W.D. Ky. 1922).

[22] *See, e.g.*, Findley v. Satterfield, 9 F. Cas. 67 (C.C.N.D. Ga. 1877); Maryland v. Soper, 270 U.S. 9 (1926); Tennessee v. Davis, 100 U.S. 257, 263 (1879).

[23] *See, e.g.*, *Findley*, 9 F. Cas. 67; *Castle*, 254 F. 917; *Huston*, 282 F. 723; *Bogan*, 285 F. 668; Goldman, *supra* note 12, at 829.

[24] *See, e.g.*, N. Carolina v. Kirkpatrick, 42 F. 689 (C.C.W.D.N.C. 1890) (discharging federal revenue officers under habeas petition after finding they were justified in shooting and killing a man who was about to fire at them amid an illicit distillery seizure operation); Georgia v. Port, 3 F. 124 (C.C.N.D. Ga. 1880) (discharging federal officers after finding that they were justified in returning fire when ambushed with shooting); Ex parte Dickson, 14 F.2d 609 (N.D.N.Y. 1926) (discharging federal customs officer who killed the driver of a smuggling car when he shot at the escaping vehicle to halt it, finding that "[t]here seems to have been no intent on the part of the officer to commit murder or any other crime, and the force and means he used would seem to have been justified, under the circumstances of the case …").

[25] *See, e.g.*, *Castle*, 254 F. 917 (affirming denial of writs of habeas corpus where federal officers shot into a car they believed was transporting intoxicating liquor); *Huston*, 282 F. 723 (denying habeas petition where federal officer shot into car of person he believed was transporting intoxicating liquor).

[26] *See, e.g.*, Florida v. Huston, 283 F. 687 (S.D. Fla. 1922) (denying habeas petition where revenue officer was charged with careless and reckless driving while returning to headquarters and "not in pursuit of any 'rum runner,' 'bootlegger,' or 'moonshiner' at the time").

[27] *See, e.g.*, Arizona v. Manypenny, 672 F.2d 761 (9th Cir. 1982); Kentucky v. Long, 837 F.2d 727 (6th Cir. 1988); Brown v. Cain, 56 F. Supp. 56 (E.D. Pa. 1944); Lima v. Lawler, 63 F. Supp. 446 (E.D. Va. 1945); Pennsylvania v. Johnson, 297 F. Supp. 877 (W.D. Pa. 1969); New York v. De Vecchio, 468 F. Supp. 2d 448 (E.D.N.Y. 2007); New York v. Tanella, 374 F.3d 141 (2d Cir. 2004); Texas v. Carley, 885 F. Supp. 940 (W.D. Tex. 1994); Texas v. Kleinert, 855 F.3d 305 (5th Cir. 2017); Clifton v. Cox, 549 F.2d 722 (9th Cir. 1977); Battle v. State, 258 A.3d 1009 (Md. 2021).

[28] *See* Waxman, *supra* note 5, at 146 (noting that cases disputing state prosecutions of federal officials "tend to be clustered around historical periods of friction between the federal government and the states").

facilitate the court-ordered enrollment of James Meredith, a Black student.[29] During the ensuing confrontation, the chief marshal ordered federal officers to release tear gas into the crowd.[30] Mississippi later charged the chief marshal with disorderly conduct for that decision, alleging that the use of tear gas was unlawful and had incited the riot, which left two dead.[31] On the chief marshal's petition for habeas relief, a federal district court ordered the charges dismissed because it concluded that the marshal "had reasonable cause to believe that drastic action was necessary to carry out his duties, and that he had reasonable cause to believe (and did so believe) that the use of tear gas, a discretionary choice of means on his part, was a proper measure to be taken."[32]

Decades later, in 1992, another high-profile prosecution of a federal official involved the siege of anti-government separatist Randall Weaver's cabin near Ruby Ridge, Idaho.[33] Amid a controversial series of events, an FBI sniper accidentally killed Weaver's unarmed wife, Vicki Weaver.[34] The U.S. Attorney General decided not to prosecute the sniper under federal law, but Idaho prosecutors charged him with involuntary manslaughter under state law.[35] After some uncertainty in prior court decisions, a split federal appeals court concluded that the Idaho case could tentatively go ahead because disputed facts left it unclear whether the sniper "acted in an objectively reasonable manner in carrying out [his] duties."[36] A week after that decision, however, the newly elected county prosecutor in Idaho chose to drop the charges.[37]

And in a case from 2006, Wyoming prosecutors charged federal wildlife officers with trespass and littering for entering private land while collaring wolves as part of a federal monitoring program.[38] The Tenth Circuit concluded that the officers were immune from prosecution because they had an "objectively reasonable and well-founded" belief that they were on public

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[29] Debbie Elliott, *Integrating Ole Miss: A Transformative, Deadly Riot*, NPR (Oct. 1, 2012, 3:30 AM ET), https://www.npr.org/2012/10/01/161573289/integrating-ole-miss-a-transformative-deadly-riot.

[30] Petition of McShane, 235 F. Supp. 262 (N.D. Miss. 1964).

[31] *Id.* at 264.

[32] *Id.* at 275. The court emphasized that federal officers do not have absolute immunity and concluded that "[t]he standards by which the act committed by the petitioner are to be measured must take into account the circumstances existing at the time he gave his command as they appeared to him, and the reasonableness and integrity of his conclusion that such action was necessary." *Id.* at 273.

[33] Idaho v. Horiuchi, 253 F.3d 359, 363 (9th Cir. 2001) (en banc), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001) (en banc).

[34] *Id.*

[35] *Id.* at 363–64.

[36] *Id.* at 377 ("On remand, the district court may conduct an evidentiary hearing to determine whether the evidence supports Agent Horiuchi's entitlement to immunity under the legal principles applicable to the use of deadly force."); *see also* Waxman, *supra* note 5.

[37] Sam Howe Verhovek, *F.B.I. Agent to Be Spared Prosecution in Shooting*, N.Y. Times (June 15, 2001), https://www.nytimes.com/2001/06/15/us/fbi-agent-to-be-spared-prosecution-in-shooting.html. The Ninth Circuit consequently vacated its decision. Idaho v. Horiuchi, 266 F.3d 979 (9th Cir. 2001).

[38] Wyoming v. Livingston, 443 F.3d 1211, 1230 (10th Cir. 2006).

land when conducting the collaring.[39] The court also concluded that the prosecution "was not a bona fide effort to punish a violation of Wyoming trespass law, which requires knowledge on the part of a trespasser, but rather an attempt to hinder a locally unpopular federal program."[40]

Other recent high-profile cases include a Virginia prosecution of U.S. Park Police officers who shot and killed a man in 2017,[41] a Boston municipal court judge finding a U.S. Immigration and Customs Enforcement agent in contempt of court and referring the matter to the district attorney for prosecution after the agent detained a man in the middle of a municipal court trial,[42] and an Oregon prosecution of a Drug Enforcement Administration officer who hit and killed a cyclist in 2023 while pursuing a suspected fentanyl trafficker.[43] The first two cases were dismissed,[44] and the Oregon case is still pending in a federal appeals court.[45]

Lastly, states also prosecute federal officials for on-the-job actions that have little or nothing to do with carrying out federal duties. For example, Arizona prosecutors charged a federal wildlife officer with animal cruelty for trapping his neighbor's dog amid a "personal dispute" with the neighbor.[46] A federal district court concluded that, although the trapping fell within the general federal authority of an urban wildlife specialist, the officer did not demonstrate that he "honestly believed" the trapping was reasonable and, even if he had, the trapping was not objectively reasonable.[47] The trial therefore proceeded, though the jury ultimately found the officer not guilty of animal cruelty.[48] In another state case, which ultimately reached the U.S. Supreme Court, prosecutors in Santa Clara County, California, obtained a conviction of a postal worker after she collided with and killed a bicyclist.[49]

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[39] *Id.* at 1229.
[40] *Id.* at 1231.
[41] Tom Jackman, *Va. Attorney General Miyares Ends Prosecution of U.S. Park Police Officers in Ghaisar Case*, Wash. Post (Apr. 22, 2022, 7:51 PM), https://www.washingtonpost.com/dc-md-va/2022/04/22/ghaisar-case-dismissed/.
[42] See Casey, *supra* note 4; Notice of Removal, Mass. Exec. Off. of the Trial Ct. v. Sullivan, No. 1:25-CV-10769 (D. Mass. Apr. 1, 2025).
[43] Oregon v. Landis, 761 F. Supp. 3d 1349 (D. Or. 2025), *appeal docketed*, No. 25-447 (9th Cir. Jan. 22, 2025).
[44] See Casey, *supra* note 4 (Boston case); Jackman, *supra* note 41 (Virginia case). In the Virginia case, a federal district court ordered the charges dismissed, and the Democratic attorney general at the time appealed. Virginia v. Vinyard, No. 1:21CR92, 2021 WL 4942807 (E.D. Va. Oct. 22, 2021); Jackman, *supra* note 41. But after an election, the new Republican attorney general dropped the case. Jackman, *supra* note 41.
[45] See *Landis*, 761 F. Supp. 3d 1349. The district court dismissed the case based on Supremacy Clause immunity, discussed *infra* Part II, and the appeal is ongoing in the Ninth Circuit. *Id.*
[46] Arizona v. Files, 36 F. Supp. 3d 873, 884 (D. Ariz. 2014).
[47] *Id.*
[48] Verdict, Arizona v. Files, No. 2:13-cr-00436 (D. Ariz. Mar 27, 2013).
[49] See Mesa v. California, 489 U.S. 121 (1989); State v. Mesa, No. C8516277 (Cal. Sup. Ct. Sept. 4, 1985).

In short, states have been filing criminal charges against federal officials in a variety of situations for more than two centuries. But, as discussed in further detail below, whether and when those prosecutions can ultimately proceed to trial and conviction is a much more complex question that turns in part on federal constitutional law.

II. Constitutional hurdles to state prosecution of federal officials

In some of the examples outlined in the preceding Part, federal courts ultimately stepped in to halt the state prosecution based on Supremacy Clause immunity. This section provides an overview of when federal officials are and are not entitled to this immunity.

First, as the historical examples in Part I indicate, federal officials are not categorically immune from state criminal prosecution, even while on duty.[50] For example, a marine who hit and killed someone after failing to yield the right of way could be prosecuted for vehicular homicide under state law—he was not immune just because he was driving in a military convoy.[51] But there is immunity if the federal official's actions are necessary to carrying out a lawful federal duty. For example, in another driving-related case, a court held that a federal officer was immune from state enforcement of speeding laws while pursuing a fleeing suspect, so long as he acted with reasonable care and prudence in the circumstances.[52]

The basic idea behind this type of immunity is that states should not be able to undermine federal law by criminally charging federal officials who are properly discharging their lawful federal duties. This idea is rooted in the U.S. Constitution's Supremacy Clause, which provides that federal law is the supreme law of the land and wins out over state law if the two conflict.[53] As the Tenth Circuit

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[50] *See* Colorado v. Symes, 286 U.S. 510, 518 (1932) ("Federal officers and employees are not, merely because they are such, granted immunity from prosecution in state courts for crimes against state law."); Johnson v. Maryland, 254 U.S. 51 (1920) ("An employee of the United States does not secure a general immunity from state law while acting in the course of his employment.").

[51] North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990); *see also* Puerto Rico v. Fitzpatrick, 140 F. Supp. 398, 400 (D.P.R. 1956) (holding that U.S. Armed Forces member could face state criminal charges for driving negligently). *But see* Maryland v. DeShields, 829 F.2d 1121 (4th Cir. 1987) (dismissing automobile manslaughter, drunk driving, reckless driving, and other charges against an officer who was driving a fellow officer to the hospital under orders of his superior).

[52] Lilly v. West Virginia, 29 F.2d 61, 64 (4th Cir. 1928); *see also* Puerto Rico v. Torres Chaparro, 738 F. Supp. 620 (D.P.R. 1990), *aff'd*, 922 F.2d 59 (1st Cir. 1991) (federal customs officer immune from traffic laws while assisting with recovering 162 kilos of cocaine); Lewistown Twp. v. Christopher, 345 F. Supp. 60 (D. Mont. 1972) (federal officer immune from prosecution for defective tail lights where his superior specifically told him to continue operating the vehicle with the defective lights in the course of an emergency snow removal project).

[53] U.S. Const. art. VI ("This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the

explained in the wolf-collaring case discussed above: "These disputes permit of no easy answers, because while state criminal law provides an important check against abuse of power by federal officials, the supremacy of federal law precludes the use of state prosecutorial power to frustrate the legitimate and reasonable exercise of federal authority."[54] Accordingly, federal courts have long said that federal officials are insulated from state prosecutions if (1) the federal official was doing something authorized by federal law, and (2) the official's actions were "necessary and proper" in fulfilling their federal duties.[55] For example, in the foundational case on Supremacy Clause immunity, *In re Neagle*, a U.S. Marshal assigned to protect a U.S. Supreme Court justice shot and killed an attacker in California.[56] The state charged the marshal with murder, but the U.S. Supreme Court concluded that the marshal could not be prosecuted because he was carrying out his official duties and was justified in killing the attacker as part of those duties.[57]

The Supremacy Clause immunity test has some clearcut cases—for example, when states prosecute postal workers for reckless driving on the job.[58] But, for many cases, the immunity analysis is complex and contested, with outcomes hinging on court-specific elaborations of the legal standard and on the factual particulars.[59] For example, when considering whether an officer's actions were authorized by federal law, some courts have focused on whether the actions fall broadly within the general scope of the officer's duties, while others have asked whether the officer was directly authorized to perform the specific action.[60] Similarly, in deciding

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Constitution or laws of any State to the contrary notwithstanding."). Seth Waxman and Trevor Morrison have also argued that Supremacy Clause immunity is necessary due to fair warning requirements under the due process clause, with the relevant question being whether the federal official had fair warning that they did not have federal authority to carry out the relevant action. Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112 Yale L.J. 2195, 2240 (2003).

[54] Wyoming v. Livingston, 443 F.3d 1211, 1213 (10th Cir. 2006).

[55] In re Neagle, 135 U.S. 1 (1890); Waxman & Morrison, *supra* note 53, at 2237; Rebecca E. Hatch, *Construction and Application of United States Supreme Court Decisions in* Cunningham v. Neagle, *135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890), Establishing Standard for Supremacy Clause Immunity as to Actions of Federal Officers or Agents Alleged to Be in Violation of State Law*, 53 A.L.R. Fed. 2d 269, 280–81(2011).

[56] In re Neagle, 135 U.S. 1.

[57] *Id.* at 75.

[58] Mesa v. California, 489 U.S. 121 (1989).

[59] *See* Waxman & Morrison, *supra* note 53, at 2237 ("This test is much easier to recite than to apply."); *id.* at 2200 (the doctrine's "precise scope, doctrinal basis, and relation to other forms of officer immunity remain somewhat obscure"); Leslie A. Gardner & Justin C. Van Orsdol, *Solidifying Supremacy Clause Immunity*, 30 Wm. & Mary Bill Rts. J. 567, 597 (March 2022) ("[T]his test is incomplete and has resulted in a patchwork of responses from lower courts."); Susan L. Smith, *Shields for the King's Men: Official Immunity and Other Obstacles to Effective Prosecution of Federal Officials for Environmental Crimes*, 16 Colum. J. Envtl. L. 1, 38–44 (1991); *see also* Stephen A. Cobb, *Jettisoning Jurisdictional: Asserting the Substantive Nature of Supremacy Clause Immunity*, 103 Va. L. Rev. 107, 122–31 (2017) (discussing courts mischaracterizing the immunity defense as jurisdictional instead of substantive).

[60] *See* Smith, *supra* note 59, at 33–43; Waxman & Morrison, *supra* note 53, at 2237.

whether an officer's actions are necessary and proper, some courts consider the officer's subjective beliefs, some look to whether the actions were objectively reasonable, and others evaluate both subjective and objective considerations.[61] The U.S. Supreme Court has provided minimal guidance on such questions, which means the answers depend largely on which lower court is hearing the case.

Factual disputes, meanwhile, can sometimes prevent a court from resolving an officer's Supremacy Clause immunity defense at an early stage of the litigation. For example, in *United States ex rel. Drury v. Lewis*,[62] the U.S. Supreme Court allowed a state prosecution to proceed against two federal soldiers charged with killing a man they believed was stealing copper fixtures from federal property.[63] Under the soldiers' account, they told the man to halt, warned him before shooting, and only shot when he continued fleeing.[64] Two witnesses offered a different account, however, testifying that the man stopped, turned, and surrendered before the soldiers shot him without warning.[65] Given these disputed facts, the court allowed the case to proceed, noting that, if the man had indeed surrendered, "it could not reasonably be claimed that the fatal shot was

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[61] *See, e.g.*, New York v. Tanella, 374 F.3d 141, 147 (2d Cir. 2004) ("To meet this standard, two conditions must be satisfied: (1) the actor must subjectively believe that his action is justified; and (2) that belief must be objectively reasonable. A defendant, however, need not 'show that his action was in fact necessary or in retrospect justifiable, only that he reasonably thought it to be.'" (quoting Clifton v. Cox, 549 F.2d 722, 728 (9th Cir.1977))); Wyoming v. Livingston, 443 F.3d 1211, 1222 (10th Cir. 2006) ("[W]e hold that a federal officer is not entitled to Supremacy Clause immunity unless, in the course of performing an act which he is authorized to do under federal law, the agent had an objectively reasonable and well-founded basis to believe that his actions were necessary to fulfill his duties. We leave for another day the question whether that belief must be both subjectively and objectively reasonable."); Puerto Rico v. Torres Chaparro, 738 F. Supp. 620, 622 (D.P.R. 1990) ("What is necessary and proper is a subjective measurement guided by whether a defendant reasonably thinks his conduct is necessary and justifiable. An error of judgment is not enough to establish criminal responsibility, but a federal officer loses his *Neagle* protection when he acts out of personal interest, malice, or with criminal intent."). Scholars also debate the proper standard. *Compare* Gardner & Orsdol, *supra* note 59, at 603 (arguing "that an officer should be protected only if his or her actions were objectively proper"), Waxman & Morrison, *supra* note 53, at 2202 (arguing that Supremacy Clause immunity should be "effectively coextensive with qualified immunity" and cover actions that officers "reasonably believe [are] necessary and proper to the performance of their federal functions"), *and* Smith, *supra* note 59, at 46 (critiquing courts' overly subjective approach to the test) *with* James Wallace, *Supremacy Clause Immunity: Deriving a Willfulness Standard from Sovereign Immunity*, 41 Am. Crim. L. Rev. 1499, 1530–31 (2004) (arguing judge should "determine whether the officer acted willfully" and should not apply the objective reasonableness standard). *Cf.* Dev P. Ranjan, Note, *Harmonizing Federal Immunities*, 109 Va. L. Rev. 427, 463 (April 2023) (arguing that the core question courts should ask is instead whether "adhering to the state's criminal law in the particular case at issue [would] actually prevent the federal officer from performing their official duties").

[62] 200 U.S. 1 (1906).

[63] *Id.* at 2–3.

[64] *Id.* at 5.

[65] *Id.*

fired in the performance of a duty imposed by the Federal law."[66] (The soldiers were ultimately acquitted at trial.[67]) Similarly, in the Ruby Ridge case discussed above, the en banc Ninth Circuit held that the prosecution could tentatively proceed because key disputed facts would bear on whether Horiuchi acted lawfully under the Fourth Amendment.[68] The court, however, concluded that the factual disputes regarding the immunity claim should "be resolved by the district court prior to trial."[69]

In short, while Supremacy Clause immunity grants federal officials a partial shield from state prosecution, that immunity is not absolute. Where key facts are in dispute or where federal officials act unreasonably in the line of duty, violate federal law, or act entirely outside their duties, state prosecutions can generally move forward.[70]

III. The respective roles of state and federal courts in state prosecutions of federal officials

Another key question that arises when states prosecute federal officials is where the dispute will play out: state court or federal court. While state and local prosecutors initiate prosecutions of federal officials in state court, Congress has enacted laws that allow federal officials to "remove" (i.e., shift) their cases from state court to federal court if certain requirements are met.

Specifically, 28 U.S.C. § 1442 allows federal officials to move criminal prosecutions that are brought against them from state to federal court if the case relates to the official's employment[71] and the officer has a "colorable federal defense."[72] This means that it's not enough for the defendant to be a federal officer; to shift the case to federal court, the defendant must also offer some plausible defense based in federal law.

In most cases, the federal official's asserted federal defense will be Supremacy Clause immunity, discussed in the preceding section. Whether or not the immunity defense ultimately succeeds, the defendant's invocation of that immunity will usually be sufficient to get the case into federal

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[66] *Id.* at 8.
[67] *Taft Sends Letter of Thanks to Walsh*, The Punxsutawney Spirit (Feb. 15, 1907) (the trial "resulted in the acquittal of both men").
[68] Idaho v. Horiuchi, 253 F.3d 359, 374 (9th Cir. 2001) (en banc), *vacated as moot*, 266 F.3d 979 (9th Cir. 2001) (en banc).
[69] *Id.* at 374.
[70] As noted earlier, *see supra* note 11, the president enjoys an added layer of immunity from criminal prosecutions involving official acts.
[71] 28 U.S.C. § 1442 (allowing removal of actions against any officer "for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue").
[72] Mesa v. California, 489 U.S. 121, 129 (1989); *see also* Goldman, *supra* note 12 (discussing the Article III implications of the removal statute).

court.[73] But not always. The defense has to be "colorable"—i.e., plausible or reasonable. For example, a federal district court in New York sent a case back to state court where an FBI agent charged with aiding and abetting murders committed by a confidential informant merely asserted that "everything [the agent] did was in the context of the discharge of his federal duties" without providing more specifics for the immunity analysis.[74] Similarly, another New York federal district court rejected Donald Trump's attempt to remove his prosecution involving hush money payments to Stormy Daniels and returned it to state court because Trump "ha[d] not explained how hiring and making payments to a personal attorney to handle personal affairs" involved carrying out federal duties as president.[75]

Where federal officials lay out a plausible immunity claim, however, they can (if they choose) move the case from state to federal court. This system is aimed at preventing state courts from intentionally obstructing federal policies by targeting federal officers, as they have done at times in the past.[76] As the U.S. Supreme Court explained in 1879:

> [The federal government] can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at once for their protection,—if their protection must be left to the action of the State court,—the operations of the general government may at any time be arrested at the will of one of its members.[77]

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[73] *See* Willingham v. Morgan, 395 U.S. 402, 406–07 (1969) (noting removal test should be broader, not narrower, than immunity test).

[74] New York v. De Vecchio, 468 F. Supp. 2d 448, 462 (E.D.N.Y. 2007). The indictment alleged that the FBI agent had disclosed information to the confidential informant that led to four murders, including information about the victims working with law enforcement or concerns that they would talk. *Id.* at 451–52. In concluding that the agent was not entitled to removal, the court noted that he did not "claim that he was authorized to disclose information to [the informant] about the four victims that could have lead to their murders; nor [did] he detail whatever conversations he did have with [the informant] that could arguably have been misconstrued as aiding and abetting those murders." *Id.* at 462. Rather, the court concluded: "He is simply being charged with outright murders having nothing to do with his federal duties." *Id.* at 462–63.

[75] New York v. Trump, 683 F. Supp. 3d 334, 346-47 (S.D.N.Y. 2023), *appeal dismissed sub nom.* People v. Trump, No. 23-1085, 2023 WL 9380793 (2d Cir. Nov. 15, 2023); *id.* at 347 ("His argument of immunity is not a colorable defense.").

[76] *See supra* Part I for examples.

[77] Tennessee v. Davis, 100 U.S. 257, 263 (1879) (concluding "that the constitutional powers of Congress to authorize the removal of criminal cases for alleged offences against State laws from State courts to the circuit courts of the United States, when there arises a Federal question in them, is as ample as its power to authorize the removal of a civil case"). In *Tennessee v. Davis*, a federal tax collector sought to remove a

Scholars debate how relaxed or stringent the standard should be for removing state prosecutions to federal court.[78] In particular, a shift to federal court can give federal defendants a tactical advantage over local prosecutors, potentially hindering prosecutors' ability to pursue even strong cases.[79] But the basic idea of this system is that it allows federal courts to step in more quickly when federal interests are at stake, acting as a check on state prosecutors and state courts.[80]

IV. Relevant state laws for prosecuting federal officials

As is evident from the examples above, states have prosecuted federal officials for a wide range of crimes, from traffic violations to falsification of business records to murder. Federal officials are generally subject to the same laws as anyone else, but certain types of criminal laws may be especially relevant to their conduct. This Part outlines three categories in particular: (1) generally applicable laws that criminalize harm to persons or property (such as trespass, assault, or murder), which can come into play when federal officers carry out law enforcement or other coercive actions; (2) state anticorruption laws that, in some cases, can reach federal corruption; and (3) state laws that make it a crime to violate someone's civil rights.

First, as discussed in various examples above, states sometimes prosecute federal officials for standard crimes like trespass, manslaughter, assault, and murder, that occur while the federal officer is carrying out federal enforcement functions or other responsibilities. For example, New Mexico argued that U.S. Forest Service officers should face trespass charges for inspecting a privately operated site in a national forest.[81] (A federal court disagreed.[82]) In other cases, federal officers have killed individuals while driving recklessly or carrying out law enforcement operations, leading to manslaughter or murder charges.[83] Federal officials can sometimes defend against these charges using Supremacy Clause immunity, discussed above, or standard criminal defenses, like a claim that the violence was carried out in self-defense. But where officials'

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murder charge against him to federal court. *Id.* at 260. The collector claimed that armed men fired at him while he was carrying out seizure of illicit distilling equipment and that he shot back in self-defense. *Id.* at 261.

[78] *See* Goldman, *supra* note 12; Kenneth S. Rosenblatt, *Removal of Criminal Prosecutions of Federal Officials: Returning to the Original Intent of Congress*, 29 Santa Clara L. Rev. 21 (1989).

[79] Rosenblatt, *supra* note 78, at 22–25; *see also* Jonathan Remy Nash, *Nontraditional Criminal Prosecutions in Federal Court*, 53 Ariz. St. L.J. 143, 190–93 (2021) (discussing how state prosecutions play out in federal court).

[80] *See* Rosenblatt, *supra* note 78, at 28–41; Goldman, *supra* note 12, at 787–802.

[81] New Mexico v. Dwyer, 105 F.3d 670 (10th Cir. 1997); *see also* Wyoming v. Livingston, 443 F.3d 1211 (10th Cir. 2006) (discussed *supra* Part I).

[82] *Dwyer*, 105 F.3d at *3.

[83] *See, e.g.*, Oregon v. Landis, 761 F. Supp. 3d 1349 (D. Or. 2025), *appeal docketed*, No. 25-447 (9th Cir. Jan. 22, 2025); Castle v. Lewis, 254 F. 917 (8th Cir. 1918); North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990); Mesa v. California, 489 U.S. 121 (1989).

actions are egregious, unreasonable, or unauthorized, federal officials can ultimately face criminal liability like anyone else.

Second, states have a host of criminal laws that specifically address corruption. Some of these laws apply only to corruption involving state public officials, not federal officials.[84] But others also apply to federal corruption—either because the definition of public official includes federal officials or because the statutes apply to anyone, regardless of employment. For example, Colorado and Maine both define "public servant" to include state *and* federal officials, so each state's anticorruption laws explicitly cover federal corruption.[85] These include statutes criminalizing bribery, improper gifts to public officials, public official misconduct, and the misuse of official information for private financial gain.[86] Other states have broadly written anticorruption statutes that do not expressly refer to federal officials, but instead apply to anyone, which presumably includes federal actors. These include statutes criminalizing bribery of private or public employees, extortion, threats, and coercion.[87] To date, state anticorruption laws do not appear to have been widely used to address federal corruption, but they are on the books as an option. And federal officials likely would not enjoy immunity from prosecution if their conduct does amount to corruption, given that corrupt conduct generally would not be a "necessary and proper" part of carrying out lawful federal duties.[88]

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[84] *See, e.g.*, Conn. Gen. Stat. Ann. § 53a-146 ("'Public servant' is an officer or employee of government … [;] 'Government' includes any branch, subdivision or agency of the state or any locality within it.").

[85] *See* Colo. Rev. Stat. § 18-1-901 ("(i) 'Government' *includes the United States*, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function. … (o) 'Public servant' means any officer or employee *of government*, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses." (Emphasis added.)); Me. Rev. Stat. Ann. tit. 17-A § 602 (nearly identical).

[86] *See* Colo. Rev. Stat. § 18-8-404 (first degree official misconduct); Colo. Rev. Stat. § 18-8-405 (second degree official misconduct); Me. Rev. Stat. Ann. tit. 17-A § 608 (official misconduct); Colo. Rev. Stat. § 18-8-402 (misuse of official information); Me. Rev. Stat. Ann. tit. 17-A § 609 (misuse of official information); Me. Rev. Stat. Ann. tit. 17-A § 602 (bribery); Colo. Rev. Stat. § 18-8-302 (bribery); Me. Rev. Stat. Ann. tit. 17-A § 604 (improper compensation for past action); Me. Rev. Stat. Ann. tit. 17-A § 605 (improper gifts to public servants); Me. Rev. Stat. Ann. tit. 17-A § 606 (improper compensation for services); Colo. Rev. Stat. § 18-8-303 (compensation for past official behavior); Colo. Rev. Stat. § 18-8-304 (soliciting unlawful compensation).

[87] *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-2602 (bribery of state public officials); N.J. Stat. § 2C:27-5 (retaliation for past official action); R.I. Gen. Laws Ann. § 11-7-4 (bribery of private or public employees); N.Y. Penal Law § 180.00 (commercial bribery); Cal. Penal Code § 518–519 (extortion); Del. Code tit. 11, § 791 (coercion); N.C. Gen. Stat. Ann. § 14-277.1 (threats).

[88] An exception may be if a federal officer offered a bribe as part of an authorized federal sting operation. *See* Baucom v. Martin, 677 F.2d 1346 (11th Cir. 1982).

Finally, about a third of states have laws criminalizing the deprivation of state and/or federal constitutional rights,[89] in line with a similar federal criminal law.[90] Some of these statutes only apply to state or local officials,[91] but others apply to anyone. For example, California Penal Code § 422.6 provides that "[a] person, whether or not acting under color of law, shall not, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States" based on certain protected characteristics, like disability, race, religion, sexual orientation, and gender.[92] Similarly, Iowa Code Ann. § 729.5 makes it a crime for anyone "to injure, oppress, threaten, or intimidate or interfere with any citizen in the free exercise or enjoyment of any right or privilege secured to that person by the constitution or laws of the state of Iowa or by the constitution or laws of the United States."[93] Such statutes may come into play if federal officials deprive individuals of their constitutional rights, such as by conducting an unlawful arrest or detention. For conduct to fall under these types of statutes, the perpetrator usually must have acted "willfully" or "knowingly," and the precise standard varies state to state. In Massachusetts, for example, a defendant only needs to have "engaged in activity which interferes with rights which as … matter of law are clearly and specifically protected"[94]; in some other states, the individual needs to know that their conduct was unlawful in order to be subject to criminal consequences.[95] This higher standard constricts how widely these laws are used,[96] but they still offer options for addressing egregious federal misconduct.

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[89] Daniel W. Xu, *Narrowing the Police Accountability Gap in Civil Rights Prosecutions*, 73 Emory L.J. 961, 982, 1007–10 (2024) (surveying state statutes). *See, e.g.*, Alaska Stat. Ann. § 11.76.110; Conn. Gen. Stat. Ann. § 53-37b; Me. Rev. Stat. Ann. Tit. 17, § 2931; Mass. Gen. Laws Ann. Ch. 265, § 37; Nev. Rev. Stat. Ann. § 197.200; 18 Pa. Stat. and Cons. Stat. § 5301; S.C. Code Ann. § 16-5-10; W. Va. Code Ann. § 61-6-21.

[90] 18 U.S.C. § 242.

[91] *See, e.g.*, N.J. Stat. § 2C:30-6 ("A public servant … commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention …; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity."); *id.* § 2C:27-1 ("'Government' includes any branch, subdivision or agency of the government of the State or any locality within it" and "'Public servant' means any officer or employee of government …").

[92] Cal. Penal Code § 422.6.

[93] Iowa Code Ann. § 729.5.

[94] Com. v. Stephens, 515 N.E.2d 606, 611 (Mass. 1987) (quoting United States v. Ehrlichman, 546 F.2d 910, 928 (D.C. Cir. 1976)); *see also* In re M.S., 896 P.2d 1365, 1373 & n.5 (Cal. 1995) (requiring "proof of a specific intent to interfere with a person's right protected under state or federal law" but noting that the defendant need not be "thinking in constitutional terms").

[95] Xu, *supra* note 89, at 985–87.

[96] *Id.* at 988.

Conclusion

In sum, states have a wide range of criminal laws at their disposal for addressing wrongdoing by federal officials, and state prosecutions of such officials have a long history. While Supremacy Clause immunity sometimes protects federal actors from state prosecution, it does not extend to conduct that federal law does not authorize or that is not necessary or proper to fulfilling lawful federal duties. Times of heightened tensions between states and the federal government have produced some of the most prominent examples of states using their criminal laws against federal actors. With the United States seemingly entering such a period, it may only be a matter of time before similar cases arise again.