

Minn. Can Still Bring State Charges In Absence Of Fed Action

By **Sheila Tendy** (February 3, 2026, 5:31 PM EST)

In Minneapolis, two fatal shootings by federal immigration agents have sparked intense legal and political controversy.

On Jan. 7, a U.S. Immigration and Customs Enforcement agent shot and killed 37-year-old Renee Good during a federal enforcement operation. Bystander videos captured the incident.

Then, on Jan. 24, a U.S. Border Patrol agent fatally shot 37-year-old Alex Pretti. Videos appear to show him holding only a phone and attempting to help others before he was pepper-sprayed and shot.

In both cases, the U.S. Department of Justice has not pursued federal criminal charges against the agents involved, despite public video evidence that appears to contradict official federal accounts. Federal authorities initially characterized the Pretti shooting as justified by a perceived threat, and said the ICE and Border Patrol agents believed Pretti was armed.

The DOJ has now announced a federal civil rights investigation into the Pretti case that may increase scrutiny, but does not constitute a homicide prosecution or substitute for state criminal enforcement. By stepping in with a civil rights probe, the DOJ may, however, be asserting federal supremacy in law enforcement accountability without pursuing criminal charges.

The question then becomes whether states can prosecute federal actors when the DOJ will not, or does the supremacy clause grant federal officers complete immunity from state criminal law?[1] Minnesota's role may now become a test case.

Supremacy clause immunity is not absolute.

The supremacy clause, found in Article VI of the U.S. Constitution, means that federal law is supreme where it conflicts with state law. The clause provides: "This Constitution, and the Laws of the United States ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Courts recognize a conditional doctrine, supremacy clause immunity, that can bar state prosecution of a federal officer, but only if the officer acted within authorized federal duties and reasonably believed the force used was necessary to carry them out, as the U.S. Supreme Court articulated in its 1890 decision in



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In re: Neagle.[2] In this case, the legality of force is a question for courts, not for executive agencies' determination.

The supremacy clause does not mean that federal employees are automatically exempt from state homicide laws. Supremacy clause immunity is also not conferred by the DOJ or the executive branch.[3]

That immunity must be determined by a court on a factual record, and if either prong is lacking, the defense fails and the prosecution proceeds.[4]

States can act within their lawful authority.

The central obstacle to state action in cases involving federal officers is not a lack of legal authority. It is arguably a combination of structural deterrence and institutional inertia that has developed around the supremacy clause doctrine, as state prosecutors are rarely required to confront supremacy clause immunity directly.

As a result, the doctrine has come to be considered by some as a categorical bar rather than what it is — a conditional, fact-dependent defense adjudicated by courts.[5]

Because federal prosecutions typically preempt state involvement and federal agencies often retain exclusive control over investigations, states are rarely positioned to test the outer boundaries of their own criminal jurisdiction. But when the DOJ does not bring charges, the question is no longer one of deference or coordination. It becomes a straightforward issue of state police power: whether a state may enforce its homicide statutes when a killing occurs within its borders.

The answer, as a matter of law, is yes. State prosecutions of federal officers are rare, but rarity is not a jurisdictional bar.

What may deter state action in the face of federal government inaction are secondary consequences that fall outside the merits of the case itself: concerns about federal retaliation or loss of intergovernmental cooperation, the risk of being accused of politicizing criminal law, and uncertainty about litigating immunity doctrines that are rarely tested in public view.[6]

None of these factors negates jurisdiction. None alters the elements of state murder statutes. And none converts supremacy clause immunity into an absolute shield.

Federalism does not require silence; it requires courts. Failing to act does not preserve neutrality. It effectively delegates the definition of lawful force to the same institutions whose conduct is in question. When federal enforcement expands into local streets, state criminal law does not disappear. In this context, the role of the state is not to predict federal approval, but to present the facts to a court and allow the judiciary to determine whether the conduct was necessary under law.

A federal civil rights inquiry does not resolve whether a state homicide prosecution is barred by supremacy clause immunity. That question remains for courts. The DOJ's newly announced civil rights investigation into Prett, which operates within the executive branch, does not preempt Minnesota's authority to enforce its homicide laws, nor does it confer supremacy clause immunity under Neagle.

Minnesota must evaluate the test case.

Minnesota must balance its jurisdictional analysis against the risk that today's conservative Supreme Court may favor expansive federal supremacy and strong protections for federal officers. This could narrow state power to enforce its homicide laws against federal agents and make supremacy clause immunity harder for states to overcome.

Here, video evidence, including footage that seems to contradict federal descriptions of events, has been widely shared, analyzed and discussed publicly. As noted, in the Pretti shooting, video appears to show him holding only a phone and not displaying threatening behavior before he was pepper-sprayed, subdued and shot. The videos do not appear to support claims that he approached agents with a firearm.

These kinds of publicly available videos can be sufficient to support probable cause for a state charging decision even in the absence of full federal cooperation. They can serve as the factual foundation for a state prosecution and for a judicial determination of whether deadly force was objectively reasonable. They also directly challenge official narratives, underscoring the need for independent review.

As a practical matter, when the DOJ declines to pursue charges or to share evidence with state authorities, the state's ability to act becomes the only available mechanism for accountability, at least in the criminal context.

The supremacy clause was never designed to permit executive agencies to unilaterally determine the legality of their own use of lethal force, insulated from state law and judicial scrutiny.[7] The supremacy clause was designed to fix a major weakness under the Articles of Confederation: States could disregard national law, leaving the federal government ineffective and inconsistent.

The clause makes federal law binding nationwide and ensures courts apply it over conflicting state law, so the country functions as one unified legal system, rather than a loose alliance of states.[8]

Federalism anticipates the opposite: When one sovereign declines to enforce the law, the other may act, and the courts — not executive actors — will determine where lawful authority ends.

A state prosecution is not rebellion against federal authority. It's the constitutional system working as intended: overlapping authority, plus judicial review to define the boundary. This is not a departure from constitutional order; it is the mechanism by which the constitutional order is supposed to function.

Minnesota's role is not to wait for a federal civil rights investigation to conclude. Its role is to determine when to enforce its homicide statutes, present its evidence to a court, and allow the judiciary to determine whether the conduct falls within or outside the narrow protections of supremacy clause immunity.

While a DOJ civil rights investigation does not itself create supremacy clause immunity, it may give the agents strategic leverage to argue for federal primacy, delay state proceedings and limit access to evidence.

Minnesota's choice will test not only the boundaries of the supremacy clause doctrine, but whether state law enforcement retains a meaningful role in policing state streets when federal actors inflict lethal force.

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[1] Bryna Godar, *Explainer: Can States Prosecute Federal Officials?*, State Democracy Research Initiative, Univ. of Wisconsin Law Sch. (July 17, 2025), <https://statedemocracy.law.wisc.edu/featured/2025/explainer-can-states-prosecute-federal-officials/>.

[2] *In re Neagle*, 135 U.S. 1,7 (1890).

[3] *Neagle*, 135 U.S. at 7.

[4] Godar, *Explainer: Can States Prosecute Federal Officials?*.

[5] Dev. P. Ranjan, *Harmonizing Federal Immunities*, 111 Va. L. Rev. (2025) (noting that "after an initially rapid development, Supremacy Clause immunity has remained entirely untouched by the Supreme Court since 1920, and it has arisen in lower federal courts only sporadically during that intervening century, and though no clear legal standard has emerged, the doctrine has generally been construed to offer sweeping immunity to federal employees who commit state crimes, as long as their actions bore some relationship to their federal duties").

[6] Seth P. Waxman & Trevor W. Morrison, *What Kind of Immunity? Federal Officers, State Criminal Law, and the Supremacy Clause*, 112Yale L.J.2195 (2003).

[7] The Articles of Confederation were the United States' first constitution, adopted during the Revolutionary era (ratified in1781) and replaced by the U.S. Constitution in1789. They created a loose alliance of sovereign states with a very weak national government. Congress could conduct diplomacy and declare war, but it couldn't reliably tax, couldn't regulate interstate commerce, and couldn't enforce its laws directly on the states, which is why the system ultimately failed and led to the Constitutional Convention.

[8] <https://constitutioncenter.org/the-constitution/historic-document-library/detail/articles-of-confederation>.