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## Newsroom: Hassel on Qualified Immunity

Roger Williams University School of Law

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# Newsroom

## Hassel on Qualified Immunity

Professor Diana Hassel explains why immigration officials could not claim qualified immunity after mistakenly detaining an American citizen for 24 hours.

**From Rhode Island Lawyers Weekly:** "[Immigration detainers require probable cause: qualified immunity arguments rejected](#)" by Brandon Gee



**July 29, 2015:** Immigration officials could not claim qualified immunity to obtain summary judgment in a lawsuit brought by a plaintiff imprisoned on an immigration detainer for 24 hours despite the fact that she is a United States citizen, the 1st U.S. Circuit Court of Appeals has determined.

The defendants, an Immigration and Customs Enforcement agent and two ICE supervisors, claimed they were entitled to qualified immunity because the law was not clearly established in 2009 when the plaintiff — a Rhode Islander — was detained and that probable cause was required before the issuance of an immigration detainer.

The 30-page decision is *Morales v. Chadbourne, et al.*, Lawyers Weekly No. 01-193-15. [The full text of the ruling can be found by clicking here.](#) [...]



While she agrees the 1st Circuit correctly found a requirement for probable cause before issuing an immigration detainer, **Roger Williams University School of Law professor Diana J. Hassel** said the qualified immunity analysis will become more complex when the case returns to U.S. District Court and a factual record is developed.

The 1st Circuit did not reach other arguments the defendants made in moving for summary judgment and dismissal because they were based on factual assertions and not pure issues of law. Such claims, therefore, were not yet ripe for review, the court ruled.

The defendant ICE agent, for example, claimed that even if probable cause was required, he had it.

“The thing that makes qualified immunity tricky is the broad legal principles can be clearly established, but then you have a million possible factual scenarios,” **said Hassel, a former assistant U.S. attorney.** “For the broad proposition of what justifies detention, there are probably all kinds of decisions on point. What it comes down to is what did this ICE officer and his supervisors do? What’s clearly established to be probable cause under these circumstances? That issue wasn’t really reached here.” [...]