

n a t i o n a l **IMMIGRATION** **p r o j e c t** of the National Lawyers Guild

Issue Brief Qualified Immunity in Immigration¹

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I. What is Qualified Immunity?

Qualified immunity is a legal doctrine created by the U.S. Supreme Court that protects public officials, including police officers, immigration officers, and immigration detention center staff from civil liability for constitutional and statutory violations. The Supreme Court has stated that this protection extends to “all [officials] but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

Unless a court finds that the public official violated clearly established rights that any reasonable person would have known, the official will not be held civilly liable. In effect, qualified immunity shields public officials from necessary accountability when they break the law even in the most egregious circumstances.

II. History and Evolution of the Qualified Immunity Doctrine

In the Ku Klux Klan Act of 1871, Congress created a right for individuals to sue state and local officials who violated their rights for money damages. The intent of this Act was to hold public officials accountable for violations of the law. This law was codified in Section 1983 of Title 42 of the U.S. Code and unequivocally states that any state official who violates the rights of a person in the United States “shall be liable” for civil damages. 42 U.S.C. § 1983. The plain language of the law did not create any exceptions, and the Supreme Court interpreted the Act as it was intended up until the 1960s.

For example, in 1915, the Supreme Court held in *Myers v. Anderson*, 238 U.S. 368 (1915), that Maryland state officials were liable for civil damages for enforcing grandfather clauses designed to deprive Black citizens of their right to vote. In *Monroe v. Pape*, 365 U.S. 167 (1961), James Monroe sued thirteen Chicago police officers who broke into his home, forced him and his wife

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to stand naked in the living room, ransacked every room, and kept Mr. Monroe in the police station for ten hours without providing him an opportunity to call his family or an attorney. The officers did not have a warrant for the search or his arrest. The Supreme Court ruled that individual city police officers can be held liable for damages under the Ku Klux Klan Act when they violate an individual's due process rights.

Just a few years after *Monroe*, the Supreme Court limited the reach of Section 1983 by creating the doctrine of qualified immunity. *Pierson v. Ray*, 386 U.S. 547 (1967), was a case involving the arrest of fifteen priests taking part in the Mississippi Freedom Rides. As they were entering a coffee shop at a bus terminal, the priests were arrested for "breach of peace" under Mississippi law. Four of the priests sued the police officers for damages under 42 U.S.C. § 1983. They claimed that the police officers falsely arrested and imprisoned them for exercising their civil rights. Ignoring prior precedent and Congressional intent underlying Section 1983, the Supreme Court ruled that police officers may be excused from liability if they "reasonably believed in good faith that the arrest was constitutional" even if "the arrest was, in fact, unconstitutional." Therefore, any official who acted in "good faith" could be shielded from civil liability even if they violated the constitution or laws of the United States. This decision formed the beginning of the qualified immunity doctrine.

Since *Pierson*, the Supreme Court has expanded the definition and use of qualified immunity in cases involving Constitutional and legal violations by public officials. The Court established the modern test for qualified immunity in *Harlow v. Fitzgerald*, 475 U.S. 800 (1982). The Court overruled the "subjective good faith" test articulated in *Pierson* on the basis that it led to high litigation costs and deterred and distracted government officials from performing their duties. The Court established a new "objective" test for qualified immunity, holding that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." After *Harlow*, courts no longer look to an official's subjective state of mind to determine whether they were acting in good faith for the purposes of qualified immunity. Rather, they consider only whether a reasonable person in the official's position would have known that their actions violated clearly established legal principles.

The Supreme Court set out a two-step analysis to determine whether an officer is eligible for qualified immunity in *Saucier v. Katz*, 533 U.S. 194 (2001). Courts must determine: (1) whether the facts "show the officer's conduct violated a constitutional right," and (2) "whether the right was clearly established." Courts routinely deny relief to individuals on the basis that the rights were not "clearly established" by the time of the court's decision even where the official's conduct violated the law. Officials often avoid liability under this doctrine when there is no prior precedential decision by the courts addressing the specific fact pattern alleged in the case against them. In effect, the Supreme Court's invention and expansion of qualified immunity prevents government officials from being held accountable when they break the law even in the most egregious circumstances.

III. Application of Qualified Immunity to Protect Federal Immigration Officers from Accountability

Qualified immunity shields both federal and state officials from liability. In *Butz v. Economou*, 438 U.S. 478 (1978), the Supreme Court clarified that federal officials who violate the rights of individuals can evade civil liability through the qualified immunity defense. This is significant because Section 1983 only applies to state officials, and there is no statute allowing for analogous suits against federal officials. Instead, civil liability for constitutional violations by federal officials arises under the Supreme Court's decision in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Over the years, federal officer liability under *Bivens* has been limited significantly by the courts and now only applies in very narrow circumstances. Qualified immunity adds yet another layer of challenges in holding federal officials, including immigration officers, accountable. As the cases below illustrate, qualified immunity has prevented federal immigration officers from being held accountable in even the most appalling circumstances.

Perez, C.Y. v. United States, 13-cv-1417-WQH-BGS, Doc. 201 (S.D. Cal., Sept. 21, 2017)
Maria Del Socorro Quintero Perez filed a lawsuit against the United States and U.S. immigration enforcement agencies for the wrongful death of her husband, Jesus Alfredo Yañez Reyes. Mr. Yañez Reyes and Jose Ibarra-Murrieta crossed the border in 2011 and were immediately apprehended by U.S. Customs and Border Protection ("CBP") agents. After a brief scuffle, Mr. Yañez Reyes managed to escape back to the Mexican side of the border, while Mr. Ibarra-Murrieta was detained by CBP. Though CBP agents claimed that Mr. Yañez Reyes threw rocks at them from across the border, Mr. Ibarra-Murrieta disputed this and claimed that Mr. Yañez Reyes only threatened to record the CBP agents, who were beating Mr. Ibarra-Murrieta at the time. Neither side disputed that Agent Dorian Diaz then shot Mr. Yañez Reyes in the head from across the border, killing him. CBP agents did not attempt to aid Mr. Yañez Reyes and themselves sustained only minor injuries. Evidence showed a pattern of CBP agents using lethal force against people they perceived to be of Mexican nationality or Hispanic appearance: between January 2010 and October 2012, CBP agents responded to alleged thrown rocks with deadly force at least twenty-nine times. A Southern District of California court held that qualified immunity shielded the officers from liability because no precedent at the time made it "beyond debate" that shooting Mr. Yañez Reyes violated his Fourth Amendment right against excessive force.

Hernandez v. Mesa, 885 F.3d 811 (5th Cir. 2018), *aff'd*, 140 S. Ct. 735 (2020)
The parents of Sergio Adrián Hernández Güereca filed a lawsuit seeking redress for the killing of their son by a CBP agent, Jesus Mesa Jr. Hernández. Sergio Hernández, a 15-year-old Mexican citizen, had been playing with friends in a culvert on the Mexican side of the border between El Paso and Ciudad Juarez. After Agent Mesa detained one of the boys on U.S. territory, Hernández ran across the Mexican border and hid under a bridge. From U.S. territory, Mesa fired two shots at Hernández, one of which struck him in the face and killed him. The entire Fifth Circuit, sitting *en banc*, held that qualified immunity shielded Mesa from liability. The Supreme Court reversed this holding and remanded the case to the Fifth Circuit to reconsider the qualified immunity question. The Fifth Circuit did not take up the qualified immunity issue and instead affirmed the lower court denial on other grounds.

Ziglar v. Abbasi, 137 S. Ct. 1843 (2017)

Six non-citizens of Arab or South Asian descent brought a class action lawsuit to challenge the federal government's detention of about 84 individuals after September 11, 2001, for being persons "of interest" under the Federal Bureau of Investigation's ("FBI") "hold-until-cleared-policy." The plaintiffs alleged that their race, ethnicity, and national origin were the determinative reasons the government detained them. The Supreme Court held that government officials were entitled to qualified immunity because, at the time, federal law prohibiting conspiracies to violate civil rights did not clearly apply to government agencies.

Morales v. Chadbourne, 12-cv-301-M-LDA, Doc. 222 (D. R.I., January 24, 2017)

Ada Morales, a naturalized U.S. citizen, sued state and federal officials for holding her in state prison on an immigration detainer based solely on her last name and the fact that she was born in Guatemala. The district court recognized that Ms. Morales's detention "revealed dysfunction of a constitutional proportion at both the state and federal levels and a unilateral refusal to take responsibility for the fact that a United States citizen lost her liberty due to a baseless immigration detainer through no fault of her own." Nevertheless, despite the fact that state officials detained Ms. Morales without even inquiring as to her citizenship status, the court held that all state actors were protected by qualified immunity.

De La Paz v. Coy, 786 F.3d 367 (5th Cir. 2015)

Alejandro Garcia De La Paz and Daniel Frias alleged that CBP agents stopped and questioned them based solely on their Hispanic appearance. The Fifth Circuit, denying Mr. De La Paz and Mr. Frias relief on other grounds, stated that qualified immunity likely shielded CBP officers from personal liability for their actions even if the initial stop was based on facial motivations.

Carcamo-Lopez v. Does 1 through 20, 865 F.Supp.2d 736 (W.D. Tex. 2011)

Miriam Aide Carcamo-Lopez was crossing the U.S.-Mexico border when a CBP agent ran her over with the back tires of his truck. After running her over, he then kicked her to try to get her to stand up, dragged her into his vehicle, and drove her to get medical attention. Ms. Carcamo-Lopez was hospitalized, underwent three surgeries, and had ongoing medical complications from the incident. She sued the agent under the Fourth and Fifth Amendments. The district court held that qualified immunity protected the agent from being sued for constitutional violations. The court held that, even assuming the agent was reckless, the court cannot hold the agent liable because of "lack of clarity" in the legal precedent and "in light of Plaintiff's failure to point to any case with analogous facts that would have made the issue any more clear."

Doe v. Robertson, 751 F.3d 383 (5th Cir. 2014)

Several anonymous female immigrants were sexually assaulted by an employee of a private prison corporation while they were being transported out of an immigration detention center following their release from U.S. Immigration and Customs Enforcement ("ICE") detention. The employee pleaded guilty to state and federal criminal charges arising from these assaults. The women sued ICE officials who were in charge of monitoring and administering the contract that allows ICE to detain immigrants at the detention facility. They claimed that the ICE officials were aware of violations of the contractual provision requiring at least one transport officer to be the same gender as that of transported immigrants and that the provision aimed to prevent sexual assault. The women alleged that the ICE officials failed to implement steps to prevent sexual

assault during their transport and failed to appropriately monitor transport activities, in violation of their Fifth Amendment rights. Without deciding whether there was a constitutional violation, the Fifth Circuit Court of Appeals ruled that the ICE officials cannot be held liable due to qualified immunity because “no clearly established law provides that an official’s knowledge of contractual breaches and of the breached provision’s aim to prevent sexual assault of detainees, standing alone, amounts to” a Fifth Amendment violation.

George v. Rehiel, 738 F.3d 562 (3d Cir. 2013)

Nicholas George, a 21-year-old U.S. citizen, had a flight from Pennsylvania to California where he was about to begin his senior year in college. When he was going through routine security screening at the Philadelphia International Airport, a Transportation Security Administration (“TSA”) official asked him to empty his pockets and Mr. George handed over a deck of handwritten Arabic–English flashcards which he was studying to become proficient in Arabic. He was subsequently detained, interrogated, handcuffed, and jailed for several hours at the airport. He alleged that TSA and FBI officials violated his Fourth and First Amendment rights by detaining and interrogating him because he was carrying a deck of Arabic–English flashcards and a book critical of American interventionism and foreign policy. The district court found that Mr. George had plausibly alleged constitutional violations and allowed the case to proceed. However, on appeal, the Third Circuit Court of Appeals held that the federal officials were protected by qualified immunity and directed the district court to dismiss the claims against the TSA and FBI officials.

Rynearson v. United States, 601 F. App’x 302 (5th Cir. 2015)

Richard Rynearson, a U.S. citizen, was stopped at an immigration checkpoint over 60 miles away from the border. Despite showing his identification, including his passport, and confirming that he is a U.S. citizen, border patrol agents subjected Mr. Rynearson to additional questioning, asked him to step outside of his vehicle, which he refused to do, and made him wait for over 30 minutes before telling him that he was free to go. Mr. Rynearson sued the agents alleging that they violated his Fourth Amendment rights by unlawfully detaining him. The Fifth Circuit Court of Appeals held that the agents were entitled to qualified immunity because Mr. Rynearson’s constitutional right to be free from unlawful searches and seizures was not “clearly established” in the context of stops at immigration checkpoints.

IV. Why Congress Must Eliminate Qualified Immunity

Ending qualified immunity is a critically important issue for immigrants. Qualified immunity shields state and local police, immigration officers, and immigration detention center staff from necessary accountability when they break the law. This happens often, because immigrants across the country are disproportionately subject to over-policing and detention. Police and federal immigration officers target immigrants for racial profiling, heightened surveillance, and harassment. In border regions, roving patrols and electronic surveillance, including drones, observation balloons, and remote cameras, are so ubiquitous that many residents feel they are living under martial law. Immigrants are also frequent victims of excessive force by law enforcement: ICE and Border Patrol regularly conduct nighttime immigration enforcement “raids,” during which they often use military tactics and weapons and indiscriminately arrest people. Immigrants who are arrested may be detained, sometimes for years, in remote detention

centers with abysmal conditions. When government officials unlawfully harm immigrants, they should not be able to hide behind the shield of qualified immunity.

Elected officials are increasingly recognizing the need to abolish the unjust doctrine of qualified immunity. In the past year, Colorado and New Mexico have enacted legislation barring state or local officials who violate each state's constitution from using qualified immunity as a defense in state court. While these laws are a significant step towards justice, only Congress can enact legislation to end qualified immunity under federal law.

Congress must provide for a statutory right to sue federal officials who violate the Constitution or laws of the United States and eliminate qualified immunity for local, state, and federal officials who violate those rights. Members of Congress should support bills such as the [Accountability for Federal Law Enforcement Act](#) and [the Bivens Act](#) - which amend Section 1983 to allow suits against federal officials - as well as [the Ending Qualified Immunity Act](#) (H.R. 1470 and S. 492 in the 117th Congress) - which eliminates qualified immunity for Section 1983 claims. It is imperative that Congress act to end qualified immunity and ensure that government officials who abuse peoples' rights can be held accountable.