

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Juneidy Mijangos Vargas, on behalf	)	
a minor, J.A.M.; and Johana	)	
Gutierrez, on behalf of minors,	)	
Y.S.G.R. and J.I.G.R.,	)	
	)	
Plaintiffs,	)	C/A No. 1:17-cv-05052-SCJ
	)	
v.	)	
	)	
The United States of America,	)	
	)	
Defendant.	)	

FIRST AMENDED COMPLAINT

With no search or arrest warrant, Defendant unlawfully detained three United States citizen children during the course of pre-planned raid. Based on this Court's August 6, 2018 order¹ and Federal Rule of Civil Procedure Rule 17(c), Plaintiff J.A.M, by and through his guardian and mother, Juneidy Mijangos Vargas, and Plaintiffs Y.S.G.R. and J.I.G.R. by and through their guardian and mother, Johana Gutierrez, seek to recover damages based on such unlawful detention and allege as follows:

¹ This Court directed that Plaintiffs re-plead the Complaint and, *inter alia*, remove the Plaintiffs who were dismissed pursuant to Rule 12(b)(6). Doc. 17. Plaintiffs' compliance with the Court's order should not be construed as a waiver of the right to appeal dismissal of the non-citizen Plaintiffs.

PARTIES

1. Plaintiff J.A.M. is a United States citizen. He permanently resides in Stone Mountain, Georgia, in DeKalb County, with his mother, Juneidy Mijangos Vargas. Pursuant to Rule 17(c), he is bringing this suit by and through his mother and guardian, Ms. Vargas, because Plaintiff J.A.M. is a minor. He is four years old.
2. Plaintiff Y.S.G.R. is a United States citizen. Y.S.G.R. permanently resides in Norcross, Georgia, in Gwinnett County with her mother, Johana Gutierrez. Pursuant to Rule 17(c), Y.S.G.R. is bringing this suit by and through her mother and guardian, Ms. Gutierrez, because she is a minor. She is fourteen years old.
3. Plaintiff J.I.G.R. is a United States citizen. He permanently resides in Norcross, Georgia, in Gwinnett County with his mother, Johana Gutierrez. Pursuant to Rule 17(c), J.I.G.R. is bringing this suit by and through his mother and guardian, Ms. Gutierrez, because he is a minor. He is eleven years old.
4. Defendant United States of America is the appropriate defendant under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., for the tort claims in this Complaint.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all claims in this case under 28 U.S.C. § 1331, 28 U.S.C. § 1346(b)(1), and the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, et seq.
6. This Court has authority to enter declaratory relief under 28 U.S.C. § 2201.
7. This complaint is timely under 28 U.S.C. § 2401(b) because the tortious acts occurred on or before January 2, 2016; the Plaintiffs filed the administrative complaints with the DHS and ICE on October 27, 2016; the agencies denied those claims on June 12, 2017; and this suit was initially filed on December 11, 2017.
8. On August 6, 2018, this Court ordered Plaintiffs to file an amended complaint within 30 days. This suit is timely under the Court’s order.
9. Venue is proper in the Northern District of Georgia under 28 U.S.C. §§ 1391, 1402(b) because a substantial part of the events giving rise to the claims occurred in this district and the Plaintiffs reside in this district.
10. All administrative remedies have been exhausted under 28 U.S.C. § 2675.

FACTS

Operation Border Resolve

11. In December 2015, the United States Department of Homeland Security (“DHS”) approved an Enforcement and Removal Operation entitled “Operation Border Resolve.” The objective of Operation Border Resolve was to target “Family Units” for deportation.
12. DHS directed its sub-agency, Immigration and Customs Enforcement (“ICE”), to execute Operation Border Resolve.
13. Operation Border Resolve specifically targeted family units from El Salvador, Honduras, and Guatemala living in nine major U.S. metropolitan areas, including Atlanta, Georgia.
14. DHS set a numeric goal for apprehensions and deportations at 400 individuals.
15. DHS encouraged ICE field offices to allocate more agents to each enforcement team than it typically would. DHS allocated funds to cover the cost of the additional agents.
16. Because Operation Border Resolve targeted family units, DHS directed ICE field offices to ensure that the enforcement teams took the necessary

supplies to detain children—including car seats, diapers, baby food, and baby formula.

17. DHS did not require ICE field offices to notify local law enforcement agencies about the planned raids.
18. DHS directed ICE to conduct the raids on January 2 and 3, 2016, between the hours of 6:00 AM and 10:00 PM.
19. DHS directed that all personnel assigned to Operation Border Resolve be trained on the Fourth Amendment.
20. ICE specifically instructs its agents that, if they claim to be a member of local law enforcement during a ruse, the agents must notify the local law enforcement agency beforehand.
21. On January 2 and 3, 2016, ICE agents conducted this multistate enforcement operation, sweeping into homes across Georgia, North Carolina, and Texas.
22. ICE agents arrested 121 people during Operation Border Resolve and transferred them to an immigration detention facility in Dilley, Texas.
23. The ICE Field Office Director for Atlanta seeks to scare foreign nationals through such raids and searches. He is quoted as saying: “If you’re in this country illegally, you should be scared. . . . We’re probably

going to come knocking at some point.” Lee, Vivian, “Please, God, Don’t Let Me Get Stopped”: Around Atlanta, No Sanctuary for Immigrants, N.Y. Times at A1 (Nov. 26, 2017).

The Vargas Family

24. Plaintiff J.A.M. lives in Stone Mountain with his family, including his mother and guardian, Juneidy Mijangos Vargas. He also lives with his extended family, comprising Rosa Vargas Morales (grandmother), Juan Mijangos Vargas (uncle), D.M.V. (aunt), and Carlos Rene Moran Morales (great uncle).
25. At approximately 4:00 AM on Saturday, January 2, 2016, J.A.M. and his family were awakened by the doorbell ringing, banging on the front door, and flashlights shining through the windows of the home.
26. Carlos Rene Morales looked out the window and saw approximately nine unmarked and unfamiliar cars outside his home and approximately five officers standing outside. He observed “POLICE” labels on the back of the officers’ jackets, and “ICE” on the back of one agent’s jacket.
27. This knocking, doorbell ringing, and shining of flashlights into the house persisted while the family cowered in the hallway, unsure of what to do.

28. At one point, Mr. Morales opened a bathroom window to speak to the officers.
29. They asked Mr. Morales to open the door so they could speak to him, but when he asked for an explanation, they refused to provide any information about why they wanted to speak with him.
30. The officers eventually left.
31. The family was terrified to leave their home that day, but they needed certain food items. Later that morning, Mr. Morales left the house to go to the grocery store.
32. When he returned home, two cars stopped him near the driveway of the house.
33. Two men, wearing jackets labeled “ICE” exited the cars, approached Mr. Morales’ car, and asked to see his driver’s license.
34. In Spanish, Mr. Morales asked the agents why they had pulled him over. They provided no traffic-related reason for stopping him.
35. Rather, the agents stated in Spanish that they knew a criminal suspect named “Miguel Soto” was in Mr. Morales’ home. They told Mr. Morales that they could arrest him for obstructing a criminal investigation.

36. Mr. Morales explained that there was no Miguel Soto in the home; the agents then stated that they saw Mr. Soto enter the house that morning. Mr. Morales provided the agents with the names of the people who were present in the house to explain that no one named Miguel Soto lived or was currently staying there.
37. The agents continued to insist to Mr. Morales that they needed to enter the house. They repeatedly threatened that he would be arrested for obstructing a criminal investigation if he did not let them in the house. Mr. Morales feared the agents would arrest him unless he proved to them that no one named “Miguel Soto” was in the house.
38. Mr. Morales again—and repeatedly—tried to explain that no one named “Miguel Soto” lived in his home.
39. Mr. Morales observed guns on both agents.
40. Both agents yelled at and threatened Mr. Morales throughout the interaction.
41. Mr. Morales told the agents that he would obtain the identification cards of the people currently present in the home to show that no one named “Miguel Soto” was present there. The agents followed him to his front door.

42. The agents told Mr. Morales that they wanted to enter the home. He asked them if they had a warrant. The agents told him that a judge had signed a warrant and they needed to come in. They never produced or otherwise proved to Mr. Morales that they had a warrant to enter his home.
43. At the entry to the home—and prior to touching the door knob—Mr. Morales explained to the agents that he would enter the home to obtain the identification cards of the people inside. He specified that the agents should wait outside, and they verbally agreed.
44. The agents did not seek his consent to enter the home.
45. He did not provide them with consent to enter his home.
46. Regardless, as Mr. Morales turned the door knob to enter his home, he observed one agent put his hand on the door above his head to push the door, and he heard the other agent simultaneously kick on the door.
47. The door opened, and the agents entered the home.
48. Mr. Morales never gave the agents verbal permission to enter the home, and he never indicated otherwise that he consented to their entry. Nor did any other occupant of the house provide verbal or other consent to the agents' entry.

49. The two ICE agents ordered all family members, including J.A.M., to gather in the living room and provide identification.
50. Mr. Morales provided identification for his entire family. After the agents looked at the IDs, Mr. Morales asked the agents why they were still there. They falsely stated that they were waiting on another agent with a scanner to check that the IDs were real. This was a lie, as no agent ever scanned their IDs.
51. J.A.M and his family were held in the room for approximately 40 minutes, until a female agent arrived. D.M.V. remained asleep in her room. During this time, J.A.M.'s family was not free to leave the room, where the armed agents were detaining them.
52. At one point, Mr. Morales stood up to relieve discomfort in his back, and an agent pushed him down, telling Mr. Morales to stay seated or he would be arrested.
53. Upon arriving, the female agent read aloud the names of Rosa Vargas Morales, Juan Mijangos Vargas, Juneidy Mijangos Vargas, and D.M.V. She did not read the name of J.A.M. She explained that the agents were there to arrest them, because Rosa Vargas Morales had missed an immigration court date. The agent said that Rosa Vargas Morales and all

three of her children would need to pack bags and come with them. Mr. Morales stated that Rosa Vargas Morales had not missed a single court date, but the agent responded that she did not want to hear the family's explanations.

54. The agents gave Rosa Vargas Morales and her children bags and instructed them to pack personal belongings for the trip.
55. At one point, J.A.M. offered one of his toys to an ICE agent and the agent aggressively directed him to return it to his mother. J.A.M. cried inconsolably throughout the raid.
56. The agents decided not to bring Juneidy Mijangos Vargas, with them, because she is the mother of J.A.M., who was an infant at the time.
57. The agents escorted Rosa Vargas Morales, Juan Mijangos Vargas, and D.M.V. to a vehicle and drove them to an immigration detention center in Atlanta.
58. Since the raids, J.A.M. is frightened and nervous around law enforcement. When he sees police, he hides and warns his mother that the police are coming to take her.
59. J.A.M. suffered serious emotional trauma because of the raids. His mother, Juneidy Mijangos Vargas, took him to see a pediatrician because

he has been overeating since the raid. The doctor informed Ms. Vargas that his overeating may be a symptom of anxiety.

60. ICE agents did not have a warrant that permitted them to enter or search the J.A.M.'s home or detain J.A.M.

61. No exigent circumstances existed that would allow ICE agents to lawfully enter or search J.A.M. or detain J.A.M.

62. Mr. Morales did not give consent for ICE agents to enter or search the J.A.M.'s home or detain J.A.M. Nor did any other occupant or resident give consent to the agents' entry and search of the J.A.M.'s home or detention of J.A.M.

The Gutierrez Family

63. Plaintiffs Y.S.G.R., and J.I.G.R live with their mother and guardian, Johanna Gutierrez, and her husband, Salvador Alfaro.

64. At approximately 5:00 AM, on Saturday, January 2, 2016, Johana Gutierrez and Salvador Alfaro awoke to the sound of loud banging on the front door and ringing of the doorbell.

65. At that time, Y.S.G.R. (age 12), J.I.G.R. (age 9), Johanna Gutierrez, Salvador Alfaro, and Ms. Gutierrez's niece, Ana Lizeth Mejia Gutierrez, and her son, W.G.M. (age 10), were present and asleep in the home.

66. Johanna Gutierrez and Salvador Alfaro got out of bed and went downstairs to the front door. Through the front window, they could see officers with flashlights and unfamiliar, unmarked cars in front of the house.
67. In English, Johanna Gutierrez asked, “Who is it?”
68. The officers held up a photo through the window and shined their flashlights on it. It was a picture of an African American man. They indicated that the man was a criminal suspect and they had been told that the person in the photo was in the Gutierrez home.
69. Salvador Alfaro opened the door and, without asking for permission to enter, approximately five or six officers pushed past Mr. Alfaro and Ms. Gutierrez and immediately entered the house.
70. The officers who entered the house had guns on their hips.
71. The officers searched the entire house—some going into the living room, others going upstairs. They checked all rooms, including the laundry room, kitchen, and garage, and they looked underneath beds and in closets.
72. The officers woke everyone in the house, including but not limited to Y.S.G.R. and J.I.G.R, and brought them—in their pajamas—into the

living room where they detained them for 30 minutes to an hour.

Everyone was scared and confused. The children were crying.

73. The officers asked for Ana Mejia Gutierrez, and her son, W.G.M.

74. When Johanna Gutierrez realized that the officers were not police, but rather ICE agents, she tried to get her phone to make a call, but an agent told her not to move.

75. One agent stood between the family in the living room and the front door throughout the raid. No one felt free to leave. At one point, the agents asked for identification cards. Johanna Gutierrez offered to go upstairs to get the IDs, and the agent in the living room told her not to move, placing his hand on his holstered gun.

76. Johanna Gutierrez asked the agents why they had lied to enter the house. They told her to be quiet. She asked about her rights. The agent standing at the door told her that she would get her rights once they left with her niece, Ana Mejia Gutierrez.

77. The agent guarding the door threatened to arrest Johanna Gutierrez several times.

78. Ms. Gutierrez told the agents that they were violating her rights. She told them that they were traumatizing Y.S.G.R. and J.I.G.R, that they should

have a warrant, and that they had lied. The interpreter heard her, but stopped interpreting what she said.

79. The agents arrested Ms. Ana Mejia Gutierrez and W.G.M and took them away.

80. After the raid, Y.S.G.R. and J.I.G.R. have changed. They are more fearful. Y.S.G.R. and J.I.G.R. refuse to answer the door when someone knocks.

81. Y.S.G.R. missed school for a week. She refused to sleep alone. Y.S.G.R. indicated to a classmate that she was thinking about harming herself. She was reported to a school counselor who referred her to a psychologist. She met with the psychologist and later her pastor to work through the mental anguish and pain as a result of the raid.

82. To this day, Y.S.G.R. intermittently cries without consolation, telling her mother that she no longer wants to live in the United States.

83. After the raid, J.I.G.R. received counseling from the family's pastor.

84. J.I.G.R. continues to suffer significant emotional pain and distress as a result of the raid. Before the raid, he was involved in swimming classes and sporting activities. He no longer participates in those activities.

J.I.G.R. has become insular. He prefers staying at home and has difficulty talking to strangers.

85. ICE agents did not have a warrant that permitted them to enter or search

Y.S.G.R. or J.I.G.R.'s home or detain Y.S.G.R. or J.I.G.R.

86. No exigent circumstances existed that would allow ICE agents to

lawfully enter or search Y.S.G.R. or J.I.G.R.'s home or detain Y.S.G.R.

or J.I.G.R.

87. Neither Ms. Gutierrez nor Mr. Alfaro gave and could have given

knowing or voluntary consent for ICE agents to enter or search the

Y.S.G.R. or J.I.G.R.'s home or detain Y.S.G.R. or J.I.G.R. because the

ICE agents gained entry by lying about their purpose for entry.

**FIRST CAUSE OF ACTION
(False Imprisonment)**

88. ICE, through its investigative and law enforcement agents, intentionally

and unlawfully deprived each J.A.M., Y.S.G.R., and J.I.G.R. of his or her

personal liberty by entering their homes without a judicial warrant or

voluntary consent and absent exigent circumstances and by detaining

J.A.M., Y.S.G.R., and J.I.G.R. against their will in violation of O.C.G.A.

§ 51-7-20; Ferrel v. Mikula, 672 S.E.2d 7, 10 (Ga. App. 2008); Lyttle v.

United States, 867 F. Supp. 2d 1256, 1297 (M.D. Ga. 2012).

89. The ICE agents committed these acts as employees of the U.S. while acting within the scope of their employment at all relevant times as part of Operation Border Resolve.

90. The ICE agents were acting in an investigative or law enforcement role at all relevant times as part of Operation Border Resolve.

91. J.A.M., Y.S.G.R., and J.I.G.R. were detained by force or threat of force to a specific area in their homes controlled by the ICE agents; they were unable to leave that area or their homes while ICE agents conducted an unlawful, pre-textual search.

92. J.A.M., Y.S.G.R., and J.I.G.R.'s detention was not authorized by a judicially issued warrant, and any warrant ICE may have had for purposes of executing the operation did not extend to J.A.M., Y.S.G.R., and J.I.G.R.

93. J.A.M. alleges the following specific facts to support his claim to false imprisonment under Georgia law, *see* O.C.G.A. § 51-7-20:

- a. ICE unlawfully detained J.A.M. when agents entered his home without consent and unlawfully confined him to a specified area for approximately one hour. At 4:00 AM on Saturday, January 2, 2016, ICE awoke J.A.M. and his family by banging on the door, ringing the

doorbell, and shining flashlights into the windows. Carlos Rene Morales refused to open the door for them, and they eventually left.

- b. Later that day, Carlos Rene Morales left the home. Upon his return, ICE officers approached him, threatened him with arrest, and alleged that a criminal suspect was located in the home of J.A.M. and his family. Carlos Rene Morales refused to consent to ICE to enter the home, but as Mr. Morales turned the doorknob of the front door, ICE officers pushed the door opened, forcefully entered the home, raided the home, and detained J.A.M. and his family. No one gave ICE consent to enter the home.
- c. Thereafter, ICE detained J.A.M. and his family in the living room by force or threat of force for approximately an hour. J.A.M. could not leave.
- d. Eventually, ICE left.

94. Based on these specific facts and those alleged elsewhere in this amended complaint, ICE falsely imprisoned J.A.M. precluding him from leaving the living room during the actual raid. This detention was unlawful under Georgia and federal law for the following specific reasons:

- a. ICE had no probable cause to detain J.A.M. during the operation, because he is a United States citizen;
- b. ICE had no judicially issued warrant authorizing the entry in and search of J.A.M.'s home;
- c. ICE used an unconstitutional "ruse" to gain entrance or consent to enter J.A.M.'s home;
- d. ICE unlawfully entered J.A.M.'s home without knowing and voluntary consent;
- e. No exigent circumstances existed that would allow ICE to lawfully enter any J.A.M.'s home without a warrant or consent; and
- f. ICE's detention of J.A.M. was otherwise unlawful.

95. This unlawful detention caused J.A.M. mental anguish with lasting consequences, including but not limited to his fear of police and ongoing significant anxiety.

96. Y.S.G.R. and J.I.G.R. allege the following specific facts to support their specific claims to false imprisonment under Georgia law, *see* O.C.G.A. § 51-7-20:

- a. At 5:00 AM on Saturday, January 2, 2016, ICE agents began banging on the front door and ringing the doorbell of Y.S.G.R. and J.I.G.R.'s

home. Y.S.G.R. and J.I.G.R.'s mother, Johana Gutierrez, and her husband, Salvador Alfaro, went downstairs to investigate the source of the ruckus. There were ICE agents at the door, claiming that an African American man was a criminal suspect who was in their home. Salvador Alfaro opened the door and five or six officers rushed past him and forcefully entered the home. No one, including Mr. Alfaro, gave the ICE officers consent to enter the home.

- b. ICE agents searched the home.
- c. ICE agents detained Y.S.G.R. and J.I.G.R. along with others in the living room by force or threat of force for approximately 30 minutes to an hour. One ICE agent with a visible gun stood between the family in the living room and the front door throughout the raid. Y.S.G.R. and J.I.G.R. did not feel they could leave. They were scared and crying. Eventually, ICE took Y.S.G.R. and J.I.G.R.'s cousins into custody. Y.S.G.R. and J.I.G.R. watched ICE yell at their mother and threaten her arrest.

97. Based on these specific facts and those alleged elsewhere in this amended complaint, ICE falsely imprisoned Y.S.G.R. and J.I.G.R. by forcing them out of their bedrooms and confining them by force or threat of force in

the living room for up to an hour. This detention was unlawful under Georgia and federal law for the following specific reasons:

- a. ICE had no probable cause to detain Y.S.G.R. and J.I.G.R. during the operation because they are United States citizens;
- b. ICE had no judicially issued warrant authorizing the entry in and search of Y.S.G.R. and J.I.G.R.'s home;
- c. ICE used an unconstitutional "ruse" to gain entrance or consent to enter Y.S.G.R. and J.I.G.R.'s home;
- d. ICE unlawfully entered Y.S.G.R. and J.I.G.R.'s home without knowing and voluntary consent;
- e. No exigent circumstances existed that would allow ICE to enter Y.S.G.R. and J.I.G.R.'s home without a warrant or consent; and
- f. ICE's detention of Y.S.G.R. and J.I.G.R. was otherwise unlawful.

98. This false imprisonment caused Y.S.G.R. significant mental anguish, including but not limited to paralyzing anxiety that forced her to miss school for a week and prevented her from sleeping alone, and trauma that led to thoughts of self-harm and ongoing crying spells.

99. Y.S.G.R. has had sought assistance from a school counselor, private psychologist, and clergy to overcome her ongoing mental anguish.

100. The unlawful detention caused J.I.G.R. significant mental anguish, including but not limited to a significant decrease in social engagement and fear of leaving home.
101. The due care exception under 28 U.S.C. § 2680(a) does not apply to this cause of action. Lyttle v. United States, 867 F. Supp. 2d. 1256, 1257 (M.D. Ga. 2012).
102. The discretionary function exception under 28 U.S.C. § 2680(a) does not apply to false imprisonment. Nguyen v. United States, 556 F.3d 1244, 1260 (11th Cir. 2009).
103. This false imprisonment caused Plaintiffs damages.
104. Those damages include but are not limited to:
 - a. Property damage and loss;
 - b. Emotional distress;
 - c. Mental anguish; and
 - d. Other damages to be proven at trial.
105. Plaintiffs are entitled to damages against the United States for false imprisonment to the full extent allowed under Georgia law and the FTCA, in an amount to be determined by the trier of fact.

106. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

**SECOND CAUSE OF ACTION
(Trespass)**

107. The ICE agents were acting within the scope of their employment at all relevant times.

108. The ICE agents were acting in an investigative or law enforcement role at all relevant times.

109. The ICE agents intentionally and unlawfully interfered with Plaintiffs' enjoyment of private property in which Plaintiffs had a possessory interest under O.G.C.A. § 51-9-1.

110. The ICE agents unconstitutionally entered all of Plaintiffs' homes without a judicially issued warrant or voluntary consent and absent exigent circumstances.

111. Further, the ICE agents entered Plaintiffs' homes by using an unconstitutional "ruse" to gain entry.

112. All such actions violated Plaintiffs' Fourth Amendment rights to be free from unreasonable searches and seizures.

113. More specifically, ICE trespassed against J.A.M. because:

- a. J.A.M. was a resident and legal tenant of the home ICE raided, and therefore, J.A.M. had a possessory interest under Georgia law.
- b. No person at the home gave consent to ICE to enter the home; rather, Carlos Rene Morales explicitly refused consent, the ICE agents nonetheless entered by force.
- c. There were no exigent circumstances that would allow ICE to lawfully enter J.A.M.'s home.
- d. ICE lied to Carlos Rene Morales in an effort to obtain entry into J.A.M.'s home by knowingly and falsely claiming there was a criminal suspect inside of the home.
- e. ICE had no warrant for the detention of J.A.M. or the search of J.A.M.'s home.

114. ICE interfered with J.A.M.'s right to quiet enjoyment with willfulness, malice, or corruption; ICE did not have a valid warrant, voluntary consent or exigent circumstances that would justify entering the home; ICE lied in its efforts to get in and then forcefully entered and detained J.A.M.

115. Y.S.G.R. and J.I.G.R. allege the following specific facts to support their claim to trespass under Georgia law, *see* O.C.G.A. § 51-7-20:

- a. Y.S.G.R. and J.I.G.R. were resident and legal tenants of the home that ICE raided; Y.S.G.R. and J.I.G.R. had a possessory interest in the home.
 - b. At 5:00 AM on Saturday, January 2, 2016, Salvador Alfaro did not provide voluntary consent to ICE to enter the home, yet when he opened the door and five or six officers forced their way into Y.S.G.R. and J.I.G.R.'s home.
 - c. There were no exigent circumstances that would justify ICE lawfully entering Y.S.G.R. and J.I.G.R.'s home;
 - d. ICE lied to try to get into Y.S.G.R. and J.I.G.R.'s home by knowingly and falsely claiming there was a criminal suspect inside of the home.
116. ICE interfered with Y.S.G.R. and J.I.G.R.'s right to quiet enjoyment with willfulness, malice, or corruption; ICE did not have a valid warrant, voluntary consent or exigent circumstances that would justify entering the home; ICE lied in its efforts to get in and then forcefully entered and detained Y.S.G.R. and J.I.G.R.
117. Defendant's actions were not discretionary because Defendant has no discretion to act unconstitutionally. Rosas v. Brock, 826 F.2d 1004, 1008

(11th Cir. 1987); Mancha v. Immigration & Customs Enf't, No. 106-CV-2650-TWT, 2009 WL 900800, at *4 (N.D. Ga. Mar. 31, 2009).

118. This unconstitutional trespass caused Plaintiffs' damages.

119. Plaintiffs are entitled to damages against the United States for trespass to the full extent allowed under Georgia law and the FTCA, in an amount to be determined by the trier of fact.

120. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

THIRD CAUSE OF ACTION (Negligence)

121. The ICE agents were acting within the scope of its employment at all relevant times.

122. The ICE agents were acting in an investigative or law enforcement role at all relevant times.

123. ICE had a duty to act with reasonable care when exercising authority to detain Plaintiffs and search their homes and to abide by the U.S. Constitution during the operation, including but not limited to entering and searching a home only under the authority of a judicially issued warrant, exigent circumstances, or knowing and voluntary consent by a person authorized to consent.

124. ICE also had a duty to act with reasonable care and to follow its own practices and procedures, including but not limited to notifying local law enforcement authorities that it intended on purporting to be local “police” during the course of its raids.
125. ICE breached these duties by unlawfully entering and searching Plaintiffs’ homes without a judicially issued warrant, exigent circumstances, or knowing and voluntary consent and unlawfully detaining the Plaintiffs.
126. ICE also breached internal, non-discretionary DHS practices and policies, including but not limited to DHS policies related to the use of “ruses.”
127. Specifically, ICE failed to act with reasonable care when ICE agents unlawfully entered and searched J.A.M.’s home and detained J.A.M. without a warrant, voluntary consent or exigent circumstances to justify their actions.
128. Similarly, ICE failed to act with reasonable care when ICE agents unlawfully entered and searched the home of Y.S.G.R and J.I.G.R. and detained Y.S.G.R and J.I.G.R. without a warrant, voluntary consent or exigent circumstances to justify their actions.

129. This breach of duty caused J.A.M. mental anguish and ongoing trauma, including but not limited to his fear of police and ongoing significant anxiety.
130. This breach of duty caused Y.S.G.R. significant mental anguish, including but not limited paralyzing anxiety that forced her to miss school for a week and prevented her from sleeping alone, and trauma that led to thoughts of self-harm and ongoing crying spells.
131. Y.S.G.R. has had to speak with a school counselor, private psychologist, and clergy to try to overcome this harm.
132. This breach of duty caused J.I.G.R. significant mental anguish, including but not limited to a significant decrease in social engagement and fear of leaving home.
133. As a direct and proximate result of Defendant's breaches of duties, Plaintiffs have suffered and continue to suffer damages including, but not limited to:
- a. Property damage and loss;
 - b. Emotional distress;
 - c. Mental anguish; and
 - d. Other damages to be proven at trial.

134. Plaintiffs are entitled to damages against the United States for negligence to the full extent allowed under Georgia law and the FTCA, in an amount to be determined by the trier of fact.

135. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

**FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)**

136. The ICE agents were acting within the scope of its employment at all relevant times.

137. The ICE agents were acting in an investigative or law enforcement role at all relevant times.

138. The ICE agents acted intentionally or recklessly when they unlawfully entered and searched J.A.M., Y.S.G.R., and J.I.G.R.'s and unlawfully detained J.A.M., Y.S.G.R., and J.I.G.R., who are United States citizens and children.

139. The ICE agents' actions were extreme and outrageous because they carried visible firearms, threatened the families of J.A.M., Y.S.G.R., and J.I.G.R., forced J.A.M., Y.S.G.R., and J.I.G.R. out of bed, and detained United States citizens J.A.M., Y.S.G.R., and J.I.G.R.

140. ICE used racial stereotypes to scare the Gutierrez and Padilla Families into “consenting” to their search.
141. The ICE agents compelled Carlos Rene Morales to enter his home, in order to obtain I.D.’s of the residents, by repeatedly threatening arrest for a knowingly falsified charge of “obstruction of justice.”
142. The ICE agents entered J.A.M.’s home without obtaining voluntary and knowing consent, by pushing the door open as Carlos Rene Morales turned the doorknob to obtain the I.D.’s and forcefully entering the home.
143. The ICE agents gained entry into J.A.M., Y.S.G.R., and J.I.G.R.’s homes by preying on their families’ fears and deliberately lying about the presence of fictitious criminal suspects in their homes.
144. Specifically, ICE engaged in intentional infliction of emotional distress towards J.A.M. by threatening to arrest and to take away his mother, forcing him and his family to cower in the hallway as they first attempted to enter the home, forcing him to remain in the living room, yelling at him and subjecting him these actions despite that he was an infant and is a United States citizen.
145. Specifically, ICE engaged in intentional infliction of emotional distress towards Y.S.G.R. and J.I.G.R. by threatening to arrest and take

away their parents, forcing them out of their beds in the early hours of the day, forcing them to stay in the living room, and subjecting them to these actions despite that they were children and are United States citizens.

146. All such conduct is extreme and outrageous.

147. The ICE agents' outrageous and extreme conduct directly caused Plaintiffs emotional distress and other damages.

148. ICE's tortious conduct caused J.A.M. mental anguish, including but not limited to his fear of police and ongoing significant anxiety.

149. ICE's tortious conduct caused Y.S.G.R. significant mental anguish, including but not limited paralyzing anxiety that forced her to miss school for a week and prevented her from sleeping alone, and trauma that led to thoughts of self-harm and ongoing crying spells.

150. Y.S.G.R. has had to speak with a school counselor, private psychologist, and clergy to try to overcome this harm.

151. ICE's tortious conduct caused J.I.G.R. significant mental anguish, including but not limited to a significant decrease in social engagement and fear of leaving home.

152. Those damages include but are not limited to:

a. Property damage and loss;

- b. Emotional distress;
 - c. Mental anguish; and
 - d. Other damages to be proven at trial.
153. The emotional distress is severe, lasting, and grave.
154. Plaintiffs are entitled to damages against the United States for intentional infliction of emotional distress to the full extent allowed under Georgia law and the FTCA, in an amount to be determined by the trier of fact.
155. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

**FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)**

156. The ICE agents were acting within the scope of its employment at all relevant times.
157. The ICE agents were acting in an investigative or law enforcement role at all relevant times.
158. Alternatively, the ICE agents acted negligently when they unlawfully entered and searched J.A.M., Y.S.G.R., and J.I.G.R.'s homes and unlawfully detained J.A.M., Y.S.G.R., and J.I.G.R.
159. ICE's negligence was extreme and outrageous.

160. The ICE agents used racial stereotypes to scare Y.S.G.R. and J.I.G.R.'s family into "consenting" to their search.
161. The ICE agents forcefully entered the J.A.M.'s home without a valid warrant authorizing the entry, or voluntary and knowing consent or exigent circumstances that would otherwise justify their entry.
162. The ICE agents also entered the J.A.M.'s home by repeatedly threatening to arrest Carlos Rene Morales for a falsified charge of "obstruction of justice."
163. ICE gained entry into J.A.M., Y.S.G.R., and J.I.G.R.'s homes by lying.
164. All such conduct is extreme and outrageous for officers bound by duty to follow federal and state law.
165. All such conduct is extreme and outrageous as to United States citizens when ICE agents were limited to executing an immigration enforcement action premised on judicial deportation orders.
166. All such conduct is extreme and outrageous as to children.
167. ICE's outrageous and extreme conduct caused Plaintiffs' damages.
168. ICE's tortious conduct caused J.A.M. mental anguish, including but not limited to his fear of police and ongoing significant anxiety.

169. ICE's tortious conduct caused Y.S.G.R., including but not limited to paralyzing anxiety that forced her to miss school for a week and prevented her from sleeping alone, and trauma that led to thoughts of self-harm and ongoing crying spells.

170. Y.S.G.R. has had to speak with a school counselor, private psychologist, and clergy to try to overcome this harm.

171. ICE's tortious conduct caused J.I.G.R. significant mental anguish, including but not limited to a significant decrease in social engagement and fear of leaving home.

172. The damages suffered by J.A.M., Y.S.G.R., and J.I.G.R. include but are not limited to:

- a. Property damage and loss;
- b. Emotional distress;
- c. Mental anguish; and
- d. Other damages to be proven at trial.

173. The emotional distress is severe, lasting, and grave.

174. Plaintiffs are entitled to damages against the United States for negligent infliction of emotional distress to the full extent allowed under

Georgia law and the FTCA, in an amount to be determined by the trier of fact.

175. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:

1. Compensatory damages;
2. Punitive damages;
3. Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2678, the Equal Access to Justice Act, the Court's inherent powers, and any other applicable law;
4. A declaration that the use of "ruses" to take custody over a foreign national for purposes of deportation or to take custody over a United States citizen during an "immigration raid" must comport with the Constitution; and
5. Any other such relief the Court deems just and proper.

September 4, 2018

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read 'B/BG.' followed by a long horizontal stroke ending in an arrowhead.

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Certificate of Service

I declare that I filed the foregoing on the court's electronic filing system, which forwarded an electronic copy to all counsel of record.

September 4, 2018

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'B. Baniyas', with a stylized flourish extending to the right.

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