

IN THE UNITED STATES DISTRICT COURT

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

Juneidy Mijangos Vargas, on behalf :
of minor J.A.M.; and Johana Gutierrez, :
on behalf of minors Y.S.G.R. and J.I.G.R., :

Plaintiffs, :

v. :

The United States of America, :

Defendant. :

Civil Action No.

1:17-CV-05052-SCJ

enforcement and removal operations in Georgia, North Carolina,

a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 569 (2007). A complaint must offer more than “naked assertion[s],” “labels and conclusions, [or] a formulaic recitation of the elements of a cause of action.” *Id.* at 555, 557. “Plausibility” requires more than a “sheer possibility that a defendant has acted unlawfully,” and a complaint that alleges facts that are “merely consistent with” liability “stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557). “[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Chandler v. Sec’y of Fla. Dept. of Transp.*, 695 F.3d 1194, 1199 (11th Cir. 2012) (quoting *Iqbal*, 556 U.S. at 678). “Further, courts may infer from the factual allegations in the complaint obvious alternative explanations, which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer.” *Kivisto v. Miller, Canfield, Paddock & Stone, PLC*, 413 F. App’x 136, 138 (11th Cir. 2011).

B. Plaintiffs Fail to State a Claim For Relief.

Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R., who are alleged to be citizens of the United States and ages 17 months, 12 years, and 9 years, respectively, at the time of the enforcement actions, bring a variety of tort-based claims. Under the FTCA, the United States is held l Mi

extent that a private individual would be under the law of the place where the tort occurred. 28 U.S.C. § 2674; *Daniels v. United States*, 704 F.2d 587, 591 (11th Cir. 1983). The Supreme Court has held that “§ 1346(b)’s reference to the ‘law of the place’ means law of the State -- the source of substantive liability under the FTCA.” *FDIC v. Meyer*, 510 U.S. 471, 478 (1994). Since the relevant events in this case occurred in Georgia, the law to be applied is that of the State of Georgia. *See Tisdale v. United States*, 838 F. Supp. 592, 597 (N.D. Ga. 1993) *aff’d*, 62 F.3d 1367 (11th Cir. 1995).

a. False Imprisonment

Under Georgia law, “[f]alse imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person

remain in the United States “ and to arrest any alien without a

v. *United States*, No. 3:98-cv-1682, 2000 WL 425170, *7-8 (N.D. Tex. Apr. 18, 2000) (noting that INS agents had “legal authority” to detain plaintiff under INA,

assert any property interest in the real property that was the subject of the enforcement operations at issue, or possess any property interest of their own.

Moreover, “[u]nder Georgia law, a state officer does not commit trespass when he acts within the scope of his official duties.” *Lavassani v. City of Canton, Ga.*, 760 F. Supp. 2d 1346, 1371 (N.D. Ga. 2010) (citing *Morton v. McCoy*, 420 S.E.2d 40 (Ga. App.1992)). Similar to *Lavassani* in which the court found that the police officers were acting within the scope of their official duties, there is no dispute that ICE agents were acting within their official capacity when they entered the subject residences and arrested and detained Plaintiffs’ family members subject to orders of removal. Therefore, the trespass claim is subject to dismissal.

c. Negligence

Under Georgia law, a plaintiff must establish four elements in order to state a cause of action for negligence: (1) a legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risks of harm; (2) a breach of this standard; (3) a legally attributable causal connection between the conduct and the resulting injury; and (4) some loss or damage flowing to the plaintiff’s legally protected interest as a result of the alleged breach of the legal duty. *See Galanti v. United States*, 709 F.2d 706 (11th Cir. 1983).

Plaintiffs fail to satisfy the elements required for a negligence claim under Georgia law because Plaintiffs fail to allege a duty that the United States owed to them. “Unless Plaintiffs can identify corresponding state law duties, they have, at the least, failed to state a claim, and arguably their lapse deprives the court of even subject matter jurisdiction over the action.” *Zelaya v. United States*, 781 F.3d 1315, 1325 (11th Cir. 2015). In the absence of identifying any state law duty owed by the United States, Plaintiffs instead cite to purported duties created by: 1) the U.S. Constitution; and 2) ICE practices and procedures.

[T]he fact that a federal employee has failed to perform duties imposed by federal law is insufficient by itself to render the federal government liable under the FTCA. *Pate v. Oakwood Mobile Homes, Inc.*, 374 F.3d 1081, 1084 (11th Cir. 2004). Instead, a state tort cause of act

emotional distress, and if bodily harm to the other results from it, for such bodily harm.

Yarbray v. S. Bell Tel. & Tel. Co., 409 S.E.2d 835, 837 (Ga. 1991). In order to sustain a cause of action, the defendant's actions must have been “so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Cornelius v. Auto Analyst, Inc.*, 476 S.E.2d 9, 11 (1996). A claim for intentional infliction of emotional distress requires more than an allegation that a plaintiff was offended or insulted. *Kornegay v. Mundy*, 379 S.E.2d 14, 16 (Ga. App. 1989). In fact, the burden on a plaintiff is “a stringent one.” *Ingram v. JIK Realty Co.*, 404 S.E.2d 802 (Ga. App. 1991). Moreover, the claim must show that “the intentional act was directed toward the plaintiff.” *Wellborn v. DeKalb County School Dist.*, 489 S.E.2d 345, 347 (Ga. App. 1997).

Whether conduct is sufficiently outrageous and whether the resulting emotional distress is sufficiently severe to support a claim of intentional infliction of emotional distress are questions of law. *See Yarbray*, 409 S.E.2d at 838. In this case, the allegations brought by Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R. fail to rise to the level required for intentional infliction of emotional distress.

Plaintiffs identify no outrageous conduct directed toward Plaintiff J.A.M., who was seventeen months-old. Instead, Plaintiffs simply allege that J.A.M. was

physically present at the time that ICE agents detained other members of his family pursuant to lawful removal orders, and was told to give one of his toys to his mother after offering it to an ICE agent. *See* Complaint at ¶¶ 51, 53, 55.³ In fact, Plaintiffs acknowledge that although the ICE agents came to the residence to arrest his mother, Plaintiff Juneidy Mijangos Vargas, 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.” *Id.* at 56. The agents exercised their prosecutorial discretion

infliction of emotional distress. *See Miraliakbari v. Pennicooke*, 561 S.E.2d 483, 486 (Ga. App. 2002) (finding insufficient severity when supervisor refused to allow mother to contact school regarding injured child and threatened to fire her); *Odem v. Pace Acad.*, 510 S.E.2d 326, 332 (Ga. App. 1998) (“Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threat, annoyances, petty oppressions, or other trivialities.”).

Similarly, with respect to Plaintiffs Y.S.G.R. and J.I.G.R, Plaintiffs allege no outrageous conduct directed toward them. Indeed, there are no specific allegations regarding conduct toward these individuals at all during the enforcement actions, other than that they were awoken and present in their living room for 30-60 minutes. *See* Complaint at ¶ 72. Effectively, Plaintiffs simply allege that Y.S.G.R. and J.I.G.R were physically present at the time that ICE agents detained other members of their family pursuant to lawful removal orders. *Id.* Plaintiffs also fail to make specific factual allegations sufficient to show these Plaintiffs were severely distressed by any intentional conduct directed toward them, as those heightened standards are defined under Georgia law. Instead, the allegations with respect to Y.S.G.R. are that she does not like to answer the door, missed one week of school, did not want to sleep alone, and made a single remark to a classmate that she had thoughts of self-harm. *Id.* at 80-81. With respect to J.I.G.R., the complaint asserts only that he does not

like to answer the door, no longer participates in sports, and is more insular. *Id.* at 20, 84.

These allegations show neither conduct that is sufficiently outrageous nor resulting emotional distress that is sufficiently extreme to support a claim of intentional infliction of emotional distress. *See Cho v. United States*, No. 13-153, 2016 WL 1611476, at *9 (M.D. Ga. Apr. 21, 2016), *aff'd*, 687 F. App'x. 833 (11th Cir. 2017) (finding that allegations of denial of medical care, assault, false arrest and imprisonment, and conditions of trips to Immigration Court did not support a claim for intentional infliction of emotional distress); *Bridges v. Winn-Dixie Atlanta, Inc.*, 335 S.E.2d 445, 448 (Ga. App. 1985) (“Emotional distress inflicted by another is not an uncommon condition; emotional distress includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that liability arises... The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it.”).

e. Negligent Infliction of Emotional Distress

In Georgia, to prevail on a negligent infliction of emotional distress claim, a plaintiff must satisfy the Georgia impact rule requirements, which are that “(1) he suffered a physical impact; (2) the physical impact caused him physical injury; and

(3) the physical injury caused his mental suffering or emotional distress.” *Kirkland v. Earth Fare, Inc.*, 658 S.E.2d 433, 436 (Ga. App. 2008). A plaintiff must allege or proffer evidence of a physical injury to pursue this cause of action. *Id.*; *see also Bullard v. MRA Holding, LLC*, 890 F. Supp. 2d 1323, 1330 (N.D. Ga. 2012) (citing *Lee v. State Farm Mut. Ins. Co.*, 533 S.E.2d 82 (Ga. 2000) (“In a claim concerning negligent conduct, a recovery for emotional distress is allowed only where there is some impact on the plaintiff, and that impact must be a physical injury.”)); *Coon v. Med. Ctr., Inc.*, 797 S.E.2d 828, 836 (Ga. 2017) (reaffirming “that Georgia follows the physical impact rule for claims of negligent infliction of emotional distress”). Because Plaintiffs, particularly Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R, do not allege that the United States “caused plaintiff[s] any physical injury, a negligent infliction of emotional distress claim necessarily fails.” *Bullard*, 890 F. Supp. 2d at 1330-31.

C. Plaintiffs May Not Recover Punitive Damages, Attorneys’ Fees, or Declaratory Relief.

In their Prayer for Relief, Plaintiffs request punitive damages, attorneys’ fees, and declaratory relief. *See* Complaint at 35. These are not available under the FTCA. *See* 28 U.S.C. § 2674 (no punitive damages); 28 U.S.C. § 2678 (attorney fees); *see also Douglas*, 796 F. Supp. 2d at 1363 (government not liable for punitive damages); *Mathis v. Laird*, 324 F. Supp. 885 (M.D. Fl. 1971) (dicta) (FTCA cannot

be invoked by claimant seeking declaratory relief); *Moher v. United States*, 875 F. Supp. 2d 739, 754-55 (W.D. Mich. 2012) (money damages is exclusive FTCA

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	:	
Defendant.	:	

CERTIFICATE OF COMPLIANCE

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1B for documents prepared by computer.

Respectfully submitted,

s/ Gabriel Mendel _____
Gabriel Mendel
Assistant U.S. Attorney

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CERTIFICATE OF SERVICE

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