**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, | : | |
| | : | Civil Action No. |
| v. | : | |
| | : | 1:17-CV-05052-SCJ |

The United Ies its Reply

se to Defendant's Motion

aintiffs fail to justify the

. In particular, it remains

oper attempt to: 1) cast

n is barred by the Federal

wrongs against the alien

ze tort law against law

upset ting for anyone,

particularly children. Nevertheless, it is a necessary reality of law enforcement every day, not just in the immigration law context, and Plaintiffs' effort to turn this experience into an actionable tort would cripple immigration law enforcement, exceeds the scope of available remedies, and fails to state a claim.

## A. Plaintiffs Fail to State a Claim For Relief.

### 1. False Imprisonment

There is no dispute that aliens subject to final removal orders were located in the homes entered by the U.S. Immigration and Customs Enforcement ("ICE") agents and those aliens were detained pursuant to those orders. *See* Complaint at ¶¶ 57, 63-79, 96; *see also* Doc. 19, Exhibits A & B. No reading of the Complaint permits a reasonable inference that the ICE agents lacked probable cause to believe that aliens subject to final orders of removal were in the subject homes and were subject to arrest.

Instead, Plaintiffs argue that the removal orders are silent as to them, as they were not the targets of the removal operation. *See* Plaintiff's Response at 7. This is true, but irrelevant. If the method by which the ICE agents entered the homes and detained the alien residents was lawful pwe[illegible]

if the ICE agents had lawful process to detain the aliens in the homes, to make the other residents of the home wait in the living room while the agents determined everyone's identity and processed the aliens for detention somehow exceeds their lawful authority and thus constitutes false imprisonment. Imagine the implications of such a rule. In any entry to a residence to lawfully detain a removable alien, or to detain any suspected criminal, law enforcement officers would be unable to secure the preu n

which bars a false imprisonment claim under California law);

a removal order by the immigration judge. This context, undisputed by Plaintiffs, takes this case outside the scope of false imprisonment under Georgia law.

**2. Trespass**

Plaintiffs cannot dispute that "[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)). Instead, Plaintiffs argue that ICE agents detaining aliens subject to orders of removal were not acting with the scope of their duties because entrance into the homes constituted a "violation of the 4th Amendment." *See* Opposition at 13. This again reveals that Plaintiffs are trying improperly to shoehorn allegations of constitutional violations into common tort law claims. *See Federal Deposit Ins. Co. v. Meyer*, 510 U.S. 471, 478 (1994) (constitutional tort claim is not cognizable under jurisdictional grant of FTCA).

Moreover, Plaintiffs' citations do not support their position. They cite to *Rosas v. Brock*, 826 F.2d 1004 (11th Cir. 1987), a class action § 1983 suit arising out of the denial of benefits under the Disaster Relief Act, which has no bearing on this case. Their reliance on *Mancha v. Immigration & Customs Enf't*, No. 106-CV-2650-TWT, 2009 WL 900800 (N.D. Ga. Mar. 31, 2009), is also misplaced. There, the court analyzed whether the trespass claim was barred by the discretionary function

question, but conducted no substantive legal analysis of Georgia trespass law. *Id.* at *4. Contrary to Plaintiffs' claims, for the same reasons discussed in the section above regarding false imprisonment, the actions of the ICE agents in entering the homes pursuant to valid legal process vest these actions squarely within their discretionary authority and preclude the elements of "willfulness, malice, or corruption" necessary to remove the protection of Georgia law. *See Morton*, 420 S.E.2d at 42. More fundamentally, this same lawful process precludes Plaintiffs from pleading the necessary element of *unlawful* interference required to establish a *prima facie* trespass claim under O.C.G.A. § 51–9–1.

**3. Negligence**

Plaintiffs assert a state law "duty by law enforcement officers to exercise ordinary care when conducting an arrest or seizure." *See* Opposition at 14. They plainly admit that they are relying upon "an ordinary duty of care" imposed "on law enforcement officers." *Id.* at 15-16. Plaintiffs thereby mistakenly rely on a duty owed by Georgia *governmental* entities, rather than a private person. The FTCA only "waives sovereign immunity 'under circumstances where the United States, if a private person,' not 'the United States, if a state or municipal entity,' would be liable." *United States v. Olson*, 546 U.S. 43, 45–46 (2005). Where "a plaintiff's effort to base liability [rests] solely upon the fact that a State would impose liability

upon a municipal (or other state governmental) entity… nothing in the Act's context,

born in the United States; coercing and manipulating him into signing a Notice of Rights form without assisting him in understanding his rights, reading the form, or protecting him from coercion despite his mental disabilities; failing to adequately

the house when he knew plaintiff was alone, and demanded that she, "although she was alone and unprotected, unlock the front door to the apartment where the plaintiff and her mother resided, stating to the plaintiff that he had come to remove the television set and to take it away with him." *Id.*at 384. Then, after "the plaintiff refused to unlock the front door, [defendant] went to the rear of the apartment building, climbed the rear stairs and came to the rear door of the apartment in which the plaintiff and her mother resided." *Id.* When the plaintiff again refused to open the door, the defendant "shook and rattled the door in an effort to gain admission to the apartment… [and] then wrote on a piece of paper the following words: 'If you don't unlock this door so that I can get the television set, I will get the police and have you locked up in jail.'" *Id.* On this basis, the court found malicious and intentional conduct on the part of the defendant. *Id*. at 385.

The facts of *Delta Finance* offer a convenient vehicle for exploring three important distinctions that doom Plaintiffs' claim. First, it is clear that all of the conduct at issue in *Delta Finance* was intentionally directed at the plaintiff herself, satisfying the key requirement that, in the absence of any "physical impact" to his person, a plaintiff seeking to recover for emotional distress must also show that the

Plaintiffs allege virtually no conduct directed toward them at all. Instead, Plaintiffs try to avoid the clear lack of outrageous conduct toward them by repeating their allegations of conduct directed toward other individuals as if such conduct was somehow directed at them. *See, e.g.*, Complaint at ¶¶ 138-145. Plaintiffs admit as much, arguing that it is sufficient for them to allege that, simply because they were present, they were "forced to witness the agents—who had visible guns on their person—search, threaten and frighten them and their family." Plaintiffs' Response at 19. But this does not constitute an intentional act directed toward them. Instead, Plaintiffs' characterization makes clear that their presence was incidental to the conduct at issue. Put another wa

aggravation that would entitle the plaintiff to punitive damages for another tort." *Jones v. Fayette Family Dental Care, Inc.*, 718 S.E.2d 88, 90 (Ga. App. 2011).

Finally, the facts of *Delta Finance* illustrate the absence of severe emotional distress in this case. In *Delta Finance*, the plaintiff alleged she "is afraid to go to school or to be left alone in the apartment or to leave the apartment." 91 S.E.2d at

them and their family," (Plaintiffs' Response at 19), the courts would be filled with tort claims from the family members of criminal suspects. Likewise if it were sufficient to allege that a member of law enforcement spoke "aggressively" toward a child during a law enforcement operation, or that someone became "frightened and nervous around law enforcement," or even that they no longer like to answer the door or participate in sports *See* Complaint at ¶¶ 55, 58, 80-81. These allegations may be unpleasant or regrettable, but they do not meet the high standard of "extreme and outrageous" conduct

Respectfully submitted,

BYUNG J. PAK
UNITED STATES ATTORNEY

*s/ Gabriel Mendel*
Gabriel Mendel
Assistant United States Attorney
Georgia Bar No. 169098
600 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303
Voice: (404) 581-6000
Facsimile: (404) 581-6181

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

| | | |
|---|---|---|
| Carlos Rene Morales, Rosa Vargas, Morales, Juan Mijangos Vargas, Juneidy MijangosVargas, D.M.V., J.A.M., Salvador Alfaro, Johana Gutierrez, Y.S.G.R., J.I.G.R., Lesly Padilla Padilla, E.D.N.P, and E.I.N.P., | : | |
| Plaintiffs, | : | |
| | : | Civil Action No. |
| v. | : | |
| | : | 1:17-CV-05052-SCJ |
| The United States of America, | : | |
| Defendant. | : | |

**CERTIFICATE OF COMPLIANCE**

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

| | | |
|---|---|---|
| Carlos Rene Morales, Rosa Vargas, Morales, Juan Mijangos Vargas, Juneidy MijangosVargas, D.M.V., J.A.M., Salvador Alfaro, Johana Gutierrez, Y.S.G.R., J.I.G.R., Lesly Padilla Padilla, E.D.N.P, and E.I.N.P., | : | |
| Plaintiffs, | : | |
| | : | Civil Action No. |
| v. | : | |
| | : | 1:17-CV-05052-SCJ |
| The United States of America, | : | |
| Defendant. | : | |

**CERTIFICATE OF SERVICE**