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

Carlos Rene Morales, et al., )

See also St. Cyr, 533 U.S. at 320

Congress intent as to § 1252(g) was narrow to preserve the Attorney General s discretion to terminate removal proceedings at any stage in the process while closing the floodgates to litigants denied discretionary relief. AADC, 525 U.S. at 483-84. This mechanism for facilitating discretionary decisions to stop or start removal proceedings serves the overarching the Illegal

which

at protecting the Executive Id. at 486. When the IIRIRA was enacted, the INS had been exercising its discretion to altogether

deportation proceedings notwithstanding the existence of legal basis for removal. Id. at 483 .

This exercise of discretion, however, oor to litigation in instances where the INS chose not to exercise it Id. at 484. §

to give some measure of protection to no deferred action decisions and similar

Id. at 485.

use § 1252(g) as a shield

Id. at 840.

Most relevant here, the Court described a set of tort claims that would be

> Suppose, for example, that a detained alien wishes to assert a claim under [Bivens], based on allegedly inhumane conditions of confinement. Or suppose that a detained alien brings a state law claim for assault against a guard or fellow detainee. Or suppose that an alien is injured when a truck hits the bus transporting aliens to a detention facility, and the alien sues the driver or owner of the truck. The
>
> injuries would never have occurred if they had not been placed in detention. But cramming judicial review of those questions into the review of final orders of removal would be absurd.

Id. (internal citations omitted). Plaintiffs claims fit nicely within this list.

The Eleventh Circuit has followed the Court s lead in holding that

Alvarez, 818 F.3d

at 1202 (AADC t § 1252(g) a command that our

sister circuits have applied in subsequent cases ). See, e.g., Kwai Fun Wong v.

United States, 373 F.3d 952, 964 (9th Cir.

reference to executing removal orders appearing in § 1252(g) should be interpreted

; Dalis v. United States, 210 F.3d 389 (10th Cir. 2000) (in light of the

AADC, § 1252(g) did not bar jurisdiction over FTCA and Bivens claims).

Here, the ICE officers

ICE agents did not follow agency policy to obtain valid consent or a warrant before entering Plaintiffs homes. This unauthorized action divorces their conduct from the removal orders that they were allegedly executing and any decision by their superiors to execute those orders.

Second, Gupta is inapplicable on its own terms. Gupta held § 1252(g) strips

*Id.* at 1065.[4] as the

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Third, as to the citizen Plaintiffs and non-citizen Plaintiffs who were not the subject of removal orders, Gupta and § 1252(g) do not apply. The ICE officers indiscriminately entered the homes and detained several individuals who were not the subject of removal orders, and by so doing they cannot use § 1252(g) as a shield to protect their unlawful conduct.

In summary, nothing indicates that the challenged actions commenced proceedings, adjudicated cases, or executed removal orders. The Department of Homeland Security (DHS) did not commence proceedings against Plaintiffs following the illegal acts challenged here. Rather, all the Plaintiffs already were in proceedings, never became subject to proceedings, or were U.S. citizens who cannot lawfully be subjected to removal proceedings.

## II. Rule 12(b)(6): Plaintiffs have adequately pled their causes of action.

Plaintiffs have properly pled their causes of action. When construing the

Boyd v. Warden, Ala. Dep't of Corrections, 856 F.3d 853, 864 (11th Cir. 2017). A complaint need only

that the defendant is liable for the Bishop v. Ross Earle &

> to believe a crime has been committed exists, a warrantless arrest would still be illegal unless it was accomplished pursuant to one of the
>
> enumerated in OCGA § 17 4 20(a) or applicable to private persons as set forth in OCGA § 17 4 60. Thus, the defense of a warrantless arrest in a false imprisonment case must show that the arrest was made on probable cause and pursuant to the appropriate exigent circumstances.

Arbee v. Collins, 463 S.E.2d 922, 926 (Ga. App. 1995) (internal citations omitted).

Here, Plaintiffs allege ICE officers did not have a judicially issued search or arrest warrant, ICE lacked probable cause, and there were no exigent circumstances. Compl. ¶¶ 82, 110, 140, 155 (lack of judicial warrant); 155 (lack of probable cause); 83, 111, 141, 155 (lack of exigent circumstances). Plaintiffs further allege that ICE invested significant effort and time in planning Operation Border Resolve, targeted the Plaintiffs with removal orders for arrest, yet did not acquire a judicial warrant before arresting them. Compl. ¶¶ 20-32 (planning operation and targeting Plaintiffs); 82, 110, 140, 155 (lacked judicial warrant for arrest or search). Even if the removal orders alone gave ICE probable cause a point Plaintiffs do not concede Plaintiffs allege a lack of exigent circumstances, Compl. ¶¶ 83, 111, 141, 155, and the Defendant does not argue that exigent circumstances existed. This concession renders futile th

8 U.S.C. § 1357(a) because § 1357(a) only authorizes warrantless arrests in exigent circumstances. 8 U.S.C. § 1357 (a) (authorizing

warrantless arrests only if an alien unlawfully in the country is likely to escape

-16. ICE

to acquire k

Rosas v. Brock, 826 F.2d 1004, 1008 (11th Cir.1987); Mancha v. Immigration & Customs Enf't, No. 06-2650, 2009 WL 900800, at *4 (N.D. Ga. Mar. 31, 2009).

Here, Plaintiffs allege

homes without consentW* nBTa4800030033004F0044<<6004C>3005140<<057>3004C40<<04900490 another which unlawfully interferes with such enjoyment is a tort for which an -9-1 (emphasis added).

Here, the complaint contains allegations that Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R. lived in the apartments where ICE trespassed. Compl. ¶¶ 33 (J.A.M.), 85-87 (Y.S.G.R. and J.I.G.R.). As tenants, under Georgia law, Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R have a right of quiet enjoyment of their homes, and they have standing to sue for trespass, regardless of age. G.A. Code Ann. § 51-9-1. As such, Plaintiffs have pled trespass against the United States. See, e.g., Mancha, 2009 WL 900800, at *4 - *5.

### *C. Plaintiffs pled a claim for negligence.*

The government next argues that Plaintiffs fail to state a claim for negligence because Plaintiffs do not

163 (2001). As such, Georgia law recognizes a duty to exercise ordinary care when exercising authority to arrest and confine. Id.; Lyttle, 867 F. Supp. 2d 1301. It is

Plaintiffs need only identify a state law duty deriving from analogous relationships. Id. (citing United States v. Olson, 546 U.S. 43, 46-47 (2005)). In other words, Plaintiffs need only plead that ICE owes a duty that state law enforcement officers in Georgia owe when conducting an arres

The government overlooks that actions taken against an adult that may not rise to the level of outrageous may, however, rise to that level for similar actions against children.

> give rise to such intense feelings of humiliation, embarrassment, fright
>
> way, a case of intentional infliction of emotional distress is one where,
> average member
> of the community would arouse his resentment against the actor, and
>
> rise to the requisite level of outrageousness and egregiousness as a
> hows that reasonable persons
> might find the presence of extreme or outrageous conduct, the jury

<u>Turnage v. Kasper</u>, 307 Ga. App. 172, 182  83, 704 S.E.2d 842, 852  53 (2010)

threatening arrest. Compl. ¶¶ 34-36; 58-63. Similarly, Y.S.G.R. and J.I.G.R. were awakened in the early morning on a Saturday to loud banging on the door and house; ICE agents woke everyone and forced them to sit in the living room for 30 minutes; Y.S.G.R. and J.I.G.R. witnessed the entire family as scared and confused;

childhood trauma or a child psychologist. This Court is simply not equipped to make this expert finding so early in the case.

### *E. Plaintiffs pled a claim for negligent infliction of emotional distress.*

The government argues that no Plaintiff stated a claim for negligent and toddlers. Id. 23-25. When construed in a light most favorable to the Plaintiffs, Plaintiffs state a claim for negligent infliction of emotional distress.

### III.

The government also argues tha0 ( a)101760550044 14.04 Tf2(i)-3(ff) ty(s)4pETQ(s)-mot4

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