ARGUMENT

Plaintiffs have sufficiently pled their causes of action under the Federal Tort Claims Act ("FTCA") and this Court should deny the government's Rule 12(b)(6) motion.[1] When construing the sufficiency of pleadings, courts must accept factual

I. Plaintiffs adequately pled false imprisonment.[2]

To allege false imprisonment, Georgia law requires Plaintiffs to plead the "unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty." O.C.G.A. § 51–7–20 (emphasis added). See also Lyttle v. United States, 867 F. Supp. 2d 1256, 1297 (M.D. Ga. 2012) ("The tort of false imprisonment has two essential elements: a detention and the

Plaintiffs have sufficiently alleged the first prong of the standard: they were detained in their homes by ICE agents. Am. Compl., at ¶¶ 46-57, 69-79. Plaintiffs have alleged that, on January 2, 2016, federal agents unlawfully entered their families' homes and detained Plaintiffs to confined areas in those homes using their authority as law enforcement agents and the threat of force. Indeed, Plaintiff J.A.M. witnessed force used against his uncle, Mr. Morales—when Mr. Morales attempted to stretch his back and an ICE agent physically pushed him down. Id. at ¶ 52. The threat of force was likewise made real to Y.S.G.R. and J.I.G.R. when an ICE officer threatened to arrest their mother, at one point putting his hand on his holstered gun. Id. at ¶¶ 75, 77.

Plaintiffs have also alleged that their detention was unlawful. In this context, Georgia courts characterize false imprisonment as an "unlawful detention

Plaintiffs need not prove any facts at this stage, see Bishop, 817 F.3d at 1270, DHS and ICE recently acknowledged that there were no judicial warrants for the raids. In a case before another court in this District, the Government admitted that the

298 (Ga. 2010) ("Probable cause exists if the arresting officer has knowledge and reasonably trustworthy information about facts and circumstances sufficient for a prudent person to believe that the accused has committed an offense." (internal citation and quotations omitted) (emphasis added)).

The Government then cites to immigration removal orders as the "legal process" pursuant to which Plaintiffs' detention was authorized. Gov't Mot., at 6-7; Exs. A and B.[3] Yet, those removal orders are not as to J.A.M., Y.S.G.R. and J.I.G.R.—who, as United States citizens, could not have been subject to removal. Gov't Mot., at Exs. A, B. *See also* Am. Compl., at ¶¶ 1-3, 94, 97 (all Plaintiffs are U.S. citizens and were citizens when detained by ICE). *See Lyttle*, 867 F. Supp. 2d at 1269-72 (no probable cause to detain U.S. citizen, even where the immigration documents (inaccurately) listed his name as subject to removal).

Even if probable cause existed, Georgia law requires more than probable cause to defend against an allegation of unlawful detention by a law enforcement officer:

> [T]he defendant in a false imprisonment case premised upon a warrantless arrest does not meet his defensive burden merely by demonstrating the existence of probable cause but he must go further

[3] It should be noted that the government provides no legal basis for this Court to review its attachments at the Rule 12(b)(6) stage without converting its motion to one for

> and show that the arrest was also effectuated pursuant to one of the "exigent circumstances" enumerated in OCGA § 17–4–20(a) . . . .

Ferrell, 672 S.E.2d at 11 (quoting Collins v. Sadler, 306 S.E.2d 390, 392 (Ga. App. Ct. 1983); Arbee v. Collins, 463 S.E.2d 922, 926 (Ga. App. Ct. 1995) ("[E]ven if probable cause . . . exists, a warrantless arrest would still be illegal unless it was accomplished pursuant to one of the 'exigent circumstances' applicable to law enforcement officers enumerated in OCGA § 17–4–20(a) . . . ."); O.C.G.A. §17-4-20(a)(2)(A)-(B) (delineating the exigent circumstances that permit a warrantless arrest with probable cause). Plaintiffs have sufficiently alleged that the ICE agents lacked exigent circumstances to detain Plaintiffs, Am. Compl. at ¶¶ 94, 97, 110, 113, 114, 115, 116, 123. These allegations render the Government's renders futile its reliance on 8 U.S.C. § 1357(a) as "valid legal process" because § 1357(a) authorizes warrantless arrests only where there are exigent circumstances (emphasis added). 8 U.S.C. § 1357(a)(2) (authorizing warrantless arrests only if an

[4] The Government supports its assertion that the detention of Plaintiffs was justified by "legal process" by citing several cases that are inapposite to the case at bar, as they did not apply Georgia law. Gov't Mot., at 7-8 (citing Douglas v. United States, 796 F. Supp. 2d 1354 (M.D. Fla. 2011) (Florida law); Bellerie v. United States, No. 10-81527-CIV, 2012 WL 12892399 (S.D. Fla. Jan. 17, 2012), vacated, 712 F.3d 543 (11th Cir. 2013) (Florida law); Valencia-Mejia v. United States, No. CV 08-2943 CAS PJWX, 2008 WL 4286979 (C.D. Cal. Sept. 15, 2008) (California law); Tovar v. United States, No. CIV.A.3:98-CV-1682-D, 2000 WL 425170 (N.D. Tex. Apr. 18, 2000), aff'd, 244 F.3d 135 (5th Cir. 2000) (Texas law).

immigrant unlawfully present in the country "is likely to escape before a warrant can be obtained for his arrest")

II. Plaintiffs have adequately pled trespass.

Georgia has codified a broad right for anyone with a possessory interest in real property to sue for trespass: "The right of enjoyment of private property being an absolute right of every citizen, every act of another which unlawfully interferes with such enjoyment is a tort for which an action shall lie." O.C.G.A. § 51-9-1 (emphasis added). Willful interference or malice is not required. See Lee v. Southern Telecom Co., 694 S.E.2d 125, 128 (Ga. App. Ct. 2010) ("Under Georgia law, a trespasser is one who, though peacefully or by mistake, wrongfully enters upon property owned or occupied by another." (emphasis in original) (internal citation and quotations omitted)); Tacon v. Equity One, Inc

property). Even a tenant who is not a grantor on a lease may sue for trespass. *See Univ. Apartments v. Uhler*, 67 S.E.2d 201, 202 (Ga. App. Ct. 1951).

Here, Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R. have alleged that they were residents and legal tenants in the family home that ICE agents forcefully entered. Am. Compl., at ¶¶ 110 (all plaintiffs), 113(a) (J.A.M.), 115(a) (Y.S.G.R. and J.I.G.R.); *see also id.* at ¶ 109 ("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."). As tenants, under Georgia law, Plaintiffs had a right of quiet enjoyment in their family homes and their allegations regarding ICE agents' unwelcome entry into those homes sufficiently plead trespass against the United States. *Id.*, at ¶¶ 114, 116. *See, e.g.*, *Manch*, 2009 WL 900800, at *4 - *5.

The Government appears to argue that Plaintiffs, as tenants, may not recover damages in a trespass action. Gov't Mot., at 8-9. This assertion is plainly false. Georgia courts have made clear that a "[p]ossession, either of land or a chattel, authorizes the possessor to recover damages from any person who wrongfully in any manner interferes with such possession. If a person commits a trespass with knowledge that he is acting without right, exemplary or punitive damages may be awarded . . . ." *Tacon*, 633 S.E.2d at 603 (quoting *Collins v. Baker*, 181 S.E. 425,

Plaintiffs also make clear allegations that ICE agents interfered with Plaintiffs' quiet enjoyment of their property. Plaintiffs allege that the ICE officers entered the Plaintiffs' homes without consent, a search warrant, or exigent circumstances in violation of the Fourth Amendment. Am. Compl., at ¶¶ 108-112. Plaintiff J.A.M. specifically pleads that a co-tenant expressly refused consent for ICE agents to enter his home, and ICE agents nonetheless "entered by force" in the absence of any exigent circumstances. Id. at ¶¶ 113(b), (c). Plaintiffs Y.S.G.R. and J.I.G.R. allege that ICE agents entered their home without permission—"push[ing] past" their co-tenant to gain entry and then immediately searching the entirety of their private living space. Id. at ¶¶ 69, 71. Furthermore, during the ICE agents' continued trespass in the home of Y.S.G.R. and J.I.G.R., their mother protested that the agents had violated her rights by entering the home without a warrant. Id. at ¶¶ 74-79. See Bullock v. Jeon, 487 S.E.2d 692, 694 (Ga. App. Ct. 1997) (defendant may be liable for trespass who refused to leave property when asked).

The Government further argues that Plaintiffs have failed to state a claim for trespass because the ICE agents were acting within the scope of their official duties. Gov't Mot., at 9. For this exception to apply, the ICE agents must have been acting within the scope of the discretion afforded to them as law enforcement officers. Morton v. McCoy, 420 S.E.2d 40, 41 (Ga. App. Ct. 1992) ("Where an

officer is invested with discretion and is empowered to exercise his judgment in matters brought before him . . . he is usually given immunity from liability to persons who may be injured as a result of an erroneous decision; provided the acts complained of are done within the scope of the officer's authority, and without willfulness, malice, or corruption." (emphasis in original) (quoting Hennessy v. Webb, 264 S.E.2d 878, 880 (Ga. 1980)). The ICE agents abandoned their official discretion when effectuating entry into Plaintiffs' homes in violation of the 4th Amendment, as alleged by Plaintiffs. Am. Compl., at ¶ 112. See Rosas v. Brock, 826 F.2d 1004, 1008 (11th Cir. 1987) ("There is no reason to believe that Congress ever intended to commit to agency's gr

Plaintiffs have pled sufficient facts to raise an inference that the ICE agents were not acting within the scope of their authority, and thus, their actions are not exempted from liability. Plaintiffs have alleged, inter alia, that the ICE agents were on notice of the constitutional parameters governing arrest, through a mandated a 4th Amendment training, Am. Compl., ¶ 119; the agents used a fraudulent, unconstitutional ruse in their effort to gain entry into the Plaintiffs' family homes, id. at ¶¶ 35-41, 67-69, 94, 97, 111; the

Prop. Inv'rs v. Milon, 549 S.E.2d 157, 163 (2001). See also Am. Compl., at ¶ 123. Under Georgia law, to show that an officer was negligent when making an arrest, the Plaintiff must demonstrate "the existence of a duty on the part of the [officer], a breach of that duty, causation of the alleged injury, and damages resulting from the alleged breach of the duty." Lyttle v. United States, 867 F. Supp. 2d 1256, 1301 (M.D. Ga. 2012) (quoting Rasnick v. Krishna Hospitality, Inc., 713 S.E.2d 835, 837 (Ga. 2011)). See also Corp. Prop. Inv'rs, 549 S.E.2d at 163.

In Lyttle, the court upheld the U.S. citizen plaintiff's negligence claim against ICE officers on allegations indicating that, inter alia, the agents:

> fail[ed] to review available documentation of [the plaintiff's] citizenship; fail[ed] to investigate [the plaintiff's] claims of being born in the United States; coerc[ed] and manipulate[ed] [the plaintiff] 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; fail[ed] to adequately train and supervise ICE officers; and detain[ed], [held], and [deported] a U.S. citizen.

867 F. Supp. 2d at 1301. Likewise, Plaintiffs have alleged that ICE agents entered the Plaintiffs' family homes without a warrant, voluntary consent, or exigent circumstances and in violation of the 4th Amendment. Am. Compl., at ¶¶ 110, 113, 115, 127; the agents violated agency policies by acting outside 4th Amendment parameters when they used a fraudulent, unconstitutional ruse in their effort to gain entry into the Plaintiffs' family homes. Id. at ¶¶ 19, 35-41, 67-96, 94, 97, 111, 126;

the ruse violated agency policy, *id.* at ¶ 127; the agents' detention of Plaintiffs was unlawful, because of their status as U.S. citizens, *id.* at ¶¶ 1-3, 94, 97; and the agents' actions caused Plaintiffs to suffer trauma and distress, *id.* at ¶¶ 58-59, 80-84, 129-33. These allegations sufficiently allege that the agents breached their duty to exercise ordinary care, and the agents' breach caused Plaintiffs' harm.

The Government argues that Plaintiffs fail to state a claim for negligence because Plaintiffs do not identify a state law duty owed to them by the United States. Gov't Mot., at 10-11. This is not the case. Plaintiffs have shown, *supra*, Georgia law imposes an ordinary duty of care on law enforcement officers when making an arrest.

courts, Plaintiffs have sufficiently pled that ICE agents breached their duty to Plaintiffs on January 2, 2016 and that breach caused Plaintiffs' injuries. See Corp. Prop. Inv'rs, 549 S.E.2d at 163.

IV. Plaintiffs have adequately pled a claim for intentional infliction of emotional distress.

The tort of intentional infliction of emotional distress, under Georgia law, requires Plaintiffs to show that the intentional or reckless conduct by the ICE agents was "extreme and outrageous," as well as a "causal connection" between the agents' conduct and the severe emotional distress experienced by Plaintiffs. Cottrell v. Smith, 788 S.E.2d 772, 780 (Ga. 2016); Lyttle, 867 F. Supp. at 1300 (same).

> [Outrageous] conduct must "be of such serious import as to naturally give rise to such intense feelings of humiliation, embarrassment, fright or extreme outrage as to cause severe emotional distress." Put another way, a case of intentional infliction of emotional distress is one where, generally speaking, "the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'"

Turnage v. Kasper, 704 S.E.2d 842, 852–53 (Ga. App. Ct. 2010) (internal citations omitted). The Government's assertion that Plaintiffs' allegations do not identify sufficiently outrageous conduct or sufficient harm, Gov't Mot., at 11-15, overlooks that the threshold for "extreme and outrageous" conduct against a child is not on par with the threshold applied to adults. See Delta Fin. Co. v. Ganakas,

91 S.E.2d 383, 383 (Ga. App. Ct. 1956) (tortfeasor's conduct had unique impact because "the plaintiff [was] a child of very tender years").

Here, in the light most favorable to the non-movant, Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R have alleged sufficiently outrageous conduct directed towards them. Considering Plaintiffs' ages at the time of their detention—an toddler and two young children—ICE's conduct was outrageous. J.A.M. alleges that, in the middle of the night, ICE agents knocked, rang the doorbell, and shined flashlights into his home; his entire family "cowered in the hallway" while this was going on; agents ordered him and his family to gather in the living room, keeping them there for forty minutes; and agents repeatedly ordered his family around during that time, threatening arrest. Am. Compl. ¶¶ 24-62, 144. *See Delta Fin. Co.*,

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 ringing of the doorbell; ICE agents "discovered" them while searching the entire house; and the agents woke the Plaintiffs and forced them to sit with their family in the living room for 30 minutes to an hour. Am. Compl., at ¶¶ 63-87, 514. Y.S.G.R. and J.I.G.R. were, thus, forced to witness the agents—who had visible guns on their persons—search, threaten and frighten them and their family, causing Y.S.G.R. and J.I.G.R. to cry throughout their detention. Id. at ¶¶ 70-78. Indeed, the agents were warned by their mother that the agents were traumatizing and frightening Y.S.G.R. and J.I.G.R. Id. at ¶ 78. These allegations are sufficient to allege outrageous conduct in the context of minors. See Delta Fin. Co., 91 S.E.2d at 383-84 (collection agent's conduct, in attempting persuade the eleven-year-old plaintiff to let him in, was sufficiently "wilful, wanton, and malicious" for tort liability).

Further, Plaintiffs J.A.M., Y.S.G.R., and J.I.G.R have alleged sufficient harm. More than two years after the raids, J.A.M. is still frightened and nervous around law enforcement. Am. Compl., at ¶ 58. Whenever he sees police, "he hides and warns his mother that the police are coming to take her." Id. J.A.M. has also been overeating since the raids, a sign of anxiety according to his pediatrician. Id. at ¶ 59. In Delta Financial Company, the Georgia court recognized that the

collection agent's demands and threats had a particular impact because the plaintiff was young: "[t]he conduct of the defendant ... so affected the plaintiff's childish mind that she is in a constant state of fear as to what the defendant will attempt to do in the future, and this fear is and will be a permanent scar upon her mind and life throughout the future years." 91 S.E.2d at 384.

As a result of the raids, Y.S.G.R. suffered paralyzing anxiety; she missed a week of school; and for a long time, was unable to sleep alone. Id. at ¶ 80. Moreover, she threatened to hurt herself, sought help from a school counselor, psychologist and pastor to work through her mental and emotional distress. Id. at ¶ 81. "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." Id. at ¶ 82. The Government's dismissal of Y.S.G.R.'s thoughts of self-harm and crying spells, Gov't Mot. at 14, ignores that she was twelve years old at the time of the raid. Id. at ¶ 65.

Similarly, J.I.G.R. suffered severe emotional harm and sought treatment. He and his sister refuse to answer the door when someone knocks. Id. at ¶ 80. Before the raid J.I.G.R. participating in swimming and other sporting activities; he no longer participates in group activities, preferring to stay at home. Id. at ¶ 84. Since

Id. J.I.G.R. was nine years old at the time ICE agents detained him. Id. at ¶ 65. See also id. at ¶ 153 (Plaintiffs' harms have been "severe, lasting, and grave.").

In the light most favorable to the Plaintiffs, the allegations are sufficient. The level of that harm suffered is testimony properly left to an expert in childhood trauma or a child psychologist. This Court is not required and is not equipped to make this expert finding at this point in the case.

V. Plaintiffs adequately pled a claim for negligent infliction of emotional distress

The Government argues that Plaintiffs did not state a claim for negligent infliction of emotional distress because Plaintiff alleged physical harm. Gov't Mot., at 15-16. However, allegations that the Defendant's conduct is malicious, willful, or wanton and directed at a group of people, not just the public in general, render allegations of physical impact unnecessary. Clarke v. Freeman, 692 S.E.2d 80, 84 (Ga. App. Ct. 2010) ("[W]here the defendant's conduct is malicious, willful, or wanton, recovery can be had without the necessity of an impact."); Pyckeley v. Callaway, 412 S.E.2d 826, 826 (Ga. 1992) ("On the other hand, where the conduct is malicious, wilful or wanton, recovery can be had without the necessity of an impact").

Here, there are sufficient allegations that ICE acted maliciously, willfully, and wantonly in detaining U.S. citizen children during Operation Border Resolve.

Am. Compl., at ¶¶ 1-3, 11-23. Indeed, ICE prepared its officers with car seats, diapers, baby food, and formula to facilitate taking small children into custody. Id. at ¶¶ 14-16. When construed in a light most favorable to the Plaintiffs, Plaintiffs state a claim for negligent infliction of emotional distress. See generally supra Section I(D).

VI. Attorneys' fees are available under the FTCA

The Government also argues that certain types of damages are unavailable under the FTCA. Gov't Mot., at 16-17. Plaintiffs agree that punitive damages and declaratory relief are unavailable under the FTCA. However, the FTCA specifically allows for attorneys' fees to be paid out of any settlement or recovery. See 28 U.S.C. § 2678. As this case evolves through discovery, Plaintiffs reserve the right to amend their complaint to seek punitive and declaratory relief should the facts and law allow it.

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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.

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