

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

**MARIE JUSTEEN MANCHA,)
through her Next Friend Maria)
Christina Martinez, MARIA)
CHRISTINA MARTINEZ,)
R**

CASE NO. 1:06-CV-2650 - TWT

Latino community was conducted ostensibly to locate certain suspected undocumented workers who had previously been employed at the Crider poultry facilit

3. Upon information and belief, the raids were authorized by federal government offi

She appears in this suit through her Next Friend and mother Maria Christina Martinez.

8. Plaintiff **MARIA CHRISTINA MARTINEZ** (“Plaintiff Martinez”) is a Latina woman who is a native and citizen of the United States. At all times relevant to this suit, she was a resident of Reidsville, Tattnall County, Georgia. Plaintiff Martinez appears in this suit as both a plaintiff in her individual capacity and as Next Friend for her daughter, Plaintiff Marie Justeen Mancha, a minor child. Plaintiff Martinez has the authority to act as Next Friend for Plaintiff Mancha pursuant to Rule 17(c) of the Federal Rules of Civil Procedure.

9. Plaintiff **RANULFO PEREZ** (“Plaintiff Perez”) is a Latino man who is a native and citizen of the United States. At all times relevant to this suit, he was

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12. Plaintiff **DAVID ROBINSON** (“Plaintiff Robinson”) is a native and citizen of the United States. At all times relevant to this suit, he was a resident of Metter, Candler County, Georgia.

13. Defendant **IMMIGRATION AND CUSTOMS ENFORC**

16. Defendant **MARCY FORMAN** (“Defendant Forman”) is Director of the Office of Investigations for Immigration and Customs Enforcement. In this capacity, Defendant Forman is responsible for all aspects of the investigative mission of Immigration and Customs Enforcement, including supervision of Special Agents, Special Agent-in-Charge offices, and other offices. As such, she is responsible for the Atlanta-based Special Agent-in-Charge Office and the Savannah-based field office of Immigration and Customs Enforcement. She is sued in her official capacity.

17. Defendant **KENNETH A. SMITH** (“Defendant Smith”) is Special Agent-in-Charge of the Special Agent-in-Charge Office of Immigration and Customs Enforcement based in Atlanta, Georgia. Defendant Smith is responsible for the administration, management and conduct of all investigative and enforcement activities within the geographic boundaries of the Atlanta-based Special Agent-in-Charge Office

18. Defendant **GREGORY**

violations of immigration law within the geographic boundaries of the Atlanta-based field office. Defendant Mata is sued in his official capacity.

21. At all times relevant to the incidents complained of in this lawsuit, **DEFENDANTS JOHN DOES 1-30** were federal law enforcement agents employed by Defendant Immigration and Customs Enforcement. Defendants were empowered by law to execute searches, conduct interrogations and detentions

Defendants Myers, Forman, Smith, Wiest, Torres, and Mata and pursuant to their policies, orders, and/or authorization.

FACTUAL ALLEGATIONS

Plaintiffs Mancha and Mart

28. Plaintiff Mancha saw approximately five other agents on the stairs leading up to her front door and several more outside in her yard. In all, there were approximately 20-25 agents who had either entered or surrounded her home.

29. Defendants John Does 1-3 interrogated Plaintiff Mancha regarding whether there were other people in the house, whether her mother had worked for Crider Poultry and the reason she had quit, whether her mother was “Mexican,”

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Plaintiff Martinez grew very concerned and immediately went to check on Plaintiff Mancha, her daughter.

34. Upon information and belief, Defendants lacked lawful authority for all detention and interrogation activities involving P003 cm BT 58 0 0 54i

Defendant John Doe 6 then twisted Plaintiff Perez' arm around and held him so that he could not easily get away.

38. Defendant John Doe 6 told Plaintiff Perez to stay there and not to move. Defendant John Doe 6 held Plaintiff Per

John Doe 6. Defendant John Doe 6 finally released Plaintiff Perez' arm and went to his vehicle. A minute or two later, Defendant John Doe 6 returned with Plaintiff Perez' identification.

42. Defendant John Doe 6 told Plaintiff Perez that the Defendants were with "immigration" and had been sent by the federal government. He also told Plaintiff Perez that immigration would be in the area for another two weeks and suggested that Plaintiff Perez and his family go elsewhere during that time period so as to avoid any future incidents and entries to their home.

43. Defendants finally left after approximately thirty to forty minutes.

44. Upon information and belief, Defendants lacked lawful authority for all detention, interrogation, and arrest activities involving Plaintiff Perez and did not have a warrant, probable cause and exigent circumstances, or consent to enter Plaintiff Perez's home.

Plaintiff Morales

45. On or about September 1, 2006, Plaintiff Morales was driving home from work when she stopped at the post office in the town of Stillmore, Georgia. After she picked up her mail, she got back in her jeep. Plaintiff Morales had her windows down because it was hot and her air conditioner was not working.

46. Plaintiff Morales turned right onto Old Kenfield Road towards her home, after waiting for a long line of cars to turn left in front of her onto Old Kenfield Road.

47. Plaintiff Morales was driving behind this long line of vehicles when an unmarked car driven by Defendant John Doe 8 pulled over to the left-hand side of the road, allowing Plaintiff Morales' jeep to pass him. Defendant John Doe 8 then pulled in

children and ran to hide in a bedroom. The Defendants then forcefully broke through the front door, causing damage to the door frame and lock.

60. Many of the Defendants poured into Plaintiff Espitia's home and began to search through it. As they made their way through the home, some of the Defendants continued making threats to use "gas" in an effort to scare Plaintiff Espitia's family members out of the bedroom.

Defendant. He left to verify its validity and eventually returned the card to

68. The ICE agents involved in the raids forcefully broke into many of the trailers in Plaintiff Robinson's parks. The ICE agents caused intentional damage to at least one door and four windows in the Highway 46 Park. In the Turkey Ridge Road Park, Defendant Wiest and other ICE agents ripped the skirting from the perimeter of a trailer and caused damage to the floorboards.

69. Upon information and belief, Defendants did not have warrants to enter the homes or other legal justifi

73. All claim

activity or probable cause, in violation of the Fourth Amendment to the United States Constitution.

77. The Count II claims of the proposed class representatives and those of the proposed class members raise common questions of law and fact concerning, *inter alia*, whether Defendants have implemented, enforced, encouraged and/or sanctioned a policy, practice and/or custom of targeting the named Plaintiffs and class members for stops, detentions, investigations, searches and seizures on the basis of race/ethnicity and/or national origin, in violation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

78. These questions are common to the named Plaintiffs and to the members of the proposed class because Defendants have acted and will continue to act on grounds generally applicable to both the named Plaintiffs and proposed class members.

79. The claims of the named Plaintiffs are typical of the claims of the members of the proposed class.

80. The named Plaintiffs will fairly and adequately protect the interests of the members of the plaintiff class.

81. The Plaintiffs are represented by [REDACTED] counsel who are highly experienced in federal class action litigation involving ci

82. The Defendants have acted on grounds generally applicable to the plaintiff class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

CAUSES OF ACTION

COUNT I: FOURTH AMENDMENT VIOLATIONS (Class Action Against All Defendants)

83. Plaintiffs Mancha, Martinez, Perez, Morales, and Espitia incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

84. Plaintiffs Mancha, Martinez, Perez, Morales, and Espitia bring this claim for injunctive and declaratory relief on behalf of the proposed class against Defendants to redress continuing and future violations of the Fourth Amendment to the United States Constitution.

85. Upon information or belief, Defendants have implemented, enforced, encouraged and/or sanctioned a policy, practice and/or custom of targeting people who appear to be of Mexican, Latino or Hispanic descent or appearance and: (a) entering and searching their homes without valid warrants or voluntary consent and in the absence of probable cause and exigent circumstances in violation of the Fourth Amendment to the United States Constitution; and (b) stopping, detaining, investigating, searching and effecting seizures in the absence

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articulable suspicion of unlawful activity or probable cause in violation of the Fourth Amendment to the United States Constitution.

86. The Defendants continue to implement, enforce, encourage, and/or sanction this unconstitutional policy, practice and/or custom against similarly situated persons of Mexican, Latino, or Hispanic descent or appearance throughout the United States. *See* Ex. A (Declarations filed with Amended Complaint in *Arias et al. v*

88.

fact, it serves the public int

95. Pl

Matter of Jose del Trancito Contreras Cueva, Removal Proceedings, Case A# 72-723-383, regarding January 2007 ICE arrests in Baltimore, Maryland).

98. Because the Plaintiffs cannot avoid being of Mexican, Latino, or Hispanic descent or appearance, and because the Defendants continue to implement their unconstitutional policy, practice, and/or custom, the Plaintiffs and those similarly situated are faced with a real and substantial threat of future injury if an injunction is not issued to stop the Defendants' ~~ob~~stinating

such other and further relief as may follow from the entry of such a declaratory judgment.

**COUNT III: *BIVENS* CLAIM OF PLAINTIFF MANCHA
(Against Defendants John Does 1-5 and 11-25)**

105. Plaintiff Mancha incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth here

107. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry, search, seizure, questioning, and detention, they are not entitled to a good faith defense or official immunity defense.

108. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

109. The actions of these Defendants give rise to a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

110. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Mancha has suffered harm, in the form of, *inter alia*, outrage, humiliation, and emotional distress. Plaintiff Mancha

112. In doing the acts complained of, Defendants John Does 1-5 and 11-25 deprived Plaintiff Martinez of certain constitutionally protected rights, including, but not limited to:

- a. the right to be free from unlawful entries to and searches of her home without a valid warrant or voluntary consent and in the absence of probable cause and exigent circumstances, as guaranteed by the Fourth Amendment to the United States Constitution; and
- b. the right to equal protection under the law, as guaranteed by the Fifth Amendment to the United States Constitution.

113. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry and search, they are not entitled to a good faith defense or official immunity defense.

114. The actions of these Defendants were intentional, malicious, reckless, and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

115. The actions of these Defendants give rise to a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

116. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Martinez has suffered harm, in the form of, *inter alia*, outrage and emotional distress. Plaintiff Martinez is entitled to compensatory and punitive damages in an amount to be determined at trial.

COUNT V: *BIVENS* CLAIM OF PLA

- c. the right to be free from arrest without probable cause, as guaranteed by the Fourth Amendment to the United States Constitution;
- d. the right to be free from the use of excessive force, as guaranteed by the Fourth Amendment to the United States Constitution; and
- e. the right to equal protection under the law, as guaranteed by the Fifth Amendment to the United States Constitution.

119. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, with regard to standards for home entry, search, seizure, questioning, detention, arrest and use of force, they are not entitled to a good faith defense or official immunity defense.

120. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

121. The actions of these Defendants give rise to a cause of action for damages against them in their individual capacities, pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

122. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiff Perez has suffered harm, in the form of, *inter alia*, outrage,

humiliation, and emotional distress. Plaintiff Perez is entitled to compensatory and punitive damages in an amount to be determined at trial.

**COUNT VI: *BIVENS* CLAIM OF PLAINTIFF MORALES
(Against Defendants Wiest and John Doe 7/8)**

123. Plaintiff Morales incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

124. In doing the acts complained of, Defendants Wiest and John Doe 7/ 8 deprived Plaintiff Morales of certain constitutionally protected rights, including, but not limited to:

a.

126. The actions of these Defendants were intentional, malicious, and reckless and showed a callous disregard of, or indifference to, the rights of the Plaintiff.

127. The actions of these Defendants give rise to a cause of action for damages against them in their indivi

guaranteed by the Fourth Amendment to the United States
Constitution;

b. the right to be free from detentions without a lawful, reasonable
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and articulable suspicion of unlawful activity or probable cause, as
guaranteed by the Fourth Amendment to the United States
Constitution;

c. the right to be free from unreasonable searches and seizures, as guaranteed
by the Fourth Amendment to the United States Constitution;

132. The actions of t

home entry, search, seizure, and use of force, they are not entitled to a good faith defense or official immunity defense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court:

1. Award Plaintiffs Mancha, Martinez, Perez, Morales, Espitia, and Robinson actual, compensatory, and punitive damages for violations of the Fourth Amendment to the United States Constitution;
2. Award Plaintiffs Mancha, Martinez, Perez, Morales, and Espitia actual, compensatory, and punitive damages for violations of the Fifth Amendment to the United States Constitution;
3. Certify this case as a class action in accordance with Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to the claims set forth in Counts I and II;
4. Issue a Declaratory Judgment with respect to the claims set forth in Count I declaring that the actions of Defendants as set forth above violated the Fourth Amendment to the United States Constitution;
5. Issue a Declaratory Judgment with respect to the claims set forth in Count II declaring that the actions of Defendants as set forth above violated the Fifth Amendment to the United States Constitution;
6. With respect to the claims set forth in Count I, issue an order permanently enjoining Defendants, their agents, employees, and successors in

office and all others acting in concert with them from engaging in the unlawful, abusive and discriminatory actions as set forth above;

7. With respect to the claims set forth in Count II, issue an order permanently enjoining Defendants, their agents, employees, and successors in office and all others acting in concert with them from engaging in the unlawful, abusive and discriminatory actions as set forth above;

8. Award Plaintiffs costs of this ac

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

As required by Local Rule 7.1(d), I hereby certify that this brief was prepared using the Times New Roman font, in a 14-point size.

Dated: June 14, 2007

s/ Mary Bauer, Esq._____

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2007, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court=s electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court=s CM/ECF System.

Dated: June 14, 2007

s/ Mary Bauer, Esq._____