

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

CARLOS RENE MORALES, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO.
	:	1:17-CV-5052-SCJ
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	
	:	

ORDER

This matter appears before the Court on Defendant’s Motion to Dismiss (Doc. No. [12]).

I. BACKGROUND

Plaintiffs Carlos Rene Morales, Rosa Vargas Morales, Juan Mijangos Vargas, Juneidy Mijangos Vargas, 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”) filed a complaint against The United States of America (“Defendant”) on December 11, 2017 relating to Operation Border Resolve. Doc. No. [1].<sup>1</sup>

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<sup>1</sup> The Complaint states that Operation Border Resolve was an Enforcement and Removal Operation (“ERO”) approved by the United States Department of Homeland Security (“DHS”) in December 2015 to target the deportation of “Family Units” from El Salvador, Honduras, and Guatemala. Doc. No. [1], ¶¶ 20–21. The operation was carried out

The Plaintiffs consist of three different family units (the Vargas Family, the Gutierrez Family, and the Padilla Family). Doc. No. [1], pp. 6, 12, and 16. Most of the Plaintiffs are nationals and citizens of one of three countries, Guatemala,

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Bargas,<sup>2</sup> and D.M.V.— for Ms. Vargas missing an immigration court date; (2) Ms. Ana Mejia Gutierrez and her son, W.G.M.; and (3) Ms. Padilla and her twin sons, E.D.N.P. and E.I.N.P. Doc. No. [1], ¶¶ 11, 62, 96, 130. According to the Defendant, at the time of these events, Ms. Vargas and her children were subject to final administrative orders of removal, which were subsequently vacated; Ms. Ana Mejia Gutierrez and her son were subject to orders of removal, which were subsequently vacated; and Ms. Padilla and her children were subject to orders of removal. Doc. No. [12], pp. 4–6; Doc. Nos. [12-1], [12-2], and [12-3].

Plaintiffs further allege that the agents engaged in misconduct and threats in the context of the raids. Doc. No. [1], pp. 5–20. Plaintiffs state that the raids

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<sup>2</sup> Junedity Mijangos Vargas was not taken into custody, because she was the mother of an infant, J.A.M. Doc. No. [1], ¶ 67.

<sup>3</sup> In support of its motion, Defendant attached orders of removal concerning the various plaintiffs. Doc. Nos. [12-1], [12-2], and [12-3]. The Court finds it proper to consider these orders in the factual attack context of a subject matter jurisdiction review, which appears to be at hand, even though the Defendant does not specifically state the type of attack that it is bringing. See *Morrison v. Amway Corp.*, 323 F.3d 920, 925 n.5 (11th Cir. 2003) (internal citations omitted) (“In resolving a factual attack, the district court may consider extrinsic evidence . . . .”); cf. *Brooks v. Blue Cross and Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (“where the plaintiff refers to certain documents in the complaint and those documents are central to the plaintiff’s claim, then the court may consider the documents part of the pleadings for the purposes of Rule 12(b)(6) dismissal”). The Complaint also references vacated orders of removal concerning Ms. Vargas and her two minor children (¶ 71). There is also a reference to vacated final removal orders against Ms. Ana Mejia Guterrez and W.G.M. (¶ 105). The Court recognizes that “Plaintiffs do not concede that any of the alleged removal orders were valid at the time of their arrest and seizure.” Doc. No. [15], p. 6, n.3.

on their families “violated the Fourth Amendment rights of each plaintiff,” resulting in harm, inclusive of emotional distress, pain and suffering, property loss, loss of consortium, and trauma. Doc. No. [1], ¶¶ 148–49.

Under the Federal Tort Claims Act, 28 U.S.C. § 2671, Plaintiffs assert claims of False Imprisonment, Trespass, Negligence, Intentional Infliction of Emotional Distress, and Negligent Inflict of Emotional Distress by the ICE agents involved with Operation Border Resolve. Id. ¶ 14 and at pp. 20–27. The Complaint states that all administrative remedies have been exhausted under 28 U.S.C. § 2675. Id. ¶ 19.

On February 16, 2018, Defendant filed a motion to dismiss Plaintiffs’ Complaint. Doc. No. [12]. Defendant moves to dismiss Plaintiffs’ Complaint

## II. LEGAL STANDARD

The United States seeks to dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Doc. No. [12].

“Subject matter jurisdiction defines the court’s authority to hear a given



As to the Federal Rule of Civil Procedure 12(b)(6) ground of the pending motion to dismiss,<sup>4</sup> a complaint may be dismissed if the facts as pled do not state a claim for relief that is plausible on its face.<sup>5</sup> Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) (explaining “only a complaint that states a plausible claim for relief survives a motion to dismiss”) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544,

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555. Factual allegations in a complaint need not be detailed but “must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” Id. at 555 (internal citations and emphasis omitted).

### III. ANALYSIS

#### A. Immigration and Nationality Act (“INA”)

Defendant asserts that this Court lacks subject matter jurisdiction over







claim ‘arising from’ a ‘decision . . . to commence proceedings’ under § 1252(g), and affirmed the district court’s dismissal for lack of jurisdiction.” Wallace, 616 F. App’x at 960.

As indicated above, in the casesub judicēDefendant argues that “Plaintiffs’ claims all ‘aris[e] from the decision . . . to commence proceedings, adjudicate cases, or execute removal orders’ and thus fall outside this Court’s jurisdiction pursuant to 8 U.S.C. § 1252(g).” Doc. No. [12], p. 14.

After review, this Court agrees with Defendant’s argument as to the alien-plaintiffs, as seizing an alien subject to a removal order constitutes an action to execute a removal order and § 1252(g) bars this Court from reaching the merits of the plaintiff-alien’s claims, which arise from the decision to execute the removal orders. While the plaintiffs-aliens do argue that they were detained by means of misrepresentations and disregard for policy, because the plaintiff-aliens challenge the methods that ICE used to detain them in the execution of the removal orders, these claims are foreclosed by § 1252(g) and the Eleventh Circuit’s binding decision in Gupta. See Alvarez v., 818 F.3d at 1203–04. As stated by another district judge, “[a]lthough [d]efendants are alleged to have violated the statutory rules in executing [the removal orders], [p]laintiffs’ claims still fall within the parameters of § 1252(g). The fact that the removal may have

been improper does not allow this Court to exercise jurisdiction where Congress clearly intended that it not.” Magallanes v. United States, 184 F. Supp. 3d 1372, 1379 (N.D. Ga. 2015).

The Court recognizes Plaintiffs’ public policy and slippery slope arguments, as well as their attempts to distinguish Gupta on the ground that the conduct of the agents at issue here was not discretionary and was “entirely divorced from execution of removal orders by the agents’ decision to act outside their authority.” Doc. No. [15]. pp. 5, 9, 11. Plaintiffs also argue that in Gupta, there was no indication that the agents were acting outside of agency policy, as the allegations in the casesub judicesuggest and the present case was not for purposes of commencing removal proceedings, as the removal proceedings had already commenced before the seizures at issue here.744 remt(.78 3)-lmt(.4.1.5.89unabl





pleading, as well as specify the facts that apply to each particular count and to each of the remaining citizen-Plaintiffs.

## CONCLUSION