

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

Juneidy Mijangos Vargas, on behalf )  
a minor, J.A.M.; and Johana )  
Gutierrez, on behalf of minors, )  
Y.S.G.R. and J.I.G.R., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
The United States of America, )  
 )  
Defendant. )

C/A No. 1:17-cv-05052-SCJ

**FIRST AMENDED**

## **PARTIES**

1. Plaintiff J.A.M. is a United States citizen. He permanently resides in Stone Mountain, Georgia, in DeKalb County, with his mother, Juneidy Mijangos Vargas. Pursuant to Rule 17(c), he is bringing this suit by and through his mother and guardian, Ms. Vargas, because Plaintiff J.A.M. is a minor. He is four years old.
2. Plaintiff Y.S.G.R. is a United States citizen. Y.S.G.R. permanently resides in Norcross, Georgia, in Gwinnett County with her mother, Johana Gutierrez. Pursuant to Rule 17(c), Y.S.G.R. is bringing this suit by and through her mother and guardian, Ms. Gutierrez, because she is a minor. She is fourteen years old.
3. Plaintiff J.I.G.R. is a United States citizen. He permanently resides in Norcross, Georgia, in Gwinnett County with his mother, Johana Gutierrez. Pursuant to Rule 17(c), J.I.G.R. is bringing this suit by and through his mother and guardian, Ms. Gutierrez, because he is a minor. He is eleven years old.
4. Defendant United States of America is the appropriate defendant under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., for the tort claims in this Complaint.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over all claims in this case under 28 U.S.C. § 1331, 28 U.S.C. § 1346(b)(1), and the Federal Tort Claims Act ( FTCA ), 28 U.S.C. § 2671, et seq.
6. This Court has authority to enter declaratory relief under 28 U.S.C. § 2201.
7. This complaint is timely under 28 U.S.C. § 2401(b) because the tortious acts occurred on or before January 2, 2016; the Plaintiffs filed the administrative complaints with the DHS and ICE on October 27, 2016; the agencies denied those claims on June 12, 2017; and this suit was initially filed on December 11, 2017.
8. On August 6, 2018, this Court ordered Plaintiffs to file an amended
9. Venue is proper in the Northern District of Georgia under 28 U.S.C. §§ 1391, 1402(b) because a substantial part of the events giving rise to the claims occurred in this district and the Plaintiffs reside in this district.
10. All administrative remedies have been exhausted under 28 U.S.C. § 2675.



supplies to detain children including car seats, diapers, baby food, and baby formula.

17. DHS did not require ICE field offices to notify local law enforcement agencies about the planned raids.



28. At one point, Mr. Morales opened a bathroom window to speak to the officers.
29. They asked Mr. Morales to open the door so they could speak to him, but when he asked for an explanation, they refused to provide any information about why they wanted to speak with him.
30. The officers eventually left.
31. The family was terrified to leave their home that day, but they needed certain food items. Later that morning, Mr. Morales left the house to go to the grocery store.
32. When he returned home, two cars stopped him near the driveway of the house.
33. Two men, wearing
34. In Spanish, Mr. Morales asked the agents why they had pulled him over. They provided no traffic-related reason for stopping him.
35. Rather, the agents stated in Spanish that they knew a criminal suspect that they could arrest him for obstructing a criminal investigation.

36. Mr. Morales explained that there was no Miguel Soto in the home; the agents then stated that they saw Mr. Soto enter the house that morning. Mr. Morales provided the agents with the names of the people who were present in the house to explain that no one named Miguel Soto lived or was currently staying there.

37. The agents continued to insist to Mr. Morales that they needed to enter the house. They repeatedly threatened that he would be arrested for obstructing a criminal investigation if he did not let them in the house. Mr. Morales feared the agents would arrest him unless he proved to them  
was in the house.

38. Mr. Morales again and repeatedly tried to explain that no one named

39. Mr. Morales observed guns on both agents











66. Johanna Gutierrez and Salvador Alfaro got out of bed and went downstairs to the front door. Through the front window, they could see officers with flashlights and unfamiliar, unmarked cars in front of the house.

67. In English, Johanna Gutierrez asked,

68. The officers held up a photo through the window and shined their flashlights on it. It was a picture of an African American man. They indicated that the man was a criminal suspect

living room where they detained them for 30 minutes to an hour.

Everyone was scared and confused. The children were crying.

73. The officers asked for Ana Mejia Gutierrez, and her son, W.G.M.

74. When Johanna Gutierrez realized that the officers were not police, but rather ICE agents, she tried to get her phone to make a call, but an agent told her not to move.

75. One agent stood between the family in the living room and the front door throughout the raid. No one felt free to leave. At one point, the agents asked for identification cards. Johanna Gutierrez offered to go upstairs to get the IDs, and the agent in the living room told her not to move, placing his hand on his holstered gun.

76. Johanna Gutierrez asked the agents why they had lied to enter the house. They told her to be quiet. She asked about her rights. The agent standing at the door told her that she would get her rights once they left with her niece, Ana Mejia Gutierrez.

77. The agent guarding the door threatened to arrest Johanna Gutierrez several times.

78. Ms. Gutierrez told the agents that they were violating her rights. She told them that they were traumatizing Y.S.G.R. and J.I.G.R, that they should

have a warrant, and that they had lied. The interpreter heard her, but stopped interpreting what she said.

79. The agents arrested Ms. Ana Mejia Gutierrez and W.G.M and took them away.

80. After the raid, Y.S.G.R. and J.I.G.R. have changed. They are more fearful. Y.S.G.R. and J.I.G.R. refuse to answer the door when someone knocks.

81. Y.S.G.R. missed school for a week. She refused to sleep alone. Y.S.G.R. indicated to a classmate that she was thinking about harming herself. She was reported to a school counselor who referred her to a psychologist. She met with the psychologist and later her pastor to work through the mental anguish and pain as a result of the raid.

82. 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.

83. After the raid, J.I.G.R. received counseling from the

84. J.I.G.R. continues to suffer significant emotional pain and distress as a result of the raid. Before the raid, he was involved in swimming classes and sporting activities. He no longer participates in those activities.

J.I.G.R. has become insular. He prefers staying at home and has difficulty talking to strangers.

85. ICE agents did not have a warrant that permitted them to enter or search Y.S.G.R. or J.I.G.R. detain Y.S.G.R. or J.I.G.R.

86. No exigent circumstances existed that would allow ICE agents to lawfully enter or search Y.S.G.R. or J.I.G.R. ain Y.S.G.R. or J.I.G.R.

87. Neither Ms. Gutierrez nor Mr. Alfaro gave and could have given knowing or voluntary consent for ICE agents to enter or search the Y.S.G.R. or J.I.G.R. J.I.G.R. because the ICE agents gained entry by lying about their purpose for entry.

**FIRST CAUSE OF ACTION  
(False Imprisonment)**

88.



89. The ICE agents committed these acts as employees of the U.S. while acting within the scope of their employment at all relevant times as part of Operation Border Resolve.

90. The ICE agents were

- doorbell, and shining flashlights into the windows. Carlos Rene Morales refused to open the door for them, and they eventually left.
- b. Later that day, Carlos Rene Morales left the home. Upon his return, ICE officers approached him, threatened him with arrest, and alleged that a criminal suspect was located in the home of J.A.M. and his family. Carlos Rene Morales refused to consent to ICE to enter the home, but as Mr. Morales turned the doorknob of the front door, ICE officers pushed the door opened, forcefully entered the home, raided the home, and detained J.A.M. and his family. No one gave ICE consent to enter the home.
  - c. Thereafter, ICE detained J.A.M. and his family in the living room by force or threat of force for approximately an hour. J.A.M. could not leave.
  - d. Eventually, ICE left.

94. Based on these specific facts and those alleged elsewhere in this amended complaint, ICE falsely imprisoned J.A.M. precluding him from leaving the living room during the actual raid. This detention was unlawful under Georgia and federal law for the following specific reasons:

- a. ICE had no probable cause to detain J.A.M. during the operation, because he is a United States citizen;
- b. ICE had no judicially issued warrant authorizing the entry in and search of J.A.M. ;
- c. ICE used an unconstitutional enter home;
- d. ICE unlawfully entered home without knowing and voluntary consent;
- e. No exigent circumstances existed that would allow ICE to lawfully enter any J.A.M. s home without a warrant or consent; and
- f. J.A.M. was otherwise unlawful.

95. This unlawful detention caused J.A.M. mental anguish with lasting consequences, including but not limited to his fear of police and ongoing significant anxiety.

96. Y.S.G.R. and J.I.G.R. allege the following specific facts to support their specific claims to false imprisonment under Georgia law, *see* O.C.G.A. § 51-7-20:

- a. At 5:00 AM on Saturday, January 2, 2016, ICE agents began banging on the front door and ringing the doorbell

home. mother, Johana Gutierrez, and her husband, Salvador Alfaro, went downstairs to investigate the source of the ruckus. There were ICE agents at the door, claiming that an African American man was a criminal suspect who was in their home. Salvador Alfaro opened the door and five or six officers rushed past him and forcefully entered the home. No one, including Mr. Alfaro, gave the ICE officers consent to enter the home.

- b. ICE agents searched the home.
- c. ICE agents detained Y.S.G.R. and J.I.G.R. along with others in the living room by force or threat of force for approximately 30 minutes to an hour. One ICE agent with a visible gun stood between the family in the living room and the front door throughout the raid. Y.S.G.R. and J.I.G.R. did not feel they could leave. They were scared and custody. Y.S.G.R. and J.I.G.R. watched ICE yell at their mother and threaten her arrest.

97. Based on these specific facts and those alleged elsewhere in this amended complaint, ICE falsely imprisoned Y.S.G.R. and J.I.G.R. by forcing them out of their bedrooms and confining them by force or threat of force in

the living room for up to an hour. This detention was unlawful under

Georgia and federal law for the following specific reasons:

a. ICE had no probable cause to detain Y.S.G.R. and J.I.G.R. during the operation because they are United States citizens;

b. ICE had no judicially issued warrant authorizing the entry in and search of Y.S.G.R. and J.I.G.R. ;

c.

enter

100. The

106. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

**SECOND CAUSE OF ACTION  
(Trespass)**

107. The ICE agents were acting within the scope of their employment at all relevant times.

108. The ICE agents were acting in an investigative or law enforcement role at all relevant times.

109. The ICE agents intentionally and unlawfully interfered enjoyment of private property in which Plaintiffs had a possessory interest under O.G.C.A. § 51-9-1.

110. The ICE agents without a judicially issued warrant or voluntary consent and absent exigent circumstances.

111. Further, the ICE agents n  
unconstitutional

112.  
free from unreasonable searches and seizures.

113. More specifically, ICE trespassed against J.A.M. because:

- a. J.A.M. was a resident and legal tenant of the home ICE raided, and therefore, J.A.M. had a possessory interest under Georgia law.
- b. No person at the home gave consent to ICE to enter the home; rather, Carlos Rene Morales explicitly refused consent, the ICE agents nonetheless entered by force.
- c. There were no exigent circumstances that would allow ICE to lawfully .
- d. ICE lied to Carlos Rene Morales in an effort to obtain entry into knowingly and falsely claiming there was a criminal suspect inside of the home.
- e. ICE had no warrant for the detention of J.A.M. or the search of .

114. ICE interfered with right to quiet enjoyment with willfulness, malice, or corruption; ICE did not have a valid warrant, voluntary consent or exigent circumstances that would justify entering the home; ICE lied in its efforts to get in and then forcefully entered and detained J.A.M.

115. Y.S.G.R. and J.I.G.R. allege the following specific facts to support their claim to trespass under Georgia law, *see* O.C.G.A. § 51-7-20:





(11th Cir. 1987); Mancha v. Immigration & Customs Enf't, No. 106-CV-2650-TWT, 2009 WL 900800, at \*4 (N.D. Ga. Mar. 31, 2009).

118. This unconstitutional trespass caused Plaintiffs damages.

119. Plaintiffs are entitled to damages against the United States for trespass to the full extent allowed under Georgia law and the FTCA, in an amount to be determined

124. ICE also had a duty to act with reasonable care and to follow its own practices and procedures, including but not limited to notifying local law enforcement authorities that it intended on purporting to be local during the course of its raids.

125. ICE breached these duties by unlawfully entering and searching judicially issued warrant, exigent circumstances, or knowing and voluntary consent and unlawfully detaining the Plaintiffs.

126. ICE also breached internal, non-discretionary DHS practices and policies, including but not limited to DHS policies related to the use of

127. Specifically, ICE failed to act with reasonable care when ICE agents J.A.M. without a warrant, voluntary consent or exigent circumstances to justify their actions.

128. Similarly, ICE failed to act with reasonable care when ICE agents unlawfully entered and searched the home of Y.S.G.R and J.I.G.R. and detained Y.S.G.R and J.I.G.R. without a warrant, voluntary consent or exigent circumstances to justify their actions.

129. This breach of duty caused J.A.M. mental anguish and ongoing trauma, including but not limited to his fear of police and ongoing significant anxiety.

130. This breach of duty caused Y.S.G.R. significant mental anguish, including but not limited paralyzing anxiety that forced her to miss

134. Plaintiffs are entitled to damages against the United States for negligence to the full extent allowed under Georgia law and the FTCA, in an amount to be determined by the trier of fact.

135. Under the Federal Tort Claims Act, defendant United States of America is liable for these actions.

**FOURTH CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)**

136. The ICE agents were acting within the scope of its employment at all relevant times.

137. The ICE agents were acting in an investigative or law enforcement role at all relevant times.

138. The ICE agents acted intentionally or recklessly when they unlawfully entered and searched \_\_\_\_\_ and unlawfully detained J.A.M., Y.S.G.R., and J.I.G.R, who are United States citizens and children.

139. The ICE \_\_\_\_\_ actions were extreme and outrageous because they carried visible firearms, threatened the families of J.A.M., Y.S.G.R., and J.I.G.R., forced J.A.M., Y.S.G.R., and J.I.G.R. out of bed, and detained United States citizens J.A.M., Y.S.G.R., and J.I.G.R.

140. ICE used racial stereotypes to scare the Gutierrez and Padilla Families

141. The ICE agents compelled Carlos Rene Morales to enter his home, in  
by repeatedly threatening arrest for  
a knowingly falsified char obstruction of justice.

142. voluntary  
and knowing consent, by pushing the door open as Carlos Rene Morales  
turned the doorknob

away their parents, forcing them

- b. Emotional distress;
- c. Mental anguish; and
- d.





169.

, including but not limited to

paralyzing anxiety that forced



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September 4, 2018

Respectfully Submitted,

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