LCR | LAWYERS FOR CIVIL RIGHTS BOSTON

June 5, 2025

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Re: Complaint and Claims for Damages under the Federal Tort Claims Act for Kenia Guerrero, Daniel Flores-Martinez, and their minor children, E.F., T.F., and R.F.

Dear Counsel:

Lawyers for Civil Rights ("LCR") respectfully submits this complaint under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680, on behalf of Kenia Guerrero (D.O.B 4/23/1989), Daniel Flores-Martinez (D.O.B [redacted]), and their minor children, E.F. (D.O.B 6/27/21), T.F. (D.O.B [redacted]), and R.F. (D.O.B [redacted]) (collectively, "Claimants"),[1] seeking damages arising from the actions of the U.S. Government and U.S. Immigration and Customs Enforcement ("ICE") officers during an incident that occurred on Mother's Day, May 11, 2025, in Chelsea, Massachusetts. Mrs. Guerrero is a U.S. citizen, and so are her three children. The traumatic incident described herein resulted in physical, emotional, and psychological harm to each claimant, stemming directly from the unlawful and excessive actions of federal agents acting within the scope of their official duties.[2]

[1] The minor children hereby proceed by pseudonym due to reasonable fear that, should their identities be revealed, they will face stigma as well as threats of violence and retaliation. *See Haitian-Americans United et al. v. Trump et al.*, 25-CV-10498 (D. Mass. 2025) (Order Granting Motion to Proceed Pseudonymously, ECF No. 7, holding that "Plaintiffs convincingly argue that coming out of the shadows will cause [them] unusually severe harm, and given that threat of harm, anonymity is necessary to forestall a chilling effect on future litigants who may be similarly situated") (internal quotation marks and citation omitted); *Alianza Americas et al. v. DeSantis et al.*, 22-CV-11550 (D. Mass. 2022) (ECF No. 7) (same); *Doe et al v. Trump et al.*, 25-CV-10135 (D. Mass. 2025) (ECF No. 9) (same); *Doe v. Austin*, No. 22-CV-368, 2023 WL 3568188, at *1 (D. Me. May 19, 2023) (granting leave to proceed under pseudonyms due to "fear of harassment and violence"); *Doe v. Lyons*, No. 23-CV-10894, 2023 WL 3936740, at *1 (D. Mass. May 9, 2023) (same); *K.O. by & through E.O. v. United States*, 651 F.Supp.3d 331, 343 (D. Mass. 2023) (noting that ECF No. 71 "allowed the plaintiffs to proceed pseudonymously" due to "fears of retaliation").

[2] Claimants are submitting these claims without the benefit of formal discovery. Claimants hereby reserve the right to amend or supplement the factual recitation and their legal claims.

STATEMENT OF FACTS

On the morning of Mother's Day, May 11, 2025, the Guerrero-Flores family followed its usual Sunday routine and prepared to attend service at the Tabernacle Gospel Church. Before the family's planned departure, Mr. Flores-Martinez and his son, E.F., took their dog for a walk. At the onset of the walk, Mr. Flores-Martinez noticed an unmarked car with heavily tinted windows idling on the family's street. He thought the unmarked vehicles may be associated with ICE. He finished walking the dog and returned home to take his family to church in celebration of Mother's Day and reverence for the Sabbath. By the time he returned home, that car had disappeared—only to be replaced by additional unmarked vehicles now parked nearby.

Around 11:20 AM, the family got into their vehicle to drive to church for the gospel service and worship. They had only made it a short distance from their home when flashing lights appeared behind them. Mrs. Guerrero was driving, and to comply, she pulled the vehicle to the side of the road. Within moments, multiple unmarked cars surrounded the vehicle, blocking the family and their vehicle from every direction. Approximately five plainclothes officers immediately approached the vehicle from both the driver and passenger sides. Some of the officers were wearing masks covering their faces. Some officers wore vests — some unmarked and others marked as "Police."

An unidentified officer motioned for Mrs. Guerrero to roll down her window and demanded to see her identification. As Mrs. Guerrero searched her purse for the documents, sitting behind the wheel of her car, an officer gestured toward the front passenger seat and asked the person's name. Confused and unsettled, Mrs. Guerrero asked the officer to explain why she had been pulled over and why they were focusing their questions on the front passenger, Mr. Flores-Martinez, given that she was the vehicle's operator. An officer said they were "looking" for a male who drives the vehicle. Mrs. Guerrero clarified it was her vehicle.

The unidentified officer took Mrs. Guerrero's license and walked away without responding to her inquiries. Upon returning, the officer continued pressing her about the front passenger, who remained silent in accordance with his constitutional rights. Mrs. Guerrero again asked why the front passenger was being questioned when she was the driver who had been pulled over while operating the vehicle.

Simultaneously, other officers approached the front passenger side, ordering Mr. Flores-Martinez to roll down his window. Struck with fear and keeping his hands visible at all times, Mr. Flores-Martinez complied and rolled the window down enough to hear the officers or exchange documents. One of the officers suddenly tapped the window with force and threatened to break it. Mrs. Guerrero immediately objected, pleading with the officers not to act violently because her three children were in the car. Within seconds, she saw an officer on the passenger side raise what appeared to be a gun or weapon, and then the officer used it to strike and shatter the window.

Glass shards flew across the front and back seats, impacting all the passengers, including the two youngest children who sat in the back seat. Within seconds, officers physically reached inside the vehicle through the shattered window and unlocked the front passenger door. Then, the

officers opened the door and unbuckled Mr. Flores-Martinez's seatbelt. They then forcibly removed Mr. Flores-Martinez, aggressively yanking and pulling him out of the vehicle. Immediately, the officers slammed Mr. Flores-Martinez face down onto the sidewalk. This caused Mr. Flores-Martinez to hit the sidewalk painfully. The officers forcibly wrenched Mr. Flores-Martinez's arms behind his back, while two agents painfully dug and shoved their knees into his back. Despite offering no resistance—and clearly stating that he was not resisting—the officers continued to aggressively drag, push, shove, and thrust Mr. Flores-Martinez, subjecting him to excessive force and violence in front of his family. Mr. Flores-Martinez experienced physical pain and agony. The brutality terrified Mrs. Guerrero and the children, all of whom panicked and screamed out of acute distress and fear.

Mrs. Guerrero, stunned at the officers' rapid escalation of violence, exited the car to see what was happening to her husband, all while her children screamed in terror and fear. She cried out: "Why are you doing this with my children here?!" A female officer physically stopped Mrs. Guerrero as Mrs. Guerrero pleaded: "Aren't you a mother?" But her cries were ignored.

Mr. Flores-Martinez was forced into the back of one of the unmarked vehicles and driven away. The family was left in distress. The officers never told Mrs. Guerrero where her husband was being taken, what agency had detained him, or why he was being arrested. It was only later that the family confirmed that the officers were from ICE and Mr. Flores-Martinez had been taken to immigration detention.

This shocking chain of events unfolded publicly in approximately ten minutes: unidentified officers pulled over the family while on their way to church, surrounded their vehicle, escalated to violence, destroyed private property, forcibly removed Mr. Flores-Martinez, physically held Mrs. Guerrero, and drove away with Mr. Flores-Martinez in custody. The officers never identified themselves or where they were from. They never produced a warrant. Mr. Flores-Martinez was not asked to exit the vehicle — nor afforded the opportunity to do so peacefully. The entire operation was executed with alarming speed, shrouded in secrecy, and devoid of justification. It was a sudden and forceful seizure—unreasonable, unlawful, and deeply traumatizing.

Alarmingly, this practice—where masked officers pull a vehicle over, do not identify themselves, and then quickly use force to smash car windows, gain entry, and apprehend individuals—appears increasingly common among ICE officers.[3] The fact that similar incidents have occurred in the weeks before and after the incident described herein raises the strong inference that these are not isolated incidents perpetrated by rogue officers, but rather are part of a pattern-and-practice of conduct sanctioned and ratified by ICE.

[3] *See, e.g.*, Michael Casey & Rodrique Ngowi, *Family Says ICE Agents Smashed Car Window in Seizing Guatemalan Man Who's Seeking Asylum*, Associated Press (April 17, 2025), *available at* https://apnews.com/article/ice-detention-francisco-mendez-new-bedford-5c5eb62788e58159f3a27915b4416062; Raven Payne, *ICE Break Woman's Car Window to Arrest Her While Daughter Records*, ABC Baltimore (April 9, 2025), *available at* https://www.wmar2news.com/local/ice-break-womans-car-window-to-arrest-her-while-daughter-records; Demetra Maragos, *Viral video of ICE officers breaking car windows during arrest in Spokane Valley*, KHQ Local (March 13, 2025), *available at* https://www.khq.com/community/instagram/viral-video-of-ice-officers-breaking-car-windows-during-arrest-in-spokane-valley/article_91ec027a-007c-11f0-a0ac-e718984bbef3.html.

HARMS

As a result of the violent event described above, the Claimants have suffered severe physical and emotional distress. Fixated and traumatized by the brutality, the youngest child, 3-year-old E.F., now regularly tells others: *"Police broke the window and threw daddy on the floor."* The 3-year-old child refuses to get into the car, associating it with the violent and terrifying incident. To this day, E.F. experiences recurring nightmares about the arrest and wakes up in the middle of the night in tears and crying out: *"Where is daddy?"*

For T.F., the psychological and practical consequences have been especially acute. T.F. lives with multiple severe and complex medical conditions, including epilepsy, hydrocephalus, and cerebral palsy. As a result of these neurological and physical conditions, she experiences disabilities that significantly impact every aspect of her daily life and require constant care and medical attention. Due to the physical and emotional impact of the violent attack on her father and the car, T.F. is now at heightened risk of more frequent and intense convulsions. Given T.F.'s health condition, this can produce a cascade of medical complications. The attack on the family's car and her father's brutal arrest have compromised T.F.'s physical and emotional state, and she now lives under the specter of recurring seizures and suffering.

Mr. Flores-Martinez is a primary source of physical and emotional support for T.F., who has been left without the caregiver she relies on for health, comfort, and stability. Mr. Flores-Martinez's violent arrest has placed T.F. in emotional turmoil. T.F. has expressed intense fear for her father's well-being and the family's safety due to the brutality of the attack and arrest. She now struggles to attend school. She has trouble concentrating on her school work due to overwhelming anxiety and sadness.

For R.F., a teenager, the incident has had a profound and destabilizing psychological effect, producing withdrawal and isolation. Since the traumatic event, R.F. has increasingly cut himself off from peers and social environments, consumed by fear, shame, and a deep sense of stigma. The image of unidentified men violently surrounding and attacking his family's car—in broad daylight and full public view—has left him feeling exposed, humiliated, and unsafe. What should have been a Mother's Day trip to church was transformed into a terrifying spectacle, searing itself into his memory and undermining his sense of security and belonging. The emotional fallout continues to interfere with his development, relationships, and daily functioning.

Additionally, all the Claimants as a family are deeply traumatized after witnessing the violent seizure of the head of the household—siblings screamed and sobbed as their father was treated like an animal. They know him as a loving and hardworking man, but the brutality of the officers' actions has shattered their sense of safety and trust in law enforcement. The family has faced immense hardship—and a lack of resources—in securing the emotional and psychological support they so desperately need to cope with the profound, life-altering trauma they have endured, leaving them to carry the weight of a lifelong wound without the care necessary for healing.

For Mrs. Guerrero, the impact has been profound and lasting. She has lost her partner, emotional anchor, and the co-owner of their family's small business. Her husband is the family's

primary breadwinner. His detention has forced her to cancel business contracts, leaving the family without a steady income.

Additionally, Mrs. Guerrero is now the sole caretaker of T.F., a responsibility requiring the constant coordination of medical appointments, administering medication, and assisting with all daily activities, including bathing, dressing, and assisting with meals. Since T.F.'s disability and medical conditions manifest in convulsions, Mrs. Guerrero is now solely responsible for monitoring her daughter's health, including all efforts to preempt and address episodes triggered by the arrest that would necessitate further medical intervention. With the trauma of the brutal encounter, Mrs. Guerrero worries that T.F. is now at heightened risk of experiencing convulsions. This incident has also negatively affected Mrs. Guerrero's mental health as she experiences nightmares, decreased appetite, and increased anxiety. This incident has devastated the family's emotional, financial, and physical stability, and its effects will reverberate for years to come. As a result of the emotional, psychological, and physical distress inflicted on T.F. and the other children, Mrs. Guerrero is now forced to provide constant supervision and support. This severely limits her ability to maintain employment, significantly diminishes her earning capacity, and results in a substantial loss of income.

At the Tabernacle Gospel Church, Mrs. Guerrero and the children gather in prayer, clinging to hope for a miracle—because they have seen their loved one ripped forcibly from their family and do not know if, or when, he will return home.

ARGUMENTS AND CLAIMS

The FTCA permits individuals to bring claims against the United States for negligent or wrongful acts committed by federal employees acting within the scope of their official duties. 28 U.S.C.§ 2674, *et seq*. Specifically, the FTCA waives the federal government's sovereign immunity "under circumstances where local law would make a *private* person liable in tort." *United States v. Olson*, 546 U.S. 43, 44 (2005) (quoting 28 U.S.C. § 1346(b)(1)) (internal citations omitted) (emphasis added in original). Claims asserting assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution are explicitly allowed by the FTCA, but only against investigative or law enforcement officers of the federal government. 28 U.S.C.A. § 2680(h).

Each tort claim brought under the FTCA must be evaluated under the substantive law of the state in which the conduct occurred. *See, e.g.*, *Gill v. United States*, 516 F. Supp. 3d 64, 79 (D. Mass. 2021) (allowing various FTCA claims to proceed and holding that "because the majority of the allegedly tortious conduct occurred in Massachusetts, its tort law governs"). In this case, since the underlying misconduct and offenses took place in Chelsea, Massachusetts, the tort claims are properly analyzed under Massachusetts law.

I. False Imprisonment

The immigration officers falsely imprisoned the passengers of the vehicle. To establish a claim for false imprisonment, a plaintiff must show that the defendant imposed — "by force or threat" — an unlawful restraint on the freedom of movement. *Ortiz v. County of Hampden*, 16 Mass. App. Ct. 138, 140 (Mass. App. Ct. 1983) (citation omitted). If a person is unjustifiably

restrained of their liberty, that amounts to a false imprisonment. *Coblyn v. Kennedy's, Inc.*, 359 Mass. 319, 320-321 (Mass. 1971) (allowing tort action for false imprisonment); *see also Alianza Americas v. DeSantis*, 727 F. Supp. 3d 9, 64-65 (D. Mass. 2024) (allowing false imprisonment claims to proceed).

Here, the immigration officers surrounded the family's vehicle, from every side, with unmarked vehicles and armed agents on foot. The fear of the threat of violence and the actual violence committed by the agents restrained the family's ability to have any free movement. Even when Mrs. Guerrero exited the vehicle, an officer stopped and physically held her. Mrs. Guerrero had no ability to move or leave. *See* Statement of Facts, *supra*. By restraining, confining, commanding, and coercing the family, the agents made it clear that the Claimants were not free to leave the scene. The agents had no lawful reason to confine the family by force or threat of force.

II. Assault

The immigration officers committed an assault on the family in the vehicle. Under Massachusetts law, the elements of assault are: (1) the defendant acts intending to cause a harmful or offensive contact with another, or an imminent apprehension of such a contact, and (2) apprehension is created and experienced by the other person. *Commonwealth v. Henson*, 357 Mass. 686, 692 (Mass. 1970) (affirming judgment).

Without any justification, the immigration officers suddenly threatened to smash the window of the family vehicle violently. *See* Statement of Facts, *supra* (officers suddenly tapped the window with force and threatened to break it). When Claimants saw the officers raising what appeared to be a gun or weapon, they became afraid. The immigration officers placed all the passengers of the vehicle in imminent apprehension of violent contact when they were verbally threatened with smashing the window. The Claimants in the vehicle were terrified and worried about the officers' threat of violence.

III. Battery

The immigration officers committed a battery against the family in the vehicle when they violently smashed the window, causing glass to shatter and impact the Claimants in the vehicle. Under Massachusetts law, the elements of battery are: (1) the defendant acts intending to cause a harmful or offensive contact with another; and (2) the harmful or offensive contact with another person directly or indirectly results. *Waters v. Blackshear*, 412 Mass. 589, 590 (1992) (affirming judgment).

The immigration officers knew that using a gun or weapon to strike and shatter the car window, *see* Statement of Facts, *supra*, would send dangerous shards of glass flying into the vehicle, endangering and injuring the passengers inside. Yet they broke the window with wanton disregard for the safety of the passengers in the vehicle, including the children. The glass made contact with the passengers, thereby amounting to a battery.

IV. Intentional Infliction of Emotional Distress

To establish an intentional infliction of emotional distress ("IIED") claim, the plaintiff must demonstrate "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct ...; (2) that the conduct was 'extreme and outrageous,' was 'beyond all possible bounds of decency' and was 'utterly intolerable in a civilized community' ...; (3) that the actions of the defendant were the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was 'severe.'" *Agis v. Howard Johnson Co.*, 371 Mass. 140, 144 (Mass. 1976) (citations omitted) (allowing IIED claims to proceed); *see also Alianza Americas*, 727 F. Supp. 3d at 65 (same).

Conduct rises to the level of "extreme and outrageous" when it "go[es] beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community." *Alianza Americas*, 727 F. Supp. 3d at 65 (citation omitted). When considering a claim for intentional infliction of emotional distress, the trier of fact is "entitled to put as harsh a face on the [defendant's actions] as the basic facts would reasonably allow." *Id.*

Here, the officers' misconduct meets and exceeds the legal threshold in Massachusetts. They surveilled before the encounter and could have planned to apprehend Mr. Flores-Martinez safely under other circumstances. Instead, they deliberately waited until Mr. Flores-Martinez was in a vehicle going to church on Mother's Day with his wife and children, including a 3-year-old child and a daughter with multiple neurological conditions and a visible physical disability.

The officers escalated the encounter in the most disruptive and traumatic manner possible: intercepting the family while following its Sunday church routine, blocking the family car with multiple unmarked vehicles, surrounding the family with armed officers, failing to identify themselves, demanding compliance without explanation, and violently breaking the passenger window in front of terrified children. All this brutality took place within minutes, including forcibly dragging Mr. Flores-Martinez out of the vehicle and painfully slamming him on the pavement.

This misconduct constitutes "extreme and outrageous" behavior and is "beyond all possible bounds of decency." *Alianza Americas*, 727 F. Supp. 3d at 65. The officers' choices showed a reckless disregard for the physical and psychological harm their actions would inflict on the family. *See* Harms, *supra*. (enumerating harms). Any reasonable officer would know that violently arresting a parent in front of their children, especially without warning or explanation, would cause deep and lasting emotional pain and trauma. *Id.* The cause of these harms is clear: the officers' brutality, excessive force, destructive tactics, and deliberate choice to arrest Mr. Flores-Martinez in front of his young children on Mother's Day on the way to church rather than in a controlled and less traumatic setting.

Moreover, as described above, the impact has been severe and enduring. For example:

- E.F., age three, now refuses to get into a car and repeatedly says, "the police broke the window and threw daddy on the floor."

- T.F., who has multiple disabilities, has experienced heightened physical and emotional distress, disrupting her ability to focus on school.
- All the children have experienced nightmares, behavioral changes, and academic disruption.
- Mrs. Guerrero, who now bears sole responsibility for the household, including her daughter's complex medical care, continues to experience emotional and psychological distress, compounded by financial strain and lack of support.

All these facts and others — *see* Harms, *supra* — amply satisfy each element of an IIED claim.

V. Negligent Infliction of Emotional Distress

In Massachusetts: "To recover for negligently inflicted emotional distress ("NIED"), a plaintiff must prove "(1) negligence; (2) emotional distress; (3) causation; (4) physical harm manifested by objective symptomatology; and (5) that a reasonable person would have suffered emotional distress under the circumstances of the case." *Lanier v. President & Fellows of Harvard Coll.*, 490 Mass. 37, 44 (2022) (citation omitted) (allowing NIED claims to proceed).

The physical harm component "must do more than allege mere upset, dismay, humiliation, grief and anger." *Sullivan v. Bos. Gas Co.*, 414 Mass. 129, 137 (Mass. 1993) (internal quotation marks and citation omitted). In *Sullivan*, the Court provided victims who experienced "headaches, concentration problems, or sleeplessness … a chance to have their day in court." *Id.* at 140; *see also Bresnahan v. McAuliffe*, 47 Mass. App. Ct. 278, 282 (Mass. App. Ct. 1999) (remanding in light of "uncontrollable crying spells, stomach pain, severe headaches, loss of concentration, depression, anger, anxiety, and the loss of [ ] sexual relationship" as well as "crying episodes, instances of stomach pain, nausea, body shakes, anxiety, depression, nightmares and periods of agonizing").

Here, Mrs. Guerrero and her children have each alleged facts and distress "sufficiently particularized to qualify as physical manifestations of harm" satisfying the NIED standard. *Bresnahan*, 47 Mass. App. Ct. at 285. The ICE officers owe a duty to exercise reasonable care in conducting law enforcement operations, particularly when vulnerable and medically fragile minors are present. *See, e.g.*, 8 C.F.R. § 287.8 (Standards for Enforcement Activities). This duty was breached when, despite having surveilled Mr. Flores-Martinez and having other opportunities to apprehend him in a non-destructive setting safely, the officers inflicted brutality against the family in a church-bound car, ultimately shattering a window and forcibly dragging him out despite his lack of resistance.

As noted above, all family members experienced significant emotional trauma. Since the incident, they have exhibited ongoing, objectively verifiable symptoms consistent with those recognized in Massachusetts NIED case law—including recurring nightmares, increased emotional dysregulation, physical distress, exhaustion, and anxiety. *See* Harms, *supra*; *see also Rodriguez v. Cambridge Hous. Auth.*, 443 Mass. 697, 703 (Mass. 2005) (allowing damages and recognizing NIED claim where child found mother in bedroom after a violent home invasion).

Further, the trauma was neither incidental nor unforeseeable—it was the natural and probable consequence of the officers' chosen course of action with escalating violence. Finally, a reasonable person, particularly a parent or child, would undoubtedly suffer emotional distress after witnessing a violent, unprovoked arrest carried out in such an aggressive and traumatic manner.

VI. Trespass to Chattels

Massachusetts law provides "[r]ecovery or relief for trespass or injury to a chattel . . .where physical harm is shown." *Smith v. Wright*, 2013 Mass. App. Div. 24 (Mass. App. Div. 2013) (citation omitted). More specifically:

> "One who commits a trespass to chattels is subject to liability to the possessor of the chattel if, but only if, (a) he dispossesses the other of the chattel, or (b) the chattel is impaired as to its condition, quality, or value, or (c) the possessor is deprived of the use of the chattel for a substantial time, or (d) bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest."

Id. (citation omitted) (allowing claim of trespass to chattels in case involving personal property); *see also Texas v. U.S. Dep't of Homeland Sec.*, 123 F.4th 186, 208 (5th Cir. 2024) (allowing trespass lawsuit against immigration officials for "continuously destroy[ing] . . . property when not necessary…") (enjoining the federal government from damaging, destroying, or otherwise interfering with property).

In this case, multiple elements are amply satisfied: the immigration officers shattered the family's vehicle window, resulting in dispossession, physical damage to the chattel, and bodily harm from the glass shards. The family was also deprived of the use and integrity of the vehicle, specifically its window, thereby meeting the legal standard for trespass to chattels.

VII. Conversion

The officers committed conversion when they destroyed the window of the family's vehicle. Under Massachusetts law, "[t]he elements of conversion may be established by a showing that one person exercised dominion over the personal property of another, without right, and thereby deprived the rightful owner of its use and enjoyment." *In re Hilson*, 448 Mass. 603, 611 (Mass. 2007) (citation omitted). Here, the immigration officers' damage to the car meets this standard.

VIII. Negligent Supervision

The immigration officers' actions of using violence to arrest community members in vehicles unlawfully amount to a systemic custom, pattern, and practice. This pattern of practice, involving the excessive use of force to violate clearly established rights under federal and state law, can lead to supervisory liability. Under Massachusetts law, to establish a claim of negligent supervision, plaintiffs must establish:

> (1) that the persons whose actions form the basis of the claim were agents and/or employees of the defendant employer; (2) that the agents and employees came into contact with members of the public in the course of their employer's business; (3) that the employer failed to use reasonable care in the selection, supervision and retention of the agents and employees; and (4) that the failure to use such reasonable care was the proximate cause of harm to the plaintiffs.

Limone v. United States, 497 F. Supp. 2d 143, 233 (D. Mass. 2007) (citations omitted), *aff'd on other grounds*, 579 F.3d 79 (1st Cir. 2009). In this case, all agents are federal employees whose duties involve direct contact with the public in the course of conducting ICE enforcement activities.

The harm inflicted on the Claimants was entirely foreseeable, given ICE's established and escalating pattern of using excessive force against immigrants. Tactics such as smashing vehicle windows, forcibly removing individuals, and throwing them to the ground during warrantless arrests are not isolated events. Rather, they reflect a systemic practice of unconstitutional conduct by ICE officers. Video evidence confirms multiple prior incidents—particularly in the weeks leading up to the brutality at issue here—in which officers, without clearly identifying themselves, acted without warrants or legal justification, using similar violent methods.

The frequency and consistency of these incidents strongly suggest that such actions are not merely tolerated but affirmatively sanctioned by ICE leadership. This reflects a deliberate strategy, with supervisors appearing to direct or encourage these tactics.

Even if not explicitly ordered, the widespread publicity surrounding these incidents means ICE officials knew or should have known and yet failed to intervene. Under established legal standards, this constitutes negligent supervision and reflects deliberate indifference. Supervisors cannot ignore repeated constitutional violations by their subordinates without becoming complicit. "Total inaction cannot be reasonable care in the face of certain misconduct." *Limone*, 497 F. Supp. 2d at 233 (condemning FBI supervisors for doing "absolutely nothing"). In light of the brutality inflicted on the Claimants and others, the failure to intervene renders supervisory liability both appropriate and necessary—to uphold accountability and prevent further abuse.

IX. The Discretionary Function Exception

The immigration officers engaged in a flagrant violation of the family's constitutional rights—conduct so egregious and unlawful that any defense of discretionary function is rendered entirely inapplicable and meritless. Discretionary function "does not immunize the government from liability for actions proscribed by federal statute or regulation. Nor does it shield conduct that transgresses the Constitution." *Limone v. United States*, 579 F.3d 79, 101 (1st Cir. 2009) (citations omitted) (affirming damages for intentional infliction of emotional distress against the federal government ranging from $50,000 to $28,000,000). "[F]ederal officials do not possess discretion to violate constitutional rights." *Torres-Estrada v. Cases*, 88 F.4th 14, 21 (1st Cir. 2023)

(internal quotation marks and citation omitted) (reversing dismissal of FTCA complaint). Here, the immigration officers' actions violate the Constitution, statutory law, and federal regulations. Each is examined below.

A. Violation of the Fourth Amendment

Longstanding U.S. Supreme Court precedent establishes that "[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest," and those performed by immigration officials. *United States v. Brignoni–Ponce*, 422 U.S. 873, 878 (1975) (citation omitted). "[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Terry v. Ohio*, 392 U.S. 1, 16 (1968). "[T]he Fourth Amendment requires that the seizure be 'reasonable.'" *Brignoni–Ponce*, 422 U.S. at 878. "[T]he reasonableness of such seizures depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Id.*

Here, the family was stopped by immigration officers while Mrs. Guerrero was driving the vehicle. As outlined above, Mrs. Guerrero immediately stopped the vehicle and pulled over to the side of the road. Officers surrounded and immobilized the family's car with multiple unmarked vehicles. Multiple armed agents on foot surrounded the vehicle from both the driver and passenger sides. The family had no means of leaving the scene. They were detained and seized. The agents violated the Claimants' Fourth Amendment rights because the seizure lacked probable cause and was unreasonable. Additionally, during the unlawful seizure, agents utilized excessive force and disregarded their own standards of enforcement. Each of these elements, individually and collectively, constitutes a violation of the Claimants' Fourth Amendment rights.

The authority of federal immigration officers is set forth, in relevant part, in 8 U.S.C. §1357. Under this statutory authority, immigration officers may only make a warrantless arrest if they have "*reason to believe* that the alien so arrested is in the United States in violation of any [immigration] law or regulation *and* is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. §1357(a)(2) (emphasis added). "Courts have consistently held that the '*reason to believe'* phrase in § 1357 must be read in light of constitutional standards, so that '*reason to believe*' must be considered the equivalent of probable cause." *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (emphasis added) (citation omitted) (affirming denial of qualified immunity against ICE agent).

Here, the immigration officers surveilled Mr. Flores-Martinez. Upon seeing the immigration officers, Mr. Flores-Martinez did not flee or hide. He went home, and the family followed its Sunday routine by boarding the vehicle and driving to church, a right guaranteed under the First Amendment. *See, e.g.*, *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) ("targeting religious beliefs … is never permissible"); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 21 (2020) (enjoining restrictions on religious services). Moments into their journey to church, the family's vehicle was stopped and surrounded by immigration officers.

Mr. Flores-Martinez presents no risk of flight, as evidenced by his substantial and longstanding ties to the community, including his ownership and active management of a small business and his deep-rooted family responsibilities. He is the caregiver for his children and plays an integral, daily role in the well-being of his disabled daughter. These stable and verifiable obligations underscore his overwhelming incentive to remain in the jurisdiction and fully comply with all immigration proceedings — a pattern of conduct that would have been readily observed through any form of surveillance or monitoring.

The position of the immigration officers' vehicles blocking all egress, coupled with the intimidating stance of the armed officers surrounding the vehicle, prohibited anyone in the vehicle from fleeing or feeling free to leave the officers' custody. *See, e.g.*, *Commonwealth v. Helme*, 399 Mass. 298, 300 (Mass. 1987) (affirming Fourth Amendment violation when officers "parked the police cruiser so as to block the [victim's] automobile and prevent it from leaving…"); *see also Commonwealth v. Lyles*, 453 Mass. 811, 817 (Mass. 2009) (affirming Fourth Amendment violation). Federal officials positioned multiple vehicles — and armed agents — with the intention and effect of blocking the family's vehicle and preventing Claimants from leaving. Mr. Flores-Martinez was strapped into the passenger seat with the seatbelt, and his hands were always empty and visible the entire time. He was calm and made no furtive movements. There was no danger to the armed officers who outnumbered the family.

Exercising the right to remain silent cannot be construed as non-compliance or resistance, especially when Mr. Flores-Martinez complied and rolled the window down enough to communicate clearly and exchange documents. Massachusetts "law guards a person's freedom to speak or not to speak to a police officer." *Commonwealth v. Warren*, 475 Mass. 530, 538 (Mass. 2016). This freedom includes the right to "avoiding altogether any contact with police," as well as the right to refuse to answer or even listen to questions posed by a police officer. *Id.* (citation omitted); *see Commonwealth v. Tyson*, 104 Mass. App. Ct. 739, 745 (2024) (same); *see also Miranda v. Arizona*, 384 U.S. 436, 460 (1966) (noting "the respect a government—state or federal—must accord to the dignity and integrity of its citizens"); *Winston v. Lee*, 470 U.S. 753, 760 (1985) (Fourth Amendment protects "personal privacy and dignity") (internal quotation marks and citation omitted).

Under the circumstances, any properly trained officer would have recognized that Mr. Flores-Martinez posed no threat of violence or risk of flight. As such, there were no articulable facts to establish probable cause that Mr. Flores Martinez would flee apprehension before federal officials could obtain a judicial warrant. The arresting officers lacked probable cause to seize the vehicle's passengers and to arrest Mr. Flores-Martinez without a judicial warrant, resulting in a violation of the Fourth Amendment.

Massachusetts courts have ruled in favor of victims even in cases involving far less violence than the extreme conduct presented here, underscoring the gravity and viability of the family's claims. Under clearly established law, an officer "could not [ ] open the car door without justification." *Tyson*, 104 Mass. App. Ct. at 744. This principle reflects longstanding Fourth Amendment jurisprudence, which holds that "a car's interior as a whole is [ ] subject to Fourth Amendment protection from unreasonable intrusions by the police." *New York v. Class*, 475 U.S. 106, 114-115 (1986); *see also Commonwealth v. King*, 389 Mass. 233, 241 (Mass. 1983)

(discussing intrusion on privacy). The facts here "do not establish any constitutionally recognized justification for the officer's intrusion." *Tyson*, 104 Mass. App. Ct. at 744; *see Commonwealth v. Stawarz*, 32 Mass. App. Ct. 211, 214 (Mass. App. Ct. 1992) (same); *see also* G. L. c. 90, §§ 21, 25 (governing warrantless arrests).

In this case, key elements of brutality and abuse of authority are present: the officers unlawfully stopped a moving vehicle; activated their lights or sirens; deliberately blocked and impeded the Claimants' movement and egress; surrounded the vehicle while armed; destroyed private property using a weapon to strike and shatter the car window; and perpetrated violence against the passengers. The unlawful stop, the window-breaking, the unlawfully opened door, the physical hold of Mrs. Guerrero, the forcible removal of Mr. Flores-Martinez from the vehicle, and the violent arrest—individually and collectively—each constitute Fourth Amendment violations. Under the totality of the circumstances, the seizure and arrest violated clearly established Massachusetts law and the Fourth Amendment.

B. Violation of the Fifth Amendment (Substantive Due Process)

Government actors may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend XIV. The Due Process Clause "centrally concerns the fundamental fairness of governmental activity." *N.C. Dep't of Revenue v. Kimberley Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019). It is intended to prevent government officials "from abusing [their] power." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 840 (1998) (citations omitted) (brackets in original). "[T]he touchstone of due process is protection of the individual against arbitrary action of government" and "the exercise of power without any reasonable justification in the service of a legitimate governmental objective." *Id.* at 845-46 (citations omitted).

Among other protections, the Due Process Clause safeguards liberty in its most literal sense—shielding individuals from unjustified government intrusions on their freedom of movement. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Ingraham v. Wright*, 430 U.S. 651, 673 (1977) ("Among the historic liberties so protected was a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security."). As the U.S. Supreme Court held over a century ago: "No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891) (affirming the fundamental "right … to be let alone"). *Cf. Obergefell v. Hodges*, 576 U.S. 644, 663 (2015) (affirming the centrality of protecting "individual dignity and autonomy").

Due process also forbids governmental conduct that "shocks the conscience." *Rochin v. California*, 342 U.S. 165, 172 (1952) (discussing police "conduct that shocks the conscience"). Abusive government actions "are, in and of themselves, antithetical to fundamental notions of due process." *Parratt v. Taylor*, 451 U.S. 527, 545 (1981) (Blackmun, J., concurring) (citations omitted); *see also Fernandez v. Leonard*, 784 F.2d 1209, 1215-16 (1st Cir. 1986) (noting importance of preventing "abusive government conduct") (internal quotation marks and citations

omitted). Courts have described this forbidden conduct as "offensive to human dignity," *Rochin*, 342 U.S. at 174—an unjustified exercise of power lacking any legitimate governmental purpose.

Here, the brutality inflicted on the Claimants mirrors the very conduct the U.S. Supreme Court has condemned as unconstitutional. The violent detention and arrest violated the Fifth Amendment, as these actions served no legitimate—let alone compelling—governmental purpose.

C. Violation of the Standards for Enforcement Activities

The standards for immigration officer enforcement activities are codified, in relevant part, in 8 C.F.R. § 287.8 (Standards for Enforcement Activities). During the immigration officers' interactions with the family, the regulations were violated as follows:

1) Warrantless Arrest

The immigration officers failed to obtain a judicial warrant and lacked the requisite articulable facts to act without one. Thus, the immigration officers violated 8 C.F.R. § 287.8(c)(2)(ii), which states:

> A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

Under this regulation, an immigration officer must obtain a warrant unless they have probable cause that the person is likely to escape. *See, e.g.*, *Morales*, 793 F.3d at 216 (analyzing "reason to believe" language in immigration statute and affirming denial of qualified immunity against ICE agent); *see also Coblyn*, 359 Mass. at 325 ("reasonable grounds" and "probable cause" have "traditionally been accorded the same meaning"). For the reasons outlined above, there was no probable cause to believe Mr. Flores-Martinez was likely to—or even could have—escaped under the circumstances preceding his unlawful arrest. The warrantless seizure, detention, and arrest were unlawful.

2) Failure to Identify

As ICE's own regulations state, officers must identify themselves in a timely and adequate manner. This aligns with basic principles of public safety and constitutional integrity, which make it imperative that law enforcement officers clearly identify themselves, particularly when engaging in high-risk operations that may involve the use of force or result in injury. The clear identification of officers serves multiple critical purposes: it promotes accountability, reduces the risk of mistaken identity, and enables civilians to distinguish legitimate law enforcement activity from unlawful conduct such as kidnapping, assault, or extortion. Absent such identification, individuals are deprived of any meaningful opportunity to assess the legality of the encounter, comply safely, or assert their rights—creating a dangerous and destabilizing environment for civilians and officers alike.

In the instant case, the officers failed to identify themselves during the encounter with the Claimants. They also failed to provide any reason, explanation, or justification for the stop,

detention, and unlawful arrest. The failure of the immigration officers to do so violates 8 C.F.R. § 287.8(c)(2)(iii), which states:

> At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so:
>
> (A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and
>
> (B) State that the person is under arrest and the reason for the arrest.

Traveling in unmarked vehicles, the officers aggressively intercepted and surrounded the family's car as they were peacefully driving to church, creating a sudden, violent, and terrifying confrontation that unfolded without warning or explanation.

Officers aggressively surrounding the family's vehicle wore face masks concealing their identity. *See* Statement of Facts, *supra*. The officers' clothing – including unmarked vests — did not clearly or meaningfully identify them as immigration officers. In obfuscating and disguising their identity and affiliation, there was no way to determine if the officers effectuating the arrest had the requisite jurisdiction, authorization, or training to conduct the stop, detention, and arrest — all of which violates the clearly established standards outlined in 8 C.F.R. § 287.8(c)(2)(iii).

3) Illegal Use of Force

As courts and law enforcement agencies alike have recognized, the use of force by law enforcement must never serve as a tool of intimidation or terror against the community. Under 8 C.F.R. § 287.8(a)(iii):

> A designated immigration officer shall *always* use the *minimum* non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force *only* when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

Id. (emphasis added).

As ICE's own regulations reflect, the use of force is a grave measure that must be reserved exclusively for the most exigent and exceptional circumstances, where it is necessary, proportionate, and clearly justified under the law. Anything less undermines public trust, endangers lives, and violates the fundamental constitutional protections that shield individuals from state-sanctioned violence.

In the instant case, the officers involved in the brutality abused their power and unwarrantedly unleashed force and escalated violence. Without asking Mr. Flores-Martinez to exit the vehicle — or providing him with the opportunity to exit the vehicle peacefully — the officers violently used a weapon to strike and shatter the passenger side window of the car. *See* Statement

of Facts, *supra*. This resulted in the destruction of property, and the shattered glass impacted the passengers. The armed officers aggravated the excessive use of force further when they forcibly removed Mr. Flores-Martinez from the vehicle. Officers then painfully slammed Mr. Flores-Martinez to the ground while two dug their knees into his back — all while his children and wife were left to witness the brutality. At no point did Mr. Flores-Martinez resist the arrest or otherwise warrant the level of violence and excessive use of force administered by the officers.

Altogether, these circumstances constitute serious violations of the standards for immigration officer enforcement activities as codified in 8 C.F.R. § 287.8.

DAMAGES AND REQUESTED RELIEF

For the reasons outlined above, Claimants respectfully request:

1) Damages in the amount of $1,000,000.00;
2) Attorneys' fees and costs as permitted by law;
3) Such other and further relief as may be just, proper, and equitable.

CONCLUSION

For the reasons outlined above, Claimants respectfully bring this action under the FTCA, seeking compensation for the extraordinary harms they suffered at the hands of the federal government.

Respectfully submitted,

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