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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIA ARGUETA, et al., Plaintiffs, v. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., Defendants.	Hon. Peter G. Sheridan Civil Action No. 08-1652-PGS-ES **NOTICE OF MOTION** **Return Date/Motion Day**: September 7, 2010

PLEASE TAKE NOTICE that on September 7, 2010, at 10:00 A.M., or as soon thereafter as counsel may be heard, individual federal defendant ICE Agents 5, 6, 12, 17, 20, 21, 29 and 30 through their undersigned counsel, respectfully move the Court, before the Honorable Peter G. Sheridan, United States District Judge, at the U.S. Courthouse, 402 East State Street, Trenton, New Jersey, for an Order dismissing the Plaintiffs' Third Amended Complaint for lack of jurisdiction and failure to state a claim on which relief may be granted pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

In support of this motion, the Court is respectfully referred to the attached Memorandum of Law. These Defendants request that this motion be decided on the papers submitted, without oral argument, pursuant to Rule 78 of the Federal Rules of Civil Procedure.

A proposed order is submitted with this motion.

Dated: August 9, 2010

Respectfully submitted,

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MARIA ARGUETA, et al., Plaintiffs, v. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., Defendants.	Hon. Peter G. Sheridan Civil Action No. 08-1652-PGS-ES **Defendant Agents 5, 6, 12 17, 20, 21, 29 and 30's Motion to Dismiss Plaintiffs' Third Amended Complaint** Return Date: September 7, 2010

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I. INTRODUCTION

This action arises from efforts of United States Immigration and Customs Enforcement ("ICE") to remove illegal aliens from the United States, in particular, aliens who have committed crimes and those who have disregarded formal orders of removal. Under national enforcement initiatives developed by ICE headquarters, ICE law enforcement officers in Newark and Marlton, New Jersey, planned and executed operations to apprehend targeted aliens. In this case, nine plaintiffs allege that federal agents gained unlawful entry into their homes and detained some of the occupants without legal justification. Third Amended Complaint ("TAC") at ¶ 2.

As pertinent to this motion, one of the Plaintiffs, Yesica Guzman, claims violations of her Fourth Amendment and Fifth Amendment rights based on an alleged unreasonable search, seizure and detention. Guzman seeks money damages from the personal assets of eight ICE Agents, Agents 5, 6, 12, 17, 20, 21, 29 and 30 (the "Marlton Defendants") on a constitutional tort theory of recovery under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for their alleged conduct during the course of an immigration enforcement operation in August 2006. Guzman does not claim that she was lawfully present at the time of the ICE enforcement operation. In fact, Guzman filed this *Bivens* suit while she simultaneously was in removal proceedings before the immigration court.

All of Guzman's claims against the Marlton Defendants in their individual capacities should be dismissed in their entirety pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Immigration and Nationality Act ("INA"), specifically 8 U.S.C. §§ 1252(b)(9) and 1252(g), divests this Court of jurisdiction to hear her constitutional tort claims relating to ICE's law enforcement actions taken to remove illegal aliens. Moreover, special factors, including Congress' comprehensive regulation through the INA and the plenary power of the political branches over immigration and national security matters, preclude Guzman from seeking damages directly under the Constitution. Even if this Court determines it has jurisdiction to hear Guzman's claims, this Court should dismiss Guzman's substantive due process claim because it is legally cognizable, if at all, only as a Fourth Amendment claim.

II. PROCEDURAL BACKGROUND

On April 22, 2008, eight named plaintiffs and five anonymous plaintiffs filed their First Amended Complaint. The four named defendants, all ICE supervisors, moved to dismiss the Complaint because the Court lacked jurisdiction over the anonymous plaintiffs, the Court lacked subject matter jurisdiction over the claims of some of the plaintiffs, special factors precluded some of the plaintiffs from seeking money damages directly under the Constitution, the Court lacked personal jurisdiction over the two DC-based officials, and the allegations were

insufficient to overcome the four defendants' qualified immunity defense. Dkt. No. 35.

On May 6, 2009, this Court entered an opinion and order dismissing the claims of the anonymous plaintiffs, but providing them leave to amend the Complaint to provide their identities. *See* Dkt. No. 94 at 19. Because the claims of the anonymous plaintiffs were dismissed, the Court declined to consider whether it had subject matter jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9) or (g) over their claims or whether special factors precluded their damages claims. *Id*. at 20, 30-31. The Court denied the four defendants' remaining arguments for dismissal.

On May 18, 2009, the Supreme Court decided *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), a case in which the Court evaluated the sufficiency of a complaint against two high-ranking government officials sued in their individual capacities under *Bivens*, 403 U.S. 388 (1971). In light of the Court's decision in *Iqbal*, the four defendants requested that this Court reconsider its May 6 Opinion and dismiss the individual capacity claims against them. Dkt. No. 99. While the Motion for Reconsideration was pending and before plaintiffs had responded to the motion, plaintiffs amended their First Amended Complaint.

Plaintiffs filed their Second Amended Complaint on June 8, 2009. The Second Amended Complaint retained the individual capacity claims against the four named defendants and identified one of the anonymous plaintiffs, Carla Roe 3,

as Yesica Guzman. *See* SAC, ¶17, Dkt. No. 106. Other than inserting Guzman's name throughout the SAC and removing the claims of the dismissed anonymous plaintiffs, the Second Amended Complaint presented the same underlying facts and claims as the First Amended Complaint against the same four named defendants. The four named defendants moved to dismiss the Second Amended Complaint because it did not meet the standards set by *Iqbal*. Dkt. No. 108. On January 26, 2010, the Court denied the motion to dismiss. Dkt. Nos. 135-36.

On April 16, 2010, Plaintiffs amended the complaint to name thirty-one ICE Agents and three Penns Grove Police Officers as defendants, but did not alter the underlying facts as presented in the Second Amended Complaint. Dkt. No. 162 (Third Amended Complaint, or "TAC").[1]

III. FACTS[2]

A. Fugitive Operations Teams

ICE was formed pursuant to the Homeland Security Act of 2002 and is charged by Congress with enforcing the nation's customs and immigration laws. ICE is the largest investigative branch within the Department of Homeland Security and was comprised of four divisions: the Office of Detention and

[1] Guzman also purports to sue unnamed ICE Supervisors.

[2] The "facts" in this section are taken from the TAC and the exhibits attached thereto and are assumed to be true only for the limited purpose of this motion.

Removal Operations, the Office of Investigations, the Office of Intelligence and the Office of Federal Protective Service.[3] TAC, Ex. C at 2.

The Office of Detention and Removal Operations ("DRO") was responsible "for promoting public safety and national security by making certain, through the enforcement of national immigration laws, that all removable aliens depart the United States." *Id*. Part of ICE's mission requires the arrest of immigration law violators found within the United States. TAC, Ex. D at 1. Fugitive Operations Teams ("FOTs") are an integral part of this mission. *Id*. FOTs use leads and other intelligence to find, arrest, and place into removal proceedings aliens who have been previously ordered to leave the country, but failed to comply. *Id*. ICE defines a fugitive as an alien who has "failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or ha[s] failed to report to a DRO officer after receiving notice to do so." TAC, Ex. C at 2.

B. Statutory Powers of ICE Agents

1. Powers to Detain and Arrest Without a Warrant

Section 287 of the INA, 8 U.S.C. § 1357, authorizes certain categories of ICE officers and employees to undertake specified enforcement-related actions

[3] ICE is now divided into three operational directorates: Homeland Security Investigations; Enforcement and Removal Operations; and Management and Administration. *See* www.ice.gov/about.

without a warrant. Section 1357(a)(1) allows authorized ICE agents to "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." 8 U.S.C. § 1357(a)(1). Section 1357(a)(2) empowers any authorized agent, without a warrant, "to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation [relating to the admission, exclusion, expulsion, or removal of aliens] and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

Federal regulations permit certain employees, including deportation officers, special agents, and immigration enforcement agents, to make the warrantless arrests authorized in section 1357(a)(2). These employees are also authorized by statute and regulation to carry firearms and to employ deadly and non-deadly force in conducting enforcement activities. *See* 8 C.F.R. §§ 287.8(a)(1), (a)(2); 8 U.S.C. § 1357(a); 8 C.F.R. § 287.9(b).

An alien arrested without a warrant under section 1357(a)(2) must be examined by an immigration officer to determine whether "there is prima facie evidence that the arrested alien was entering, attempting to enter, or is present in the United States in violation of the immigration laws." 8 C.F.R. §§ 287.3(a) and (b). If such evidence exists, ICE refers the case to an immigration judge by issuing and filing a "Notice to Appear," which charges the alien with being in the United

States in violation of the INA. *See* 8 C.F.R. §§ 239.1, 1003.15. The filing of a Notice to Appear (or other charging document) with the immigration court vests that Court with jurisdiction and initiates removal proceedings against the alien. *See* 8 C.F.R. § 1003.14.

2. Powers to Execute Administrative Warrants

Once an alien is subject to a final removal order, certain ICE officials authorized by regulation may issue a warrant of removal. *See* 8 C.F.R. § 241.2(a). A warrant of removal may be executed by certain employees, including special agents and deportation officers, provided that they have successfully completed basic immigration law enforcement training. *See* 8 C.F.R. §§ 241.2(b) and 287.5(e)(3).

C. Plaintiff Guzman's Allegations

Yesica Guzman claims that she is a lawful permanent resident of the United States. *Id*. at ¶ 17. Guzman claims that on an unspecified morning in August 2006, she awoke to loud knocking on the door of her residence in Salem County, New Jersey. *Id*. at ¶¶ 168-69. She alleges that her husband opened the door to see what the callers wanted. She reports that ICE Agents and Penns Grove Police Officers stated that they were looking for a particular individual, who was Guzman's brother. *Id*. at ¶ 172. Guzman alleges that, without waiting for a response, agents pushed her husband up the stairs and shoved her out of the way. She alleges that the law

enforcement officers entered and searched the home with their guns drawn and without consent or a warrant. *Id*. at ¶¶ 172-175. She contends that they detained her on the couch, pointing their guns at her and indicated that she was not free to leave. *Id*. at ¶ 175. She alleges the agents repeatedly screamed "shut up" at her. *Id*. at ¶ 178.

The officers reportedly arrested her husband and two other occupants of the house, who were subsequently deported, and told Guzman that she had to report to "the office." *Id*. at ¶ 180. She claims that an unspecified agent stated that if she did not go to the office, the state would take her children. She also claims that the agent stated that he would make it his personal mission to ensure her husband went to jail for 22 years for crossing the border. *Id*. The TAC does not state whether Guzman was lawfully present in the United States at the time of the enforcement operation.

Based on these alleged events, Guzman claims that ICE agents and Penns Grove Officers unreasonably entered and searched her residence and unreasonably detained her in violation of the Fourth Amendment. TAC, Claims 1-3. She also contends that excessive force was used in violation of the Fourth Amendment and in violation of her Fifth Amendment substantive due process rights. TAC, Claims 4-5. She sues the eight Marlton Defendants as well as three Penns Grove Police Officers.

D. Plaintiff Guzman's Removal Proceedings

The government brought removal proceedings against plaintiff Guzman

following the August 2006 operation. *See* Ex. 1, attached hereto.[4] In her removal proceedings, Guzman argued that her removal should be cancelled under INA § 240A(b)(1); 8 U.S.C. § 1229b(b)(1). *See* Ex. 2, attached hereto. She could have, but did not challenge the underlying finding of removability. Under section 1229b(b)(1), an individual in removal proceedings may apply for cancellation of removal if she can establish ten years of continuous physical presence in the United States, good moral character, and demonstrate that her removal would result in exceptional and extremely unusual hardship to a parent, spouse, or child who is a United States citizen or lawful permanent resident. On October 6, 2008, six months after Guzman filed this *Bivens* action, an Immigration Judge granted her the relief she was seeking under section 1229b(b)(1) and adjusted her status to lawful

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[4] This Court may consider matters of public record and take judicial notice of decisions by administrative agencies on a motion to dismiss. *Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 259 (3d Cir. 1998); *Pension Benefit Guar. Corp. v. White Consolidated Indus.*, 998 F.2d 1192, 1196-97 (3d Cir. 1993); *see also* 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure, Civil, § 1357 (3d ed. 2004 & 2010 Supp.). In *Aguilar v. U.S.I.C.E.*, the court took judicial notice of proffered immigration orders and explained that such orders are "highly relevant to a determination of whether the petitioners have an adequate forum in which to present their claims." 510 F.3d 1, 8, n.1 (1st Cir. 2007) (citing *Fornalik v. Perryman*, 223 F.3d 523, 529 (7th Cir. 2000) (taking judicial notice of INS actions)); *cf. Furnari v. Warden, Allenwood Federal Corr. Institution*, 218 F.3d 250, 255 (3d Cir. 2000) (noting that "it is proper for this Court to take judicial notice of decisions of an administrative agency"). Similarly, on motions pursuant to Rule 12(b)(1), a court may examine information outside of the pleadings to "satisfy itself as to the existence of its power to hear the case." *Robinson v. Dalton*, 107 F.3d 1018, 1021 (3d Cir. 1997).

permanent resident. *Id*.

IV. ARGUMENT

A. Legal Standard

A motion to dismiss based on Federal Rule of Civil Procedure 12(b)(1) may be asserted at any time. Fed. R. Civ. P. 12(h); *Brown v. Philadelphia Housing Auth.*, 350 F.3d 338, 346 (3d Cir. 2003). When subject matter jurisdiction is challenged, the plaintiff bears the burden of persuasion. *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005).

When presented with a motion to dismiss based on Federal Rule of Civil Procedure 12(b)(6), a district court should conduct a two-part analysis. *See Edwards v. A.H. Cornell and Son, Inc.*, -- F.3d --, 2010 WL 2521033, at * 2 (3d Cir. June 24, 2010). First, the court should separate the factual and legal elements of a claim. *Id*. All of the well-pleaded facts must be accepted as true, but a court may disregard any legal conclusions. *Id*. Second, the court should "then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a plausible claim for relief." *Id*. (internal quotation marks omitted).

B. This Court Lacks Subject Matter Jurisdiction Over Constitutional Claims Guzman Could Have Raised in Her Removal Proceedings.

The INA deprives this Court of jurisdiction to hear all of Guzman's claims in two ways. First, Congress has channeled and consolidated review of "*all* questions

of law and fact . . . *arising* from *any* action taken or proceeding brought to remove an alien from the United States," in the courts of appeals once agency remedies have been exhausted. *See* 8 U.S.C. § 1252(b)(9) (emphasis added). Second, the INA precludes challenges to decisions and actions to commence removal proceedings, adjudicate cases, or execute removal orders. *See* 8 U.S.C. § 1252(g).

Courts are to construe a statute affecting federal jurisdiction, like the INA "'with precision and with fidelity to the terms by which Congress has expressed its wishes.'" *Kucana v. Holder*, 130 S. Ct. 827, 840 (2010) (quoting *Cheng Fan Kwok v. INS*, 392 U.S. 206, 212 (1968)). Those jurisdictional provisions aim to "limit all aliens to one bite of the apple . . . [and thereby] streamline what the Congress saw as uncertain and piecemeal review of orders of removal." *Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005).

In this case, Guzman is asserting *Bivens* claims for damages arising from alleged Fourth Amendment violations, including unreasonable entry, search, seizure and excessive force, and an alleged Fifth Amendment substantive due process violation all stemming from an ICE immigration enforcement operation in August 2006. TAC, Claims 1-5. Because Guzman was a deportable alien who could have raised these claims in removal proceedings, the INA divests this particular court of jurisdiction to hear these constitutional claims. Accordingly, all of Guzman's claims should be dismissed under Fed. R. Civ. P. 12(b)(1).

1. Section 1252(b)(9) Channels All Claims Arising From Any Action Taken or Proceeding Brought to Remove Guzman from the United States to Her Immigration Proceedings, Thus Precluding Jurisdiction In This Court.

Congress has divested district courts of jurisdiction over "all questions of law and fact . . . *arising* from *any* action taken or proceeding brought to remove an alien from the United States." *See* 8 U.S.C. § 1252(b)(9) (emphasis added). This Court lacks jurisdiction over Guzman's claims because her claims fall within the purview of section 1252(b)(9). Congress has chosen to streamline judicial review of an alien's claims by requiring all legal and factual questions arising from actions taken to remove an alien be reviewed only by the courts of appeals. *Id*. The Supreme Court described section 1252(b)(9) as a "general jurisdictional limitation" and as "an unmistakable 'zipper' clause." *Aguilar v. U.S.I.C.E.*, 510 F.3d 1, 9 (1st Cir. 2007) (citing *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 482-83 (1999) ("*AADC*")). By its terms, the provision encompasses "all questions of law and fact" and extends to both "constitutional and statutory challenges." *Id*.

Section 1252(b)(9) of 8 U.S.C. provides in full:

> **Consolidation of questions for judicial review**
>
> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas

> corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or non-statutory), to review such an order or such questions of law or fact.

Id. (emphasis added).[5] These provisions demonstrate that exclusive jurisdiction resides with the Court of Appeals after exhaustion at the administrative level. Because Congress has limited judicial review to courts of appeals, "other challenges" may no longer be "brought pursuant to a federal court's federal question subject matter jurisdiction under 28 U.S.C. § 1331." *Calcano-Martinez v. INS*, 232 F.3d 328, 340 (2d Cir. 2000).

Section 1252(b)(9) is a "judicial channeling provision, not a claim-barring one," *see Aguilar*, 510 F.3d at 11, and was intended to provide a streamlined approach through a single petition for review. Indeed, "it is Congress – not the judiciary – that has the responsibility of prescribing a framework for the vindication of [certain inalienable rights]. When Congress speaks clearly and formulates a regime that satisfies constitutional imperatives, the courts must follow Congress's lead." *Id.* at 24.

As the *Aguilar* court explained:

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[5] 8 U.S.C. § 1252(a)(5) states that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision in this chapter."

> The reach of section § 1252(b)(9) is not limited to challenges to singular orders of removal or to removal proceedings simpliciter. By its terms, the provision aims to consolidate "*all* questions of law and fact" that "arise from" either an "action" or a "proceeding" brought in connection with the removal of an alien.

Id. at 9 (emphasis in original). While the words "arising from" should not be read "to swallow all claims that might somehow touch upon" the government's efforts to remove an alien, any suggestion that the provision can not apply to challenged actions that occurred prior to the institution of formal removal proceedings would "render the word 'action' superfluous." *Id*. at 10.[6]

As the First Circuit explained, "[U]ndocumented aliens cannot escape the vise-like grip of section 1252(b)(9) by the simple expedient of banding together claims consigned by law to administrative channels, declining to raise them within the ambit of removal proceedings . . . " *Id.* at 9. The court further observed that this kind of "claim – splitting – pursuing selected arguments in the district court and leaving others for adjudication in the immigration court – heralds an obvious loss of efficiency and bifurcation of review mechanisms" and was "among the principal evils that Congress sought to avoid through the passage of section 1252(b)(9)." *Id.* at 10.

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[6] Ultimately, the court determined that section 1252(b)(9) did not apply to petitioners' family integrity claims, which were marginal to removal, but governed petitioners' right to counsel and procedural due process claims because those claims arise from removal. *Aguilar*, 510 F.3d at 18-19.

In *Arias v. ICE*, No. 07-1959, 2008 WL 1827604 (D. Minn. Apr. 23, 2008), a *Bivens* case with factual allegations nearly identical to Guzman's, the court held that section 1252(b)(9) precluded district court jurisdiction over *Bivens* claims brought by plaintiffs who were parties to removal proceedings. There, the plaintiffs alleged that ICE agents "forcibly entered" their homes, and "conducted warrantless, non-consensual searches." *Id.* at *3. Like this case, the plaintiffs in *Arias* sued both the ICE agents who arrested them and senior ICE officials Julie Myers, John Torres, and a field office director. *Id.* at *2. The court held that section 1252(b)(9) applied because plaintiffs' constitutional claims could have been raised in their removal proceedings and district court interference was contrary to congressional intent:

> Plaintiffs' claims are common in removal proceedings and could directly impact Plaintiffs' immigration status. "Ultimately, allowing aliens to ignore the channeling provisions of section 1252(b)(9) and bring [these] claims directly in the district court would result in precisely the type of fragmented litigation that Congress sought to forbid."

Arias, 2008 WL 1827604 at * 6 (quoting *Aguilar*, 510 F.3d at 13-14).

This Court previously addressed similar jurisdictional arguments as to the claims asserted by Plaintiff Juan Ontaneda. Dkt. No. 94. As applied to Ontaneda's claims, this Court concluded that section 1252(b)(9) did not obviate the Court's jurisdiction to hear his *Bivens* claims because "[Onteneda's] constitutional claims could not be brought before an immigration court." *Id.* at 25. This Court reasoned

that *Arias* was distinguishable from the circumstances presented by Ontaneda's case because Ontaneda voluntarily departed the United States, and therefore had no opportunity to present his claims in an administrative forum. *Id.* at 25-26.

In *INS v. Lopez-Mendoza*, the Supreme Court held that the Fourth Amendment exclusionary rule does not *generally* apply in deportation proceedings. 468 U.S. 1032, 1051 (1984). However, the Supreme Court left the door open for cases involving "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Id.* at 1050-1051 (recognizing the proposition in *dicta* and joined by Justices O'Connor, Blackmun, Powell and Rehnquist).

While the Third Circuit has not directly opined on this issue, a number of courts have concluded that such issues are appropriately raised during an alien's removal proceedings, and accordingly, could have been raised by Guzman. Courts have generally held that the exclusion of evidence is appropriate if an "egregious violation" that was "fundamentally unfair" has occurred. *See, e.g.*, *Singh v. Mukasey*, 553 F.3d 207, 215 (2d Cir. 2009) (quoting *Pinto-Montoya v. Mukasey*, 540 F.3d 126, 131 (2d Cir. 2008)) (while "the exclusionary rule generally does not apply in deportation proceedings," exclusion "is appropriate 'if record evidence established either (a) that an egregious violation that was fundamentally unfair had occurred, or (b) that the violation – regardless of its egregiousness or unfairness –

undermined the reliability of the evidence in dispute'"); *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1018 (9th Cir. 2008) ("In the present proceeding . . . we must next consider whether the [Fourth Amendment] violations were sufficiently egregious to warrant the application of the exclusionary rule in these civil deportation proceedings.") (internal quotations omitted) (*reh'g en banc denied* 560 F.3d 1098 (9th Cir. 2009)); *Kandamar v. Gonzales*, 464 F.3d 65, 70 (1st Cir. 2006) (in the immigration court context, "[w]e examine Kandamar's claims to determine whether there is evidence of an 'egregious violation' of the Fourth Amendment or other liberties");[7] *cf. Gonzalez-Reyes v. Holder*, 313 Fed. Appx. 690, 695 (5th Cir. 2009) (unpublished and non-precedential) (reporting that the Fifth Circuit "has never reversed, based on a finding of egregious violation of an alien's constitutional rights," an immigration judge's admission into evidence an alien's statements).

In *Lopez-Rodriguez v. Mukasey*, the court confronted issues similar to those that could have been raised by Guzman in her removal proceedings. 536 F.3d 1012

[7] *See also In re: Regino Mendez-Lopez Hortencia Lopez De-La Rosa*, 2010 WL 2224544 (BIA 2010) (unpublished and non-precedential) (concluding that case should be remanded to allow parties an opportunity to present evidence on the issue of whether the Department of Homeland Security agents committed an egregious violation of the Fourth Amendment); *In re: Maria C. Evans A.K.A. Maria C. Rios Galvan A.K.A. Maria Evans-Ceniza*, 2009 WL 2171715 (BIA 2009) (unpublished and non-precedential) (concluding that case should be remanded to allow the immigration court to further consider the respondent's allegations of egregious conduct); *In re: Argelio Guerrero-Renovato*, 2009 WL 2171592 (BIA 2009) (unpublished and non-precedential) (holding that evidence obtained as a result of respondent's detention was sufficiently egregious to be suppressed).

(9th Cir. 2008). In that case, the court concluded that the Immigration Judge and the Board of Immigration Appeals erred in denying the aliens' joint motion to suppress their respective Record of Deportable/Inadmissible Alien and a related sworn statement because the evidence contained in the documents was obtained in egregious violation of their Fourth Amendment rights, when "two men pushed the door and entered" and "proceeded to interrogate [the alien]." *Id.* at 1015. There, the court held that "even in administrative proceedings in which . . . the exclusionary rule [does not ordinarily apply], administrative tribunals are still required to exclude evidence that was 'obtained by deliberate violations of the Fourth Amendment or by conduct a reasonable officer should know is in violation of the Constitution.'" *Id.* (quoting *Orhorhaghe v. INS*, 38 F.3d 488, 492-493 (9th Cir. 1994)). In assessing whether the INS agents' conduct amounted to an "egregious violation" of the petitioners' rights, the court indicated that it "must first determine whether the agents violated the Fourth Amendment. If they did, then we must determine whether agents committed the violations deliberately or by conduct a reasonable officer should have known would violate the Constitution." *Id.* at 1016.

Accordingly, unlike Ontaneda, Guzman had a forum in which to pursue the constitutional claims she asserts in this *Bivens* case.[8] Guzman's claims could have

[8] Defendants' argument relates solely to the forum in which Guzman's claims are to be channeled pursuant to section 1252(b)(9). None of the federal defendants are conceding that they engaged in any unlawful conduct, let alone any egregious

been raised before the immigration court because she participated in removal proceedings after the enforcement action at issue, and was engaged in her removal proceedings before and at the time of the initial filing of this lawsuit.[9] All of Guzman's claims arise from alleged actions taken by ICE officials to remove her (and others who were at her home) from the country because they were unlawfully present in the United States. As such, under the INA and relevant case law, Guzman was afforded both the procedures and the opportunity to raise her constitutional claims in another forum.

In challenging her removability before the immigration court, Guzman made the strategic decision to seek cancellation of her removal proceedings under 8 U.S.C. § 1229b(b)(1). *See* Ex. 2. Her request was granted by Immigration Judge Annie B. Garcy on October 6, 2008. *Id*. On the same date, Judge Garcy adjusted her status to that of a legal permanent resident. *Id*. The fact that she was granted cancellation in no way changes the fact that she was deportable as charged and had a forum in which to raise her claims. Any other construction would allow aliens to evade Congress's clear "zipper clause" by the strategic decision of what claims to pursue in immigration proceedings. Such a result is not contemplated by law.

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violations of any plaintiff's constitutional rights.

[9] The immigration court issued a Final Order in Yesica Guzman's case on October 6, 2008. *See* Ex. 2. She filed this *Bivens* action six months before, on April 3, 2008. Dkt. No. 1.

Guzman could have had a meaningful review of her constitutional claims before the immigration court, the Board of Immigration Appeals and ultimately, the Third Circuit Court of Appeals. Indeed, Guzman's claims are no different than those pursued by the plaintiffs in *Arias*, who like Guzman, were also engaged in removal proceedings. *Arias*, 2008 WL 1827604, at * 6. Accordingly, this Court should adopt the reasoning set forth in *Arias* and dismiss Guzman's claims for lack of jurisdiction pursuant to section 1252(b)(9).

2. Section 1252(g) Bars Guzman's Claims, Which Arose From the Government's Decision to Commence Proceedings and Execute a Removal Order.

Guzman's claims are also barred by 8 U.S.C. § 1252(g). In addition to consolidating review, Congress has precluded district courts from hearing claims arising from actions to commence removal proceedings, adjudicate cases and execute removal orders:

> Except as provided in this section and notwithstanding any other provision of law[,] . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).[10]

[10] Section 1252(g)'s reference to the "Attorney General" is properly understood as referring to the Secretary of the Department of Homeland Security, as the Homeland Security Act of 2002 transferred authority to carry out "immigration enforcement functions" from the former Immigration and Naturalization Service within the Department of Justice to Department of Homeland Security. 6 U.S.C. §

Although the Supreme Court in *AADC* concluded that section 1252(g) should be read narrowly, the Court expressly held that the section encompasses "three discrete events" – decisions or actions to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *AADC*, 525 U.S. at 482 (emphasis in original). If the conduct falls within one of these events, section 1252(g), by its terms, bars the claim.

Courts confronted with claims like those here have determined that 1252(g) barred the claims. *E.g.*, *Sissoko v. Rocha*, 509 F.3d 947, 950-951 (9th Cir. 2007) (section 1252(g) barred an alien's *Bivens* action for false arrest); *cf. Arias*, 2008 WL 1827604 at *7-8 (holding that section 1252(g) barred claims of plaintiffs who were ultimately removed because they arose from conduct that was a direct result of the decision to commence proceedings against them).

Here, there is no question that Guzman's constitutional claims "arise from" an "action" by DHS to "commence proceedings" against aliens in the country unlawfully.[11] As the allegations in the TAC make clear, ICE agents arrived at Guzman's residence to commence removal proceedings against illegal aliens, one of

---

202(3).

[11] The Fifth Circuit has properly interpreted the phrase "arising from" in section 1252(g) to include "those claims connected directly and immediately with a decision or action by the Attorney General to commence proceedings . . . " *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001) (internal quotation marks omitted).

the three discrete events identified in section 1252(g). Specifically, in her complaint Guzman alleges that ICE agents who participated in the enforcement action that took place at her home did so as part of "Operation Return to Sender," an ICE operation directed at "arresting 'fugitive' aliens." TAC ¶¶ 1, 72. Guzman also alleges that these agents were part of ICE's National Fugitive Operations Program, a program established by ICE to "arrest and remove" "immigration 'fugitives'." *Id.* ¶ 69. Finally, Guzman asserts that her husband and two other occupants of her home were arrested during the operation, all of whom were subsequently deported. *Id.* ¶ 180. Because three people at Guzman's home, including her husband, were arrested as part of a program to initiate removal proceedings against aliens present in this country unlawfully, and because removal proceedings were subsequently initiated against Guzman as a direct result of their encounter with her at the home, section 1252(g) bars Guzman's constitutional claims, all of which stem from an action to "commence proceedings." Accordingly, all of Guzman's claims should be dismissed for want of jurisdiction.

C. Special Factors Counsel Against Creating a Damages Remedy for Yesica Guzman.

Even if this Court determines it has jurisdiction over the claims of Guzman, this Court should refrain from implying a damages remedy under *Bivens*. In the Motion to Dismiss by Defendants Myers, Torres, Weber and Rodriguez, they argued

that Plaintiffs Argueta, Ontaneda, Carla Roe 1, Carlos Roe 2, and Carla Roe 3 may not pursue a *Bivens* remedy in light of the special factors presented by the INA and the federal government's exercise of its plenary immigration authority. Dkt. No. 35, at 21-28. In its May 6, 2009 opinion, this Court rejected the argument that special factors counseled against implying a damages remedy for Argueta and Ontaneda. Dkt. No. 94 at 30-35. The Court did not rule on the claims of any of the anonymous plaintiffs because the court had already dismissed their claims in their entirety. *Id.* at 30-31.

This Court should decline Guzman's invitation to recognize an implied monetary damages action against any federal officer for her claims alleged here. Special factors, including Congress' comprehensive regulation through the INA and the plenary power of the political branches over immigration and national security matters preclude her from seeking damages directly under the Constitution. The procedural safeguards in the INA, *see* 8 U.S.C. §§ 1229, 1229a, 1229b, as well as the provisions limiting judicial review, 8 U.S.C. §§ 1252(a)(2)(D), 1252(b)(9), show that "Congress expected the judiciary to stay its *Bivens* hand" when confronted with claims like Guzman's.[12] *Wilkie v. Robbins*, 551 U.S. 537, 554 (2007).

[12] The Marlton Defendants acknowledge that this Court previously considered and determined whether special factors counsel against implying a damages remedy for the claims Argueta and Ontaneda pursue in this litigation. While the Marlton Defendants disagree with the Court's May 6, 2009 decision, given the doctrine of the law of the case, they do not re-visit the legal arguments previously presented by

This is especially so for the claims of Guzman – who unlike the other Plaintiffs – simultaneously pursued claims in this Court while she was in removal proceedings governed by the INA. Where Congress delineates specific remedial mechanisms within a statutory scheme, "federal courts will generally not attempt to supplement the relief afforded by that statute through other actions, including those implied under *Bivens*." *Dotson v. Griesa*, 398 F.3d 156, 160 (2d Cir. 2005). The fact that Congress has not provided "complete relief" for a *Bivens* plaintiff for injuries suffered (*i.e.*, the scheme does not provide a damages remedy), is not determinative. *Schweiker v. Chilicky*, 487 U.S. 412, 424-429 (1988). Instead, it is the presence of a deliberately crafted statutory scheme which demonstrates that Congress has not intended to allow a private right of action for damages. *Id*. at 421-25. Because the INA is the type of comprehensive statutory scheme that courts have found to be a special factor counseling hesitation, and because Guzman in fact proceeded on her claims simultaneously in another forum, this Court should not infer a *Bivens* remedy here.

D. Guzman's Substantive Due Process Claim Should Be Dismissed Because It Is Properly Analyzed Under the Fourth Amendment.

Defendants Myers, Torres, Weber and Rodriguez. MTD at Dkt. No. 35, at 21-28; Reply at Dkt. No. 66, at 13-18. Thus, they do not restate the arguments already presented to this Court, but incorporate them by reference and hereby preserve the argument that this Court should refrain from implying a constitutional tort remedy for Guzman's claims because special factors counsel against doing so.

If this Court determines that it has jurisdiction over the constitutional tort claims of Guzman, her substantive due process claim, Claim 5, should be dismissed.[13] That is because that claim is cognizable, if at all, under the Fourth Amendment. In Claim 5, Guzman alleges that one or more defendants "violated [her] Fifth Amendment substantive due process right to be free from governmental conduct that shocks the conscience" by drawing their guns, pointing their guns at her, threatening to have her children taken from her and telling her that her husband would spend more than 20 years in prison. *See* TAC ¶ 231.

For a substantive due process challenge to an officer's action, "the threshold question is whether the behavior of the government officer is so egregious, so outrageous, that it may be fairly said to shock the contemporary conscience." *County of Sacramento v. Lewis*, 532 U.S. 833, 843 (1998). In *Graham v. Connor*, 490 U.S. 386 (1989), however, the Supreme Court declared that where the Fourth Amendment "provides an explicit textual source of constitutional protection"

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[13] The Marlton Defendants agree with the Penns Grove Defendants that Guzman's claims are barred by the applicable statute of limitations because she failed to provide an appropriate description sufficient for identification of the Doe Defendants she purported to sue, failed to identify herself until June 8, 2009, *see* Dkt. No. 106, and did not even attempt to request discovery into the John Doe Defendants' identities until September 2, 2009, *see* Dkt. Nos. 122, 146, well after the two years of the applicable limitations period had run. Because, however, the Marlton Defendants intend to rely on information outside of the complaint to support their defense, this threshold, pre-Answer Motion to Dismiss does not address the affirmative defense of statute of limitations.

against a particular form of government behavior, "that Amendment, not the more generalized notion of 'substantive due process' must be the guide for analyzing these claims." *Id*. at 395. In that case, the Court rejected an attempt to litigate an excessive force claim as a denial of substantive due process. *Id.; see also Albright v. Oliver*, 510 U.S. 266, 274 (1994) ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it"); *e.g.*, *Fagan v. City of Vineland*, 22 F.3d 1296, 1305 n.5 (3d Cir. 1994) (noting that "since . . . *Graham* . . . excessive force claims against the police are actionable under the Fourth Amendment rather than [the substantive due process clause].").

Although Guzman has characterized the alleged conduct of the Marlton Defendants as conduct that "shocks the conscience," her Fifth Amendment claim arises from the same basic facts (and contains nearly identical allegations) as her claim brought under the Fourth Amendment. Specifically, as in her excessive force claim, her Fifth Amendment claim alleges that one or more defendants drew their weapons, screamed at her, and pointed a gun at her. *Compare* TAC ¶ 222 *with* ¶ 231. Because Guzman's substantive due process claim is based on allegations of unlawful seizure and excessive force, those claims fall within Fourth Amendment protections and thus are properly analyzed under the contours of the Fourth Amendment – not the generalized notions of substantive due process. *See Lewis*, 532 U.S. at 843 (internal quotation marks omitted) (explaining that *Graham* requires

that "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process"); *Mellott v. Heemer*, 161 F.3d 117, 121 (3d Cir. 1998) (explaining that because plaintiffs' excessive force claims involve allegations that the marshals restrained their liberty through use of force and the pointing of guns, "we must analyze the plaintiffs' claims under the Fourth Amendment"); *Park v. Veasie*, -- F. Supp. 2d --, 2010 WL 2367666, at *10 (M.D. Pa. 2010) (dismissing substantive due process claim because it arose from the allegations of a wrongful search and seizure which were properly raised under the Fourth Amendment); *cf. Cooleen v. Lamanna*, 248 Fed. Appx. 357, 362 (3d Cir. 2007) (explaining "[t]he very viability of [plaintiff's] Eighth Amendment claim means that his substantive due process claims are without merit"). Accordingly, Guzman's substantive due process claim (Claim 5) should be dismissed in its entirety, pursuant to Rule 12(b)(6).

V. CONCLUSION

For the reasons stated above, this Court should dismiss the individual capacity claims against Defendant Agents 5, 6, 12, 17, 20, 21, 29 and 30.

Dated: August 9, 2010

Respectfully submitted,

TONY WEST
Assistant Attorney General

TIMOTHY P. GARREN
Director, Torts Branch, Civil Division

MARY HAMPTON MASON
Senior Trial Counsel

s/ Jesi J. Carlson
JESI J. CARLSON
SARAH E. WHITMAN
Trial Attorneys

Attorneys for Defendants Agents 5, 6, 12, 17, 20, 21, 29 and 30

EXHIBIT 1

to

DEFENDANT AGENTS 5, 6, 12,17, 20, 21, 29 AND 30'S
MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

United States District Court for the District of New Jersey
Civil No. 08-1652-PGS-ES

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: [redacted]
Case No: [redacted]
FIN #: [redacted]

In the Matter of:

Respondent: Yesica SEGURA-CHAVEZ currently residing at:

[redacted]
(Number, street, city state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of MEXICO and a citizen of MEXICO;

3) You were admitted to the United States at Laredo, Texas on or about June 21, 1996, as a nonimmigrant B2 Visitor with authorization to remain in the United States for a temporary period not to exceed 6 months;

4) You remained in the United States beyond 6 months without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
970 Broad Street Room 1135 Newark NEW JERSEY US 07102
(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted]
(Signature and Title of Issuing Officer)

Date: August 8, 2006

MARLTON, NEW JERSEY
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99)N

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

_____
(Signature and Title of INS Officer)

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on August 8, 2006, in the following manner and in
(Date)

compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

X Jessica Segura Chavez
(Signature of Respondent if Personally Served)

[redacted]
(Signature and Title of Officer)

Form I-862 (Rev. 3/22/99)N

U.S. Department of Justice

Immigration and Naturalization Service

Warrant for Arrest of Alien

Case No: [redacted]

File No. [redacted]

Date: August 8, 2006

FIN #: [redacted]

To any officer of the Immigration and Naturalization Service delegated authority pursuant to section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

Yesica SEGURA-CHAVEZ
(Full name of alien)

an alien who entered the United States at or near Laredo, Texas (Port) on June 21, 1996 (Date) is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.

[redacted]
(Signature of authorized INS official)

[redacted]
(Print name of official)

[redacted]
(Title)

Certificate of Service

Served by me at MARLTON, NEW JERSEY on August 8, 2006 at 12:00 AM.

I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.

[redacted]
(Signature of officer serving warrant)

[redacted]
(Title of officer serving warrant)

Form I-200 (Rev. 4-1-97)N

EXHIBIT 2

to

DEFENDANT AGENTS 5, 6, 12,17, 20, 21, 29 AND 30'S
MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

United States District Court for the District of New Jersey
Civil No. 08-1652-PGS-ES

IMMIGRATION COURT
970 BROAD STREET, ROOM 1135
NEWARK, NJ 07102

In the Matter of

SEGURA-CHAVEZ, YESICA
Respondent

Case No.: A [redacted]

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11/16/07.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to .
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to .

Respondent's application for:
[ ] Asylum was [ ]granted [ ]denied [ ]withdrawn.
[ ] Withholding of removal was [ ]granted [ ]denied [ ]withdrawn.
[ ] A Waiver under Section _____ was [ ]granted [ ]denied [ ]withdrawn.
[ ] Cancellation of removal under section 240A(a) was [ ]granted [ ]denied [ ]withdrawn.

Respondent's application for:
[X] Cancellation under section 240A(b)(1) was [X] granted [ ] denied [ ] withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b)(2) was [ ]granted [ ]denied [ ]withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Adjustment of Status under Section _____ was [ ]granted [ ]denied [ ]withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Respondent's application of [ ] withholding of removal [ ] deferral of removal under Article III of the Convention Against Torture was [ ] granted [ ] denied [ ] withdrawn.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a _____ until _____.
[ ] As a condition of admission, respondent is to post a $ _____ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
[ ] Proceedings were terminated.
[X] Other: Status adjusted

Date: Oct 6, 2008

ANNIE S. GARCY
Immigration Judge

Appeal: ~~Waived~~/Reserved Appeal Due By:

by her partner

Post order interview info included

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Attorneys for Defendant Agents 5, 6, 12, 17, 20, 21, 29 and 30

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIA ARGUETA, et al.,	)	
	)	
Plaintiffs,	)	Hon. Peter G. Sheridan
	)	
v.	)	Civil Action No. 08-1652
	)	
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,	)	**[PROPOSED] ORDER**
	)	
Defendants.	)	

THIS MATTER having come before the Court by Defendant Agents 5, 6, 12, 17, 20, 21, 29 and 30 for an Order to dismiss the individual capacity claims against each of them, and the Court having considered the matter,

IT IS on this _____ day of _____, 2010

ORDERED that the Third Amended Complaint is dismissed as to individual federal defendant Agents 5, 6, 12, 17, 20, 21, 29 and 30.

_____

Honorable Peter G. Sheridan
United States District Judge

TONY WEST
Assistant Attorney General
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Attorneys for Defendant Agents 5, 6, 12, 17, 20, 21, 29 and 30

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIA ARGUETA, et al.,	
Plaintiffs,	Hon. Peter G. Sheridan
v.	Civil Action No. 08-1652
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,	**CERTIFICATE OF SERVICE**
Defendants.	**Return Day/Motion Day:** **September 7, 2010**

I, **JESI J. CARLSON,** do hereby certify that:

1. I hold the title of Trial Attorney with U.S. Department of Justice, Civil Division, and am counsel for individual federal defendant ICE Agents 5, 6, 12, 17, 20, 21, 29 and 30.

2. On August 9, 2010, I caused a true and correct copy of the following documents to be filed electronically with the Court's CM/ECF system:

DEFENDANT AGENTS 5, 6, 12, 17, 20, 21, 29 and 30's MOTION TO DISMISS THE THIRD AMENDED COMPLAINT; BRIEF IN SUPPORT; EXHIBITS 1 and 2, PROPOSED ORDER; and THIS CERTIFICATE OF SERVICE

Thus, the documents are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

3. I also certify that on August 9, 2010, Trial Attorney Sarah Whitman caused one (1) true and correct courtesy copy of the above documents to be delivered via Federal Express Service to the Honorable Peter G. Sheridan at:

Honorable Peter G. Sheridan
United States District Court, District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Room 2020
Trenton, NJ 08608

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 9, 2010

s/ *Jesi J. Carlson*
JESI J. CARLSON
Trial Attorney
Office of Immigration Litigation,
Civil Division