

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 03 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GUADALUPE ISABEL CASTILLO  
PEREYRA, surviving spouse of the  
deceased, Juan Pinacho Rodriguez, on  
behalf of herself and Luis Armando  
Pinacho, a minor child,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 08-17575

D.C. No. 4:03-cv-00267-JMR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, Chief District Judge, Presiding

Argued and Submitted December 9, 2009  
San Francisco, California

Before: O'SCANNLAIN, RAWLINSON, and BEA, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Guadalupe Isabel Castillo Pereyra and Luis Armando Pinacho (collectively Appellants) appeal from the district court's decision that it lacked jurisdiction over Appellants' wrongful death action.

If the discretionary function exception to the Federal Tort Claims Act applies, the district court correctly determined that it lacked subject matter jurisdiction. *See Sigman v. United States*, 217 F.3d 785, 793 (9th Cir. 2000), *as amended*. The exception applies if: 1) the government action involves exercise of discretion, and 2) the discretion involves "considerations of social, economic, and political policy . . ." *Alfrey v. United States*, 276 F.3d 557, 561 (9th Cir. 2002) (citation omitted). Whether and when to remove an illegal alien from within this country's borders is a matter committed to the sole discretion of immigration officials. *See Martinez-Garcia v. Ashcroft*, 366 F.3d 732, 735 (9th Cir. 2004). Moreover, immigration matters affect core political considerations. *See Mercado-Zazueta v. Holder*, 580 F.3d 1102, 1112 (9th Cir. 2009). Finally, the INS Detention Standard did not "specifically prescribe[ ] a course of action" so as to deprive the Border Patrol agents of discretion. *Alfrey*, 276 F.3d at 561 (citation omitted).

**AFFIRMED.**