

1 JOSEPH H. HUNT  
 2 Assistant Attorney General  
 Civil Division  
 3 WILLIAM C. PEACHEY  
 4 Director, District Court Section  
 Office of Immigration Litigation  
 5 WILLIAM C. SILVIS  
 6 Assistant Director, District Court Section  
 Office of Immigration Litigation  
 7 SARAH B. FABIAN  
 8 Senior Litigation Counsel, District Court Section  
 Office of Immigration Litigation  
 9 P.O. Box 868, Ben Franklin Station  
 10 Washington, D.C. 20044  
 11 Tel: (202) 532-4824  
 12 Fax: (202) 305-7000  
 Email: sarah.b.fabian@usdoj.gov

13 Attorneys for Defendants

14 **UNITED STATES DISTRICT COURT**  
 15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 JENNY LISETTE FLORES; *et al.*,

17 Plaintiffs,

18 v.

19 WILLIAM P. BARR, Attorney  
 20 General of the United States; *et al.*,

21 Defendants.  
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Case No. CV 85-4544-DMG

**RESPONSE TO PLAINTIFFS'**  
**REQUEST FOR A TEMPORARY**  
**RESTRAINING ORDER**

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1                   **I. INTRODUCTION**

2                   On June 26, 2019, Plaintiffs filed an ex parte application seeking a  
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4 temporary restraining order (“TRO”) against the government. In accordance with  
5 the Court’s Procedures regarding ex parte applications, Defendants hereby file this  
6 response within 24 hours to raise for the Court their initial opposition points to  
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8 Plaintiffs’ TRO request.

9                   Plaintiffs ask this Court to order injunctive relief that goes beyond simply  
10 ordering that Defendants comply with the plain terms of the *Flores* Settlement  
11 Agreement (“Agreement”). The relief sought would impose extensive obligations—  
12 including sanctions—on the government. Such relief is not appropriately sought  
13 through a TRO. Moreover, in seeking relief through sanctions and the imposition of  
14 extensive obligations on the government, Plaintiffs must establish their claims by  
15 clear and convincing evidence. In light of the expanded relief sought by Plaintiffs,  
16 and the exacting burden Plaintiffs must meet to obtain such relief, Defendants should  
17 be provided an opportunity to fully review and respond to the extensive briefing and  
18 evidence that Plaintiffs have filed with this Court before the Court rules. Therefore,  
19 Defendants request that the Court deny the TRO, and set a schedule for briefing  
20 these issues that provides Defendants with a full and fair opportunity to respond to  
21 the allegations that Plaintiffs have lodged against them. In the alternative, to allow  
22 for expeditious consideration of the concerns raised in Plaintiffs’ application related  
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1 to the Rio Grande Valley and El Paso Border Patrol Stations, Defendants are willing  
2 to agree to an expedited mediation process to address these concerns in front of the  
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4 *Flores* Special Master.

5 **II. ARGUMENT**

6 Plaintiffs seek a TRO from this Court requiring:

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8 (1) an immediate inspection of all CBP Facilities [in the El Paso and  
9 Rio Grande Valley Border Patrol Sectors] by a public health expert  
10 authorized to mandate a remediation plan that Defendants must  
11 follow to make these facilities safe and sanitary, (2) immediate  
12 access to the Facilities by independent medical professionals  
13 appointed by Plaintiffs’ class counsel or the Court-appointed Special  
14 Master who can assess the medical needs of the children and triage  
15 appropriately, and [sic] (3) deployment of an intensive case  
16 management team to focus on expediting the release of Category 1  
17 and Category 2 children (as classified in The Trafficking Victims  
18 Protection Reauthorization Act) to alleviate the backlog caused by  
19 the inadequate Office of Refugee Replacement placement array, and  
20 (4) [] an Order finding Defendants in contempt of Court, with a  
21 suitable and appropriate remedy to be determined by the Court.

22 Proposed Order, ECF No. 572-6.

23 A TRO should not issue here, because this is not the type of request for which  
24 a TRO is appropriately sought. The purpose of a TRO is to preserve the status quo  
25 before a preliminary injunction hearing may be held. *See Granny Goose Foods, Inc.*  
26 *v. Teamsters*, 415 U.S. 423, 438–39 (1974) (noting that TROs “should be restricted  
to serving their underlying purpose of preserving the status quo and preventing  
irreparable harm just so long as is necessary to hold a hearing, and no longer”); *see*  
*also Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006)

1 (noting that “courts have recognized very few circumstances justifying the issuance  
2 of an ex parte TRO”). Here, Plaintiffs seek to alter – not preserve – the status quo.  
3  
4 For example, Plaintiffs’ proposed remedies would require CBP to alter operations to  
5 allow for the inspections Plaintiffs are seeking, and then to potentially comply with  
6 a “remediation plan.” Likewise, the request to “deploy” an “intensive case  
7 management team to focus on expediting the release of Category 1 and Category 2  
8 children,” goes beyond the status quo, and appears to impose remedies on the Office  
9 of Refugee Resettlement (“ORR”) when no allegations against ORR are included in  
10 the memorandum of points and authorities. Plaintiffs moreover ask the Court to  
11 impose these substantial obligations on Defendants before Defendants have any  
12 chance to respond to their allegations or obtain a full and fair adjudication of the  
13 claims before the Court. Because Plaintiffs are seeking relief that is not appropriately  
14 sought through a TRO, the Court should deny Plaintiffs’ request.  
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18 Further, Plaintiffs’ TRO request is far more than a simple motion to enforce  
19 the terms of the Agreement, and it seeks relief beyond what is available under the  
20 Agreement. Plaintiffs ask the Court to order coercive remedies. Even if the Court  
21 does have the authority to order the remedies that Plaintiffs seek, which Defendants  
22 reserve the right to dispute, the Court’s only power to order Defendants to take  
23 actions such as these that go far beyond the scope of the Agreement is based on the  
24 Court’s inherent powers to enforce the Agreement and its own orders. Plaintiffs also  
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1 explicitly seek sanctions against Defendants. Requests for coercive remedies and  
2 sanctions such as the ones made by Plaintiffs fall under the framework of a civil  
3 contempt proceeding, requiring Plaintiffs to bear the burden of proof by clear and  
4 convincing evidence. *See Bailey v. Roob*, 567 F.3d 930, 934-35 (7th Cir. 2009) (“The  
5 parties agree that this circuit’s case law requires the party seeking sanctions to  
6 demonstrate that the opposing party is in violation of a court order by clear and  
7 convincing evidence.”); *Kelly v. Wengler*, 822 F.3d 1085, 1097 (9th Cir. 2016)  
8 (discussing how court-ordered remedies designed to ensure compliance with a  
9 settlement agreement, and to cure breach, are properly considered under civil  
10 contempt standards). Given Plaintiffs’ heavy burden of proof, the Court should  
11 decline to reach any conclusions as to Plaintiffs’ allegations without affording the  
12 government a full and fair opportunity to reply to the allegations that Plaintiffs have  
13 lodged against them. A TRO does not provide such an opportunity, and is not the  
14 appropriate avenue for Plaintiffs to seek the relief they are requesting, and the Court  
15 should deny this request.

### 21 **III. CONCLUSION**

22 For the foregoing reasons, Defendants request that the Court deny the TRO,  
23 and set a schedule for briefing these issues that provides Defendants with a full and  
24 fair opportunity to respond to the allegations that Plaintiffs have lodged against  
25 them. In the alternative, to allow for expeditious consideration of the concerns raised  
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1 in Plaintiffs' application, the Court should order the parties to engage in an expedited  
2 mediation process in front of the *Flores* Special Master to address these concerns.  
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4 DATED: June 27, 2019

JOSEPH H. HUNT  
Acting Assistant Attorney General  
Civil Division

6 WILLIAM PEACHEY  
7 Director, District Court Section  
8 Office of Immigration Litigation

9 WILLIAM SILVIS  
10 Assistant Director, District Court Section  
11 Office of Immigration Litigation

12 /s/ Sarah B. Fabian

13 SARAH B. FABIAN  
14 Senior Litigation Counsel  
15 Office of Immigration Litigation  
16 District Court Section  
17 P.O. Box 868, Ben Franklin Station  
18 Washington, D.C. 20044  
19 Tel: (202) 532-4824  
20 Fax: (202) 305-7000  
21 Email: sarah.b.fabian@usdoj.gov

22 *Attorneys for Defendants*  
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2019, I served the foregoing pleading on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian  
SARAH B. FABIAN  
U.S. Department of Justice  
District Court Section  
Office of Immigration Litigation  
  
Attorney for Defendants

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