

1 CENTER FOR HUMAN RIGHTS &
 2 CONSTITUTIONAL LAW
 3 Peter A. Schey (Cal. Bar No. 58232)
 4 Carlos Holguín (Cal. Bar No. 90754)
 5 Laura N. Diamond (Cal. Bar. No. 185062)
 6 Rachel Leach (D.C. Bar No. 1047683)
 7 Center for Human Rights & Constitutional Law
 8 256 South Occidental Boulevard
 9 Los Angeles, CA 90057
 10 Telephone: (213) 388-8693
 11 Facsimile: (213) 386-9484
 12 Email: pschey@centerforhumanrights.org
 13 crholguin@centerforhumanrights.org
 14 ldiamond@centerforhumanrights.org
 15 rleach@centerforhumanrights.org

16 *Listing continues on next page*

17 *Attorneys for Plaintiffs*

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA
 20 WESTERN DIVISION

21 Jenny Lisette Flores., *et al.*,
 22 Plaintiffs,
 23 v.
 24 William Barr, Attorney General of the
 25 United States, *et al.*,
 26 Defendants.

27 Case No. CV 85-4544-DMG-AGR_x
 28 **EX PARTE APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER AND ORDER TO SHOW
 CAUSE WHY A PRELIMINARY
 INJUNCTION AND CONTEMPT
 ORDER SHOULD NOT ISSUE**

Hearing: None set

29 Dated: June 26, 2019

1 *Counsel for Plaintiffs, continued*

2

3 **USF SCHOOL OF LAW IMMIGRATION CLINIC**

4 Bill Ong Hing (Cal. Bar No. 61513)

5 2130 Fulton Street

6 San Francisco, CA 94117-1080

7 Telephone: (415) 422-4475

8 Email: bhing@usfca.edu

9

10 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

11 Kevin Askew (Cal. Bar No. 238866)

12 777 South Figueroa Street, Suite 3200

13 Los Angeles, CA 90017

14 Telephone: (213) 629-2020

15 Email: kaskew@orrick.com

16

17 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

18 Elyse Echtman (*pro hac vice* pending)

19 Shaila Rahman Diwan (*pro hac vice* pending)

20 51 West 52nd Street

21 New York, NY 10019-6142

22 Telephone: 212/506-3753

23 Email: eechtman@orrick.com

24 Email: sdiwan@orrick.com

25

26 **LA RAZA CENTRO LEGAL, INC.**

27 Michael S. Sorgen (Cal. Bar No. 43107)

28 474 Valencia Street, #295

San Francisco, CA 94103

Telephone: (415) 575-3500

29

30 **THE LAW FOUNDATION OF SILICON VALLEY**

31 Jennifer Kelleher Cloyd (Cal. Bar No. 197348)

32 Katherine H. Manning (Cal. Bar No. 229233)

33 Annette Kirkham (Cal. Bar No. 217958)

34 152 North Third Street, 3rd floor

35 San Jose, CA 95112

36 Telephone: (408) 280-2437

37 Facsimile: (408) 288-8850

38

39

1 Email: jenniferk@lawfoundation.org
2 kate.manning@lawfoundation.org
3 annettek@lawfoundation.org

4 NATIONAL CENTER FOR YOUTH LAW
5 Leecia Welch (Cal. Bar No. 208741)
6 Neha Desai (Cal. RLSA Bar No. 803161)
7 405 14th Street, 15th Floor
8 Oakland, CA 94612
9 Telephone: (510) 835-8098
10 Email: lwelch@youthlaw.org
11 ndesai@youthlaw.org

12 U.C. DAVIS SCHOOL OF LAW
13 Holly S. Cooper (Cal. Bar No. 197626)
14 One Shields Ave. TB 30
15 Davis, CA 95616
16 Telephone: (530) 754-4833
17 Email: hskooper@ucdavis.edu
18
19
20
21
22
23
24
25
26
27
28

EX PARTE APPLICATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 65 and Local Rule 7-19, Plaintiffs in the above-captioned matter, hereby apply *ex parte* to this Court for a temporary restraining order and for issuance of an order to show cause why a preliminary injunction should not issue. This *ex parte* application is based upon this Application, the Memorandum of Points and Authorities below, the concurrently-filed Declaration of Class Counsel Peter Schey and Supplemental Declaration of Elyse D. Echtman and all exhibits thereto, all papers on file in this action, and any oral argument of counsel the Court may hear. The Memorandum of Points and Authorities in support of this Application is attached as Exhibit A.

The Plaintiffs bring this application on an *ex parte* basis because, as described in the Motion attached, the conditions at multiple U.S. Customs and Border Patrol (“CBP”) facilities are in non-compliance with the Jan. 17, 1997 Settlement Agreement in *Flores v. Reno et al.*, CV 85-4544 (RJK) (Px) (“Flores Settlement Agreement”) and this Court’s June 27, 2017 Order, Docket No. 363. The non-compliance has created a health crisis that is in need of immediate attention in order to avoid further loss of life. Plaintiffs respectfully submit that *ex parte* relief is therefore appropriate given that the facts in the Motion and its supporting papers evidence that immediate and irreparable injury will result to Plaintiffs before opposition can be heard.

Statement of Compliance with Civil Local Rule 7-19

Counsel for Defendants are:

Sarah B. Fabian Sarah.B.Fabian@usdoj.gov

William Silvis William.Silvis@usdoj.gov

Pursuant to Civil Local Rule 7-19.1 and Fed. R. Civ. P. 65, counsel for the Plaintiffs informed the Monitor and counsel for the government of the substance

1 and date of this *ex parte* application. Declaration of Class Counsel Peter Schey ¶ 2;
2 Supplemental Declaration of Elyse D. Echtman ¶¶ 4-7.

3 On June 19, 2019, Plaintiffs’ counsel served a formal Notice of Non-
4 Compliance (the “Notice”) on Defendants and the Monitor pursuant to Section D.3
5 of the October 5, 2018 Order Appointing an Independent Monitor, *Flores v.*
6 *Sessions, et al.*, CV 85-4544-DMG (AGRx), Docket No. 494 (the “Monitoring
7 Order”), detailing grave violations at CBP Facilities that created a public health
8 emergency requiring immediate attention. Echtman Decl. ¶ 4. Because of the
9 public health crisis and the threat to lives of the children, Plaintiffs’ counsel asked
10 that the Monitor expedite Defendants’ response time to the Notice to two business
11 days, as provided for in Section D.3(b) of the Monitoring Order (“In an emergency,
12 Class Counsel may request that the Monitor and the Court waive the time periods
13 set forth in Section D.3 of this Order.”). Echtman Decl. ¶ 5; Monitoring Order at
14 20-21. The Monitor responded on June 21, 2019, acknowledging receipt of the
15 Notice and indicating that the Monitor had begun an inquiry into it. Echtman Decl.
16 ¶ 6.

17 On June 23, 2019, Plaintiffs provided Defendants and the Monitor with a
18 Supplement to the Notice of Non-Compliance (the “Supplemental Notice”),
19 supported by additional declarations from children at the CBP facilities in the El
20 Paso and RGV sectors. Echtman Decl. ¶ 7. These declarations provided additional
21 evidence substantiating the unsafe and unsanitary conditions and public health
22 crises existing at these facilities. *Id.* ¶ 7. In the Supplemental Notice, Plaintiffs’
23 counsel reiterated the request for the Monitor to expedite the government’s
24 response time, pursuant to Section D.3(b) of the Monitoring Order. *Id.* To date, the
25 Monitor has not taken any action to expedite resolution of this dispute which is
26
27
28

1 endangering the health and welfare of children, including infants, at the CBP
2 facilities. *Id.*

3 Plaintiffs have informed the Monitor that they intend to seek immediate relief
4 from this Court. *Id.* ¶ 8.

5
6 Dated: June 26, 2019

/s/Peter Schey
Attorneys for Plaintiffs

7
8 CENTER FOR HUMAN RIGHTS &
9 CONSTITUTIONAL LAW

10 Peter A. Schey
11 Carlos Holguín
12 Laura N. Diamond
13 Rachel Leach

14 USF School of Law Immigration Clinic
15 Bill Ong Hing

16 ORRICK, HERRINGTON & SUTCLIFFE
17 LLP

18 Kevin Askew
19 Elyse Echtman
20 Shaila Rahman Diwan

21 LA RAZA CENTRO LEGAL, INC.
22 Michael Sorgen

23 LAW FOUNDATION OF SILICON
24 VALLEY

25 Jennifer Kelleher Cloyd
26 Katherine H. Manning
27 Annette Kirkham

28 NATIONAL CENTER FOR YOUTH LAW
Leecia Welch
Neha Desai

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

U.C. DAVIS SCHOOL OF LAW
Holly S. Cooper