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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 MS. L, et al.,

Case No. 18cv428 DMS MDD

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5 Petitioners-Plaintiffs,

JOINT STATUS REPORT

6 vs.

7 U.S. IMMIGRATION AND CUSTOMS
8 ENFORCEMENT, et al.,

9 Respondents-Defendants.
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11
12 The Court ordered the parties to file a joint status report (JSR) by 3:00 pm on
13 September 11, 2019, in anticipation of the status conference scheduled at 1:00 pm
14 on September 20, 2019. The parties submit this joint status report in accordance with
15 the Court's instruction.
16

17 **I. DEFENDANTS' POSITIONS**

18 **A. Update on Reunifications for the Original Class Period**

19
20 As of September 6, 2019, Defendants have discharged 2,787 of 2,814 possible
21 children of potential class members for the original class period. That is, Defendants
22 have discharged 2,787 of the 2,814 possible children of potential class members who
23 were in the care of the Office of Refugee Resettlement (ORR) as of June 26, 2018.
24
25 *See* Table 1: Reunification Update. This is an increase of three discharges reported
26 in Table 1 since the JSR filed on August 14, 2019. *See* ECF No. 444. Of the three
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1 discharges, one child was reunified with the separated parent,¹ and the other two
2 were discharged under other appropriate circumstances, such as discharges to
3 sponsors.

4
5 Currently, there is one child of a class member from the original class period
6 who remains in ORR care and is proceeding towards reunification or other
7 appropriate discharge. This child has a parent who departed from the United States,
8 but the Steering Committee has advised that resolution of parental preference will
9 be delayed. Defendants are supporting the efforts of the Steering Committee to
10 obtain a statement of intent from the parent. Once Defendants receive notice from
11 the Steering Committee, Defendants will either reunify the child or move him into
12 the TVPRA sponsorship process, consistent with the intent of the parent.
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15 The current reunification status for the 2,814 children ages 0 through 17 for
16 the original class period, who have been the focus of Defendants' reporting to date,
17 is further summarized in Table 1. The data in Table 1 reflect approximate numbers
18 on these children maintained by ORR at least as of September 6, 2019. These
19 numbers are dynamic and continue to change as more reunifications, determinations
20 on class membership, or discharges occur.
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26 ¹ DHS initially separated this child from his father due to safety concerns. An immigration
27 judge later granted the father asylum. As a result, DHS released him into the community, and ORR
28 reunified the child with his father shortly thereafter.

Table 1: Reunification Update

Description	Phase 1 (Under 5)	Phase 2 (5 and above)	Total
Total number of possible children of potential class members	107	2707	2814
<u>Discharged Children</u>			
Total children discharged from ORR care:	107	2680	2787
• Children discharged by being reunified with separated parent	82	2086	2168
• Children discharged under other appropriate circumstances (these include discharges to other sponsors [such as situations where the child's separated parent is not eligible for reunification] or children that turned 18)	25	594	619
<u>Children in ORR Care, Parent in Class</u>			
Children in care where the parent is not eligible for reunification <u>or</u> is not available for discharge at this time:	0	1	1
• Parent presently outside the U.S.	0	1	1
○ Steering Committee has advised that resolution will be delayed	0	1	1
• Parent presently inside the U.S.	0	0	0
○ Parent in other federal, state, or local custody	0	0	0
○ Parent red flag case review ongoing – safety and well being	0	0	0
<u>Children in ORR Care, Parent out of Class</u>			
Children in care where further review shows they were not separated from parents by DHS	0	4	4
Children in care where a final determination has been made they cannot be reunified because the parent is unfit or presents a danger to the child	0	8	8
Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	12	12
Children in care with parent in the United States who has indicated an intent not to reunify	0	1	1
Children in care for whom the Steering Committee could not obtain parental preference	0	1	1

B. Update on Removed Class Members for the Original Class Period

The current reunification status of removed class members for the original class period is set forth in Table 2 below. The data presented in this Table 2 reflect approximate numbers maintained by ORR as of at least September 6, 2019. These numbers are dynamic and continue to change as the reunification process moves forward.

Table 2: Reunification of Removed Class Members

<u>REUNIFICATION PROCESS</u>	<u>REPORTING METRIC</u>	<u>NO.</u>	<u>REPORTING PARTY</u>
STARTING POPULATION	Children in ORR care with parents presently departed from the U.S.	14	Defs.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns			
	Children with no “red flags” for safety or parentage	14	Defs.
PROCESS 2: Establish Contact with Parents in Country of Origin			
	Children with parent contact information identified	14	Defs.
	Children with no contact issues identified by plaintiff or defendant	14	Defs. & Pls.
	Children with parent contact information provided to ACLU by Government	14	Defs.
PROCESS 3: Determine Parental Intention for Minor			
	Children for whom ACLU has communicated parental intent for minor:	12	Pls.
	<ul style="list-style-type: none"> Children whose parents waived reunification 	12	Pls.
	<ul style="list-style-type: none"> Children whose parents chose reunification in country of origin 	0	Pls.

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	<ul style="list-style-type: none"> Children proceeding outside the reunification plan 	0	Pls.
	Children for whom ACLU has not yet communicated parental intent for minor:	1	Pls.
	<ul style="list-style-type: none"> Children with voluntary departure orders awaiting execution 	0	Defs.
	<ul style="list-style-type: none"> Children with parental intent to waive reunification documented by ORR 	0	Defs.
	<ul style="list-style-type: none"> Children whose parents ACLU has been in contact with for 28 or more days without intent determined 	0	Pls.
	Children whose parents steering committee could not obtain parental preference	1	PIs
PROCESS 4:			
Resolve Immigration Status of Minors to Allow Reunification	Total children cleared Processes 1-3 with confirmed intent for reunification in country of origin	0	Pls.
	<ul style="list-style-type: none"> Children in ORR care with orders of voluntary departure 	0	Defs.
	<ul style="list-style-type: none"> Children in ORR care w/o orders of voluntary departure 	0	Defs.
	<ul style="list-style-type: none"> o Children in ORR care whose immigration cases were dismissed 	0	Defs.

C. Update Regarding Government's Implementation of Settlement Agreement

SETTLEMENT PROCESS	DESCRIPTION	NUMBER
Election Forms²	Total number of executed election forms received by the Government	414 (241 Parents/173 Children)³
	<ul style="list-style-type: none"> Number who elect to receive settlement procedures 	254 (139 Parents/115 Children)
	<ul style="list-style-type: none"> Number who waive settlement procedures 	160 (102 Parents/58 Children)⁴
Interviews	Total number of class members who received interviews	152⁵
	<ul style="list-style-type: none"> Parents who received interviews 	80
	<ul style="list-style-type: none"> Children who received interviews 	72
Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	68⁶

² The number of election forms reported here is the number received by the government as of August 30, 2019.

³ The number of children's election forms is lower than the number of parent election forms because in many instances a parent electing settlement procedures submitted an election form on his or her own behalf or opposing counsel e-mailed requesting settlement implementation for the entire family, but no separate form was submitted on behalf of the child.

⁴ The number of children's waivers is lower because some parents have submitted waivers only for themselves and some parents who have waived reunification also waived settlement procedures and have therefore not provided a form for the child.

⁵ Some individuals could not be interviewed because of rare languages; these individuals were placed in Section 240 proceedings. This number includes credible fear and reasonable fear interviews, as well as affirmative asylum interviews.

⁶ This number is the aggregate of the number of parents whose negative CFI/RFI determinations were reconsidered, number of parents whose negative CFI/RFI determination was unchanged, and individuals who were referred to Section 240 proceedings without interview because of a rare language. This number excludes 12 cases where a parent already had a Notice to Appear (NTA) from ICE or was already ordered removed by an IJ (which are included in the interview totals).

1		• Number of parents determined to establish CF or RF upon review by USCIS	67 ⁷
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3		• Number of parents whose CF or RF finding remains negative upon review by USCIS	1
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6		Total number of CFI decisions issued for children by USCIS	73 ⁸
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8		• Number of children determined to establish CF by USCIS	73 ⁹
9			
10		• Number of children determined not to establish CF by USCIS	0
11			
12		Total number of affirmative asylum decisions by USCIS	6
13			
14		• Number of parents granted asylum by USCIS	1
15			
16		• Number of parents referred to immigration court	1
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18		• Number of children granted asylum by USCIS	1 ¹⁰
19		• Number of children	3 ¹¹

20 ⁷ This number includes parents who received positive CF/RF determinations upon
21 reconsideration, parents who received an NTA based on their child's positive CF determination,
and parents who were placed in Section 240 proceedings due to a rare language.

22 ⁸ This number is the aggregate of the number of children who received a positive CF
23 determination, the number of children who received a negative CF determination, and children
who were referred to Section 240 proceedings without interview because of a rare language.

24 ⁹ This number includes children who received a positive CF determination, children who
25 received an NTA as a dependent on their parent's positive CF determination, and children who
were placed in Section 240 proceedings due to a rare language.

26 ¹⁰ This number includes children granted asylum as a dependent on their parent's asylum
application.

27 ¹¹ This number includes children referred/returned to immigration court as the principal
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	referred/returned to immigration court	
Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	102 Parents¹²

D. Parents Who ICE Records Reflect Have Absconded After Being Released

Absconders	Number of Parents who absconded from enrollment in ATD (Alternatives To Detention)	173
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E. Update Regarding Identification of Expanded Class Members

On April 25, 2019, the Court approved Defendants’ Plan for identifying members of the expanded class. On August 30, Defendants filed an update with this Court that described the status of Defendants’ efforts of identifying members of the expanded class. *See* ECF No. 455. Since that date, Defendants have produced Batches 4, 5, and 8 to Plaintiffs.

asylum applicant or as a dependent on their parent’s asylum application.

¹² This number is as of September 2, 2019.

1 **F. Government Processes, Procedures, and Tracking, for Separations Since**
2 **June 26, 2018.**

3 1. Data Requested by Plaintiffs

4 Defendants are providing Plaintiffs updated reports containing information
5 regarding parents and children separated since the Court's June 26, 2018
6 preliminary-injunction order on the Friday following the filing of each JSR. The
7 parties have discussed amending this schedule so that Defendants will produce these
8 updated reports on a monthly basis. Defendants have made this offer but Plaintiffs
9 have not yet agreed to this proposal.
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12 2. Processes and Procedures

13 Defendants provided a summary outline to the Court and to Plaintiffs
14 memorializing the processes, procedures, tracking, and communication between the
15 agencies that have been adopted by the agencies since June 26, 2018. The outline
16 also included an overview of the options for separated parents and children to obtain
17 information about reunification options.
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20 On March 4, 2019, Plaintiffs and lawyers for the children's legal service
21 providers sent comments and questions in response to the government's proposals.
22 Defendants reviewed those comments and questions, and the parties met and
23 conferred on April 15, 2019, regarding those inquiries. On May 28, 2019, Plaintiffs
24 sent additional comments related to Defendants' proposals. Since receiving those
25 comments, Defendants have held several internal telephonic meetings, and have
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1 spoken with representatives for the Bureau of Prisons and the U.S. Marshals Service
2 to ensure that those entities are included in discussions regarding these processes
3 and procedures. On July 11, 2019, Defendants provided a comprehensive response
4 to Plaintiffs' comments, and requested that the parties schedule a follow-up meet
5 and confer on these issues once Plaintiffs have reviewed Defendants' response.
6

7 On July 18, 2019, the parties met and conferred regarding Defendants'
8 responses. Plaintiffs sent a list of follow up questions, to which Defendants
9 responded on July 26, 2019. Plaintiffs then sent follow-up questions to Defendants'
10 responses on August 6, to which Defendants responded on August 12. Defendants
11 provided some additional information to Plaintiffs on September 4, 2019, and
12 requested that Plaintiffs clarify what information they were seeking with regard to
13 other of their inquiries. Plaintiffs have not yet responded to that latest request. The
14 parties will continue to meet and confer on this issue.
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18 **II. MS. L. PLAINTIFFS' POSITION**

19 **A. Steering Committee Outreach to Sponsors and Parents of Children of** 20 **Expanded Class Members**

21 As of the date of this Joint Status Report, Defendants have provided
22 Plaintiffs with seven lists identifying a total of 986 children of expanded class
23 members.¹³ For 853 of these children, the information in the government's
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25
26 ¹³ The seven lists identify a total of 1,271 unique children, but denote only
27 986 of them as being children of potential expanded class members, while the
28 remainder are categorized as "exclusions."

1 production includes one or more phone numbers. The phone numbers provided in
2 the government lists are labeled as numbers for sponsors, for parents, or for both.

3 The Steering Committee's process begins by calling the provided phone
4 numbers. Where the phone number is for a sponsor and not a separated parent, the
5 Steering Committee attempts to reach the sponsor, then obtain contact information
6 for the parent, and then finally reach the parent.

7 As of September 11, the Steering Committee has attempted to call the
8 families of 722 of these 853 children, or 85% of families who can be called based
9 on the information the government has provided. Of the 722 families to whom the
10 Steering Committee has attempted outreach, the Steering Committee has been
11 successful in completing phone calls with 542 sponsors and 119 parents.

12 The Steering Committee is also considering methods of making contact with
13 families for whom no phone contact information has been provided, or for whom
14 the phone contact information is erroneous or unworkable, for the next stage of the
15 process.

16 **B. Additional Lists of Children of Expanded Class Members**

17 On August 30, the government filed three declarations, including a
18 declaration of Commander Jonathan White, attesting to the status of the
19 interagency review process. Commander White stated that HHS file review had
20 generated a total of eleven lists, and that Plaintiffs had been provided four of the
21 eleven as of August 30. ECF 455-1 at ¶ 3. Commander White's declaration
22 further suggested that the seven remaining lists generated by HHS contained names
23 of up to 2,200 additional children of expanded class members that required
24 interagency review. *Id.* ¶ 4.

25 On September 10, the government provided Plaintiffs with three additional
26 lists. These three lists together contain the names of 20 previously unreported
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1 children of expanded class members.¹⁴ The September 10 disclosure brings the
2 total number of lists provided to Plaintiffs to seven of the total eleven identified by
3 Commander White.

4 **C. Steering Committee Progress for June 26 Initial Class**

5 The Steering Committee has successfully contacted and confirmed the
6 preferences of nearly all removed parents with respect to reunifications. On August
7 16, the government reported that, as of August 13, 15 children with removed
8 parents remained in ORR custody. The Steering Committee has advised the
9 government that no preference will be forthcoming for one of those parents due to
10 complex and individualized family circumstances, leaving 14 children with
11 removed parents in the operative group. The Steering Committee has delivered
12 preferences for 13 parents of those children. The parent of the remaining child
13 sought and was granted the opportunity to return to the United States pursuant to
14 the Court's September 4 Order and, as the Steering Committee has previously
15 advised the government and the Court, delivery of a parental reunification election
16 in this case will therefore be delayed.

17 **D. Children Whose Parents Have Submitted Preferences and Are Still**
18 **Detained**

19 The Steering Committee continues to meet and confer with the government
20 about children who are still in ORR after the Steering Committee has submitted a
21 final reunification election.

22 **E. Relief for Deported Parents**

23 On September 4, 2019, the Court granted, in part, the Plaintiffs' Motion
24 seeking relief for deported parents, so as to provide relief for eleven separated
25 parents. Plaintiffs have written to Defendants to ascertain (1) what process the

26 ¹⁴ While the lists provided on September 10 included the names of 85
27 children of expanded class members, the names of 65 of these children had been
28 provided to Plaintiffs in the government's prior lists.

1 agencies will make available to the parents to travel to the United States (at their
2 own expense) and (2) what process the agencies will provide upon the parents'
3 return, and are awaiting a response.

4 Plaintiffs are also reviewing the Courts' order with individual attorneys for
5 the deported parents in order to determine if any clarification of the order may be
6 necessary.

7 **F. Information Sharing Regarding Continuing Separations**

8 Since the last status conference on August 16, Defendants have provided one
9 updated list tracking continuing separations of families. Defendants provided that
10 list on August 20. The last separation included on the August 20 list was dated
11 July 20.

12 By the time Plaintiffs received the information, it was already one month
13 old, and its utility to families and their lawyers seeking reunification, diminished.
14 Plaintiffs are requesting that lists of continued separation be provided on a more
15 regular basis (every week).

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1 **III. MMM-Dora Plaintiffs' Report Regarding Settlement Implementation**

2 The parties continue to work together to implement the settlement agreement approved on
3 November 15, 2018. Class counsel are providing the Government with signed waiver forms as
4 they are received from class members, and class counsel are continuing to work on outreach
5 efforts to class members who may qualify for relief under the settlement. The parties continue to
6 meet and confer on issues related to settlement implementation as they arise.
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8 One issue that continues to remain unresolved—and which was discussed at the last status
9 conference—is a discrepancy in the statistics of settlement implementation. As the Court is
10 aware, the Government has included in the ongoing status reports certain statistics related to
11 implementation of the *MMM/Dora/Ms. L* settlement agreement, including the total number of
12 executed settlement forms provided to the Government and the number of forms in which class
13 members elected to receive settlement procedures. Class counsel has submitted forms for more
14 class members than are being reported by the Government. After the last status conference, class
15 counsel again offered to compare their internal list of forms to the Government's list to attempt
16 to identify the cause of the discrepancy. At the Government's request, class counsel instead
17 provided their then-current list of forms to the Government, which the Government indicated it
18 would compare with its records. The Government indicated this week that it will provide the
19 results of its review soon.
20

21 Class counsel would like to discuss this issue with the Court at the status conference,
22 hopefully to report on a resolution of the issue, or alternatively, to discuss setting a plan for
23 resolving it. Below are the statistics, as of August 12, 2019, that class counsel are able to report
24 based on their internal records:
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Settlement Process	Description	Number
Election Forms	Total number of executed election forms sent to the Government	436 (260 parents; 176 children)
	• Number who elected to receive settlement procedures	266 invoke (150 parents; 116 children)
	• Number who waived settlement procedures	170 waive (110 parents; 60 children)

1 DATED: September 11, 2019

Respectfully submitted,

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