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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 MS. L, et al.,

Case No. 18cv428 DMS MDD

4
5 Petitioners-Plaintiffs,

JOINT STATUS REPORT

6 vs.

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

10 Respondents-Defendants.
11

12 The Court ordered the parties to file a joint status report on September 27,
13 2018. The parties submit this joint status report in accordance with the Court’s
14 instruction.
15

16 **I. DEFENDANTS’ POSITIONS**
17

18 **A. Update on Reunifications: Defendants are discharging children**
19 **appropriately and expeditiously**

20 Defendants have appropriately discharged an additional 45 children since the
21 last Joint Status Report, for a total of 2,296 children.

22 Looking ahead, there are 136 children proceeding towards reunification or
23 another appropriate discharge. Specifically, there are:
24

- 25 • 40 children in ORR care with a parent who is in the United States and
26 presently in the class. Of the 40 children, 6 cannot be reunified at this time
27
28

1 because their parents are in other federal, state, or local custody (e.g., state
2 criminal detention). Defendants are working to appropriately discharge
3 the remaining 34 of 40 children, and to identify any possible barriers to
4 their discharge, meeting and conferring with Plaintiffs where appropriate
5 for resolution. *See* Table 1: Reunification Update.
6

- 7 • 27 children in ORR care who have parents presently departed from the
8 United States, who have cleared Processes 1 through 3 of the court-
9 approved reunification plan, and who are proceeding towards reunification
10 with their parents in their home country. *See* Table 2: Reunification of
11 Removed Class Members.
12

- 13
 - 14 ○ Of these 27 children, 9 children have voluntary departure orders.

- 15
 - 16 The government is actively arranging travel to their home countries.

- 17
 - 18 Another 12 of the 27 children have immigration proceedings that

- 19
 - 20 have been dismissed or canceled by the government. The

- 21
 - 22 government is actively arranging travel to their home countries as

- 23
 - 24 well. *See id.*

- 25 • 69 children in ORR care who have parents presently departed from the
26 United States, and for whom the ACLU has not yet provided notice of
27 parental intent regarding reunification (or declination of reunification). As
28 described below, Defendants are supporting the efforts of the ACLU to

1 obtain statements of intent from those parents. Once Defendants receive
 2 the notices from the ACLU, Defendant will either reunify the children or
 3 move them into the TVPRA sponsorship process, consistent with the intent
 4 of the parent. For 18 of the 69 children, the ACLU has been in contact
 5 with their parents for more than 28 days without providing Defendants
 6 with notice of parental intent. *See* Table 2: Reunification of Removed
 7 Class Members.
 8
 9

10 The current reunification status for children ages 0 through 17 is further
 11 summarized in Table 1 below. The data in Table 1 reflects approximate numbers
 12 maintained by ORR at least as of September 24, 2018. These numbers are dynamic
 13 and continue to change as more reunifications or discharges occur.
 14
 15

16 **Table 1: Reunification Update**

<u>Description</u>	<u>Phase 1 (Under 5)</u>	<u>Phase 2 (5 and above)</u>	<u>Total</u>
Total number of possible children of potential class members originally identified	103	2,551	2,654
<u>Discharged Children</u>			
Total children discharged from ORR care:	87	2,209	2,296
<ul style="list-style-type: none"> • Children discharged by being reunified with separated parent 	72	1,953	2,025
<ul style="list-style-type: none"> • 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) 	15	256	271

<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:	3	133	136
• Parent presently outside the U.S.	2	94	96
• Parent presently inside the U.S.	1	39	40
o Parent in other federal, state, or local custody	0	6	6
<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	4	45	49
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	7	22	29
Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	1	122	123
Children in care with parent in the United States who has indicated an intent not to reunify	0	18	18

B. Update on Removed Class Members: Defendants are working with Plaintiffs' counsel to implement parental intent

The current reunification status of removed class members is set forth in Table 2 below. The data presented in this Table 2 reflects approximate numbers maintained by ORR as of at least September 24, 2018. 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.	219	Def's.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no "red flags" for safety or parentage	219	Def's.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	219	Def's.
	Children with no contact issues identified by plaintiff or defendant	219	Def's. & Pl.'s
	Children with parent contact information provided to ACLU by Government	219	Def's.
PROCESS 3: Determine Parental Intention for Minor	Children for whom ACLU has communicated parental intent for minor:	150	Pl's.
	<ul style="list-style-type: none"> Children whose parents waived reunification 	123	Pl's.
	<ul style="list-style-type: none"> Children whose parents chose reunification in country of origin 	27	Pl's.
	Children for whom ACLU has not yet communicated parental intent for minor:	69	Pl's.
	<ul style="list-style-type: none"> Children with voluntary departure orders awaiting execution 	2	Def's.
	<ul style="list-style-type: none"> Children with parental intent documented by ORR 	22	Def's.
<ul style="list-style-type: none"> Children whose parents ACLU has been in contact with for 28 or more days without intent determined 	18	Pl's.	

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	27	Pl's.
	<ul style="list-style-type: none"> • Children in ORR care with orders of voluntary departure 	9	Def's.
	<ul style="list-style-type: none"> • Children in ORR care w/o orders of voluntary departure 	18	Def's.
	<ul style="list-style-type: none"> o Children in ORR care whose immigration cases were dismissed or withdrawn 	12	Def's.

Defendants believe they have and are continuing to provide Plaintiffs with the majority of the information they seek with respect to children of departed (or removed) class members. In last week's status conference, the Court and Plaintiffs requested further information about how Defendants have reported information regarding departed class members and their children.

In short, Defendants have continually refined their reporting to provide more detailed information to the Court and Plaintiffs:

- Defendants' weekly reporting has generally focused on the current weekly population of children of departed class members in ORR care, as those are most relevant to the parties' shared reunification goal.
- On August 7, Defendants provided Plaintiffs with a list of 400 total children with departed parents who were then in ORR care — a total population which later increased to 414 children as additional cases meeting the relevant criteria were identified.

- 1 • Beginning August 23, Defendants continued reporting the current, weekly
2 number of children in ORR care with departed parents in each Joint Status
3 Report. The number changed weekly as children were discharged from care
4 (or re-categorized based on determinations related to separation, parental
5 fitness, or safety). Defendants also provided supporting data to Plaintiffs.
6
- 7 • On or around August 30, Defendants provided Plaintiffs with information
8 about the *type* of discharge of each child to date. Defendants also began
9 providing that data weekly for new discharges.
10
- 11 • On or around September 11, Defendants provided additional information
12 about discharges to date (e.g., sponsor contact information). Defendants also
13 began providing that data weekly for new discharges.
14

15 By providing the above, Defendants believe they have provided Plaintiffs with
16 detailed information about the circumstances of each discharged child among the
17 414 total children with departed parents. Defendants will continue to do so for new
18 discharges. The table below summarizes the information regarding children of
19 departed parents that Defendants have reported to Plaintiffs since August 7:
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**Table 3: Summary of Reporting on
Reunification of Children with Departed Parents**

Date Provided to Plaintiffs	Total Cumulative Cases	Number of Children In Care with Departed Parents	Discharged Separated Parent or Voluntary Departure	Discharged to Individual Sponsor	Discharge via Age Out or Age Redetermination	Out of Class (Not a Separation or Safety)	Parent no longer departed
August 7, 2018	400	400					
August 10, 2018	412	398					
August 24, 2018	413	343					
August 30, 2018	413	322					
September 6, 2018	414	304					
September 13, 2018	414	279					
September 20, 2018	414	254					
September 27, 2018	414	219	90	70	7	24	4

Defendants understand that Plaintiffs want to track the status of children of removed parents, even following discharge, from the total group of 414 children. For example, Plaintiffs submitted late last night a list of 33 of the 414 children about whom they claim not to have received adequate information. Defendants believe

1 that much of the information Plaintiffs are seeking has already been provided as
2 detailed above, and have explained that to Plaintiffs' counsel by email. Defendants
3 hope that the chart and explanation above provide further clarity about the
4 relationship between Defendants' reporting and that group of 414 children.
5 Defendants remain willing and available to meet and confer regarding any questions
6 Plaintiffs have.
7

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9 **C. Locating Removed Parents**

10 ORR is continuing to support the ACLU's efforts to obtain parental intent by
11 brokering three-way calls with parents, the case manager, and the ACLU. As of
12 September 24, Plaintiffs had identified a total of 45 cases that they asked be
13 prioritized for three-way calls. Commander White instructed that ORR case
14 managers begin to broker three-way calls with the phone number provided by
15 Plaintiffs for those 45. So far, the parties agree that that process has resulted in at
16 least 29 successful three-way calls connecting the parents and the ACLU, which are
17 helping to facilitate confirmation of parental intent. Defendants will continue to
18 broker more calls between children, parents and the ACLU. The parties are meeting
19 and conferring about additional phone numbers for prioritization.
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21
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23 **D. Update Regarding Government's Implementation of Agreement**

24 Defendants are continuing to work with Plaintiffs' counsel to finalize the
25 documents necessary for approval and implementation of the agreement. Defendants
26
27
28

1 also are continuing to conduct the manual case reviews needed to finalize the lists
2 for implementation of the agreement that were detailed in last week's joint status
3 report.

4 **E. Criminal History Exclusions**

5
6 The parties met and conferred multiple times regarding the issue of exclusions
7 from the class based on criminal history. Based on the class certification order in this
8 case, ECF No. 82, and the Court's recent order addressing two individual criminal
9 exclusions, ECF No. 236, the government understands the Court to have concluded
10 that it will not review the government's good faith exercises of discretion with regard
11 to exclusions from the class based on criminal history.
12
13

14 Although these individuals are not class members, the government will
15 continue to evaluate the possibility of reunification under ordinary processes.
16 Although class counsel does not represent these individuals who are not class
17 members, the government is continuing to meet and confer with class counsel to
18 determine if there is an appropriate way for class counsel to bring cases to the
19 government's attention that may merit further review or reconsideration.
20
21

22 **F. Information Sharing and Reporting on Removed Parents**

23 As discussed above, the parties continue to meet and confer regarding the
24 sharing of data. Defendants believe they are now providing Plaintiffs with the
25 majority of the information they are seeking.
26
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28

II. PLAINTIFFS’ POSITIONS

A. Steering Committee Progress

The Steering Committee has continued to make progress in contacting parents, confirming parent and child wishes with respect to reunifications, and relaying such wishes to the Government in the form of attorney declarations or reunification election forms signed by parents. As of Wednesday, September 26, the Committee delivered final preferences for 187¹ parents to the Government. The status of efforts based on the Government’s September 21 list of 254 children in ORR custody with removed parents is as follows:

Removed parents identified by the Government to Steering Committee on 9/21/18	254
<ul style="list-style-type: none"> • Parents for whom Committee has no phone number 	0
Steering Committee called phone number for parent (using Government-provided number or number otherwise obtained by Steering Committee)	254
Steering Committee spoke to parent (either by phone or in person)	236
<ul style="list-style-type: none"> • Parents successfully reached by phone 	227
<ul style="list-style-type: none"> • Parents found through outreach by NGOs 	9
<ul style="list-style-type: none"> • Parents called and not reached (and not reached through NGO efforts) 	18
<ul style="list-style-type: none"> ○ Phone number inoperable or ineffective 	0
<ul style="list-style-type: none"> ○ Contact efforts ongoing 	18

¹ This figure is based on the Government’s September 21 report of 254 children remaining in ORR custody. As previously noted, the Steering Committee continues to report its progress with respect to the total 414 families that the Government has identified as including children in ORR care with removed parents. Progress with respect to this total population is contained at the end of this section.

1	Parents reached by phone or NGO outreach	236
2	• Parent's preference with respect to reunification has been	197
3	confirmed to match child's	
4	• Preliminary indication of parent's wishes with respect to	17
5	reunification	
6	• Ongoing discussions with parent about reunification	22
7	Parent's final preference has been communicated to government	187
8	• Parent has elected reunification in Country of Origin	55
9	• Parent has elected to waive reunification in Country of Origin	132

10 **B. Information-Sharing**

11 **2. Repatriation**

12 The parties continue to solve issues with lack of reliable notice of when
 13 repatriation will occur. Over the past week, the Steering Committee has identified
 14 several inaccuracies and concerns regarding the information being shared by the
 15 Government about the repatriation of children. Examples include:

- 16 - Insufficient notice to parents, many of whom live far from their home
 17 country's capital;
- 18 - Children repatriated but not appearing on lists shared by the Government.

19 The Steering Committee has raised these concerns with the Government and
 20 is actively coordinating with Commander White and the Government's counsel to
 21 reach resolution. The Committee understands that Commander White has put in
 22 place new protocols which should be taking effect shortly and the Committee is
 23 discussing steps to address additional concerns with the Government's counsel.

24 **3. Parents First Contacted 28 days ago**

25 In the September 20 status report, the Government began reporting the
 26 number of parents with whom the Steering Committee first made contact 28 days
 27 ago, and for whom the Government has not yet received the parent's reunification
 28

1 preference. Of the 22 parents identified by the Government in that status report,
2 the Steering Committee has submitted reunification preferences for six parents. In
3 seven more cases, the Government no longer considers the parent as part of the 254
4 removed parents with children in ORR care. The Steering Committee e-mailed
5 detailed information for the remaining nine cases to the Government on September
6 23, and also offered to further discuss the issue. The Committee has not received a
7 response from the Government but continues to be willing to meet and explain
8 such cases as removed parents reach life-changing decisions about their children.

9 **4. Removals from Government Lists**

10 The Steering Committee continues to meet and confer with the Government
11 to clarify the bases for which children and parents have been removed from the
12 lists of class members or children in ORR custody previously produced by the
13 Government, as reflected in each week's Joint Status Report and, on Wednesday,
14 September 26, asked the Government to provide more specific information with
15 respect to 33 children and parents, for whom the Government has either provided
16 no information as to why they have been removed from the operative list, or for
17 whom the Government has provided only general information, such as an
18 indication that the child was "discharged from ORR custody," without specifying
19 whether the child has been repatriated or placed with a specific sponsor. The
20 Steering Committee looks forward to receiving this additional information and to
21 being able to continue to work collaboratively with the Government to ensure that
22 the parents' and children's interests are properly addressed.

23 **5. Inoperative/Ineffective/Lack of Phone Numbers**

24 The Steering Committee continues to meet and confer with the Government
25 regarding parents the Committee has not yet reached. The Committee has
26 identified additional parents for whom the Steering Committee would like the
27 Government to facilitate three-way calls.

28

Steering Committee Progress on Total Reported Parents/Children (414)

Removed parents identified by the Government to Steering Committee (8/7/28, 8/10/18, 8/24/18, 9/6/18, 9/14/18 and 9/21/18 lists)	414
<ul style="list-style-type: none"> • Parents for whom Committee has no phone number 	19
Steering Committee called phone number for parent (using Government-provided number or number otherwise obtained by Steering Committee)	395
Steering Committee spoke to parent (either by phone or in person)	346
<ul style="list-style-type: none"> • Parents successfully reached by phone 	329
<ul style="list-style-type: none"> • Parents found through outreach by NGOs 	17
<ul style="list-style-type: none"> • Parents called and not reached (and not reached through NGO efforts) 	49
<ul style="list-style-type: none"> ○ Phone number inoperable or ineffective 	0
<ul style="list-style-type: none"> ○ Contact efforts ongoing 	49
Parents reached by phone or NGO outreach	346
<ul style="list-style-type: none"> • Parent's preference with respect to reunification has been confirmed to match child's 	269
<ul style="list-style-type: none"> • Preliminary indication of parent's wishes with respect to reunification 	28
<ul style="list-style-type: none"> • Ongoing discussions with parent about reunification 	49
Parent's final preference has been communicated to	246

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government	
<ul style="list-style-type: none"> • Parent has elected reunification in Country of Origin 	72
<ul style="list-style-type: none"> • Parent has elected to waive reunification in Country of Origin 	174
Resolved Cases	68
<ul style="list-style-type: none"> • Child reunited with parent in Country of Origin 	32
<ul style="list-style-type: none"> • Child placed with sponsor in U.S. 	36

1 DATED: September 27, 2018

Respectfully submitted,

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