

1 JOSEPH H. HUNT
Assistant Attorney General
2 SCOTT G. STEWART
Deputy Assistant Attorney General
3 WILLIAM C. PEACHEY
Director
4 Office of Immigration Litigation
5 WILLIAM C. SILVIS
Assistant Director
6 Office of Immigration Litigation
7 SARAH B. FABIAN
Senior Litigation Counsel
8 NICOLE MURLEY
Trial Attorney
9 Office of Immigration Litigation
10 U.S. Department of Justice
11 Box 868, Ben Franklin Station
12 Washington, DC 20442
13 Telephone: (202) 532-4824
14 Fax: (202) 616-8962
15 ADAM L. BRAVERMAN
United States Attorney
16 SAMUEL W. BETTWY
Assistant U.S. Attorney
17 California Bar No. 94918
18 Office of the U.S. Attorney
19 880 Front Street, Room 6293
20 San Diego, CA 92101-8893
21 619-546-7125
619-546-7751 (fax)
22 *Attorneys for Federal Respondents-*
23 *Defendants*

Lee Gelernt*
Judy Rabinovitz*
Anand Balakrishnan*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
jrabinovitz@aclu.org
abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF
SAN DIEGO & IMPERIAL
COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
T: (619) 398-4485
F: (619) 232-0036
bvakili@aclusandiego.org

Stephen B. Kang (SBN 292280)
Spencer E. Amdur (SBN 320069)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
skang@aclu.org
samdur@aclu.org

Attorneys for Petitioners-
Plaintiffs
**Admitted Pro Hac Vice*

24
25
26
27
28

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 (“JSR”) on March 27,
13 2019, in anticipation of the status conference scheduled at 1:00pm PST on March
14 28, 2019. The parties submit this joint status report in accordance with the Court’s
15 instruction.
16

17
18 **I. DEFENDANTS’ POSITIONS**

19 **A. Update on Reunifications**

20 As of March 25, 2019, Defendants have discharged 2,749 of 2,814¹ possible
21 children of potential class members. *See* Table 1: Reunification Update. This is an
22

23
24 ¹ Since the last JSR, ORR discovered that two separated children it previously reported as possible
25 children of potential class members in ORR care on June 26, 2018 were in fact referred to its care
26 in July 2018. As a result, the true count of such children was 2,814, not 2,816 as previously
27 reported. The two miscounted children, who have both been discharged from ORR care, will be
28 added to the count of new, post-June 26, 2018 separations reported to Plaintiffs. Notwithstanding
this correction, this JSR describes updates in reference to the numbers reported on March 6, 2019.

1 increase of eight discharges reported in Table 1 since the JSR filed on March 6, 2019.
2 *See* ECF No. 382. Four of the eight children were discharged by being reunified with
3 their separated parent; and the remaining four were discharged under other
4 appropriate circumstances, such as discharges to other appropriate sponsors.
5

6 Table 1 shows that, as of the date that the table was generated, there were five
7 children in ORR care proceeding towards reunification or other appropriate
8 discharge. Since the table was generated, however, one of these five children was
9 reunified with his separated parent earlier this week.² This reunification occurred
10 after Defendants generated the data for this report, and will be reflected in the next
11 JSR. The current status of the four remaining children is as follows:
12
13

- 14 ▪ One child has a parent who is in the United States, but who is unavailable
15 because the parent is in other federal, state, or local custody. Defendants
16 are working to appropriately discharge the child, and to identify any
17 possible barriers to discharge, meeting and conferring with Plaintiffs
18 where appropriate for resolution. The other child was reunified with his
19 separated parent earlier this week
20
- 21 ▪ Three children have parents who departed from the United States. The
22 Steering Committee has not yet provided notice of parental intent
23 regarding reunification (or declination of reunification) for two of these
24
25
26

27 ² The child is reflected in Table 1 as having a parent presently in the United States.
28

1 children. For the third child, the Steering Committee has advised
 2 Defendants that it is unable to obtain the parent's preference, and regards
 3 this case as resolved for its purposes. Defendants are supporting the efforts
 4 of the Steering Committee to obtain statements of intent from the parents
 5 of the first two children. Once Defendants receive the notices from the
 6 Steering Committee, Defendants will either reunify the children or move
 7 them into the TVPRA sponsorship process, consistent with the intent of
 8 the parent.³

11 **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	107	2707	2814
<u>Discharged Children</u>			
Total children discharged from ORR care:	106	2643	2749
<ul style="list-style-type: none"> • Children discharged by being reunified with separated parent 	82	2077	2159
<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) 	24	566	590

25 ³ After generating this report, Defendants received notice from the Steering Committee that it will
 26 not be submitting an indication of parental preference with respect to another parent, and plans to
 27 report the case as resolved. This update will be reflected in the next JSR, and in Defendants'
 28 separate report to Plaintiffs this week.

<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	5	5
• Parent presently outside the U.S.	0	3	3
○ Steering Committee has advised that resolution will be delayed	0	2	2
○ Steering Committee could not obtain parental preference	0	1	1
• Parent presently inside the U.S.	0	2	2
○ Parent in other federal, state, or local custody	0	1	1
○ 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	1	10	11
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	16	16
Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	30	30
Children in care with parent in the United States who has indicated an intent not to reunify	0	3	3

B. Update on Removed Class Members

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 March 25, 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.	33	Def.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no “red flags” for safety or parentage	33	Def.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	33	Def.
	Children with no contact issues identified by plaintiff or defendant	33	Def. & Pls.
	Children with parent contact information provided to ACLU by Government	33	Def.
PROCESS 3: Determine Parental Intent for Minor	Children for whom ACLU has communicated parental intent for minor:	30	Pls.
	• Children whose parents waived reunification	30	Pls.
	• Children whose parents chose reunification in country of origin	0	Pls.
	• Children proceeding outside the reunification plan	0	Pls.
	Children for whom ACLU has not yet communicated parental intent for minor:	2	Pls.
	• Children with voluntary departure orders awaiting execution	0	Def.
	• Children with parental intent to waive	0	Def.

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

	reunification documented by ORR		
	<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"> 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 Forms⁴	Total number of executed election forms received by the Government	347 (222 Parents/125 Children)⁵
	<ul style="list-style-type: none"> Number who elect to receive settlement procedures 	190 (122 Parents/68 Children)
	<ul style="list-style-type: none"> Number who waive settlement procedures 	157 (100 Parents/57 Children)⁶
Interviews	Total number of class members who received interviews	139⁷
	<ul style="list-style-type: none"> Parents who received interviews 	73
	<ul style="list-style-type: none"> Children who received interviews 	66
Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	66⁸

⁴ The number of election forms reported here is the number received by the Government as of March 18, 2019.

⁵ 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.

⁶ 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.

⁷ Some individuals could not be interviewed because of rare languages; these individuals were placed in Section 240 proceedings.

⁸ 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 240 proceedings without interview because of a rare language.

1		<ul style="list-style-type: none"> Number of parents determined to establish CF or RF upon review by USCIS 	66 ⁹
2		<ul style="list-style-type: none"> Number of parents whose CF or RF finding remains negative upon review by USCIS 	0
3		Total number of CFI decisions issued for children by USCIS	73 ¹⁰
4		<ul style="list-style-type: none"> Number of children determined to establish CF by USCIS 	73 ¹¹
5		<ul style="list-style-type: none"> Number of children determined not to establish CF by USCIS 	0
6	Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	99 Parents¹²

This number excludes 12 cases where a parent already had an NTA from ICE or was already ordered removed by an IJ (which are included in the interview totals).

⁹ This number includes parents who received positive CF/RF determinations upon reconsideration, parents who received a Notice to Appear based on their child's positive CF determination, and parents who were placed in Section 240 proceedings due to a rare language.

¹⁰ This number is the aggregate of the number of children who received a positive CF determination, the number of children who received a negative CF determination, and children who were referred to 240 proceedings without interview because of a rare language.

¹¹ This number includes children who received a positive CF determination, children who received a Notice to Appear as a dependent on their parent's positive CF determination, and children who were placed in Section 240 proceedings due to a rare language.

¹² This number is as of March 23, 2019.

1 **D. March 8, 2019 Order Regarding Class Definition**

2
3 On March 19, 2019, the parties met and conferred regarding the Court’s
4 March 8, 2019 order expanding the class definition in this case. In that call, Plaintiffs
5 requested that Defendants provide an accounting of the members of the expanded
6 class along with any known contact information for class members. Also during that
7 call, Plaintiffs agreed, in response to a request from Defendants, that Plaintiffs will
8 inform Defendants right away if Plaintiffs become aware of any members of the
9 expanded class who has no contact with their separated child. Plaintiffs stated that
10 they are not aware of any parent in this situation.
11

12
13 Both in advance of that call, and in response to the parties’ discussions,
14 Defendants have continued to discuss internally the best way to most quickly and
15 efficiently identify members of the expanded class. Defendants intend to hold
16 another call with Plaintiffs on this issue next week, and Defendants ask that the Court
17 allow the parties to continue to meet and confer on this issue, as well as the question
18 of what, if any, relief should be provided to this expanded class and/or whether
19 briefing is necessary to resolve this issue. Defendants propose that they will submit
20 a proposal to the Court with regard to next steps on or before April 5, 2019.
21
22

23 **E. Pending Motion Regarding Released Settlement Class Members**

24 Defendants provided Plaintiffs with the requested list of individuals who
25 potentially had final orders of expedited removal on February 28, 2019. Plaintiffs
26
27
28

1 sent a follow-up inquiry regarding this list of individuals on March 23, 2019, and the
2 parties met and conferred by phone on March 27, 2019. The parties will continue to
3 meet and confer on this issue in the hopes that it can be resolved without further
4 involvement of the Court.
5

6 **F. Children Awaiting Placement.**

7 On February 12, 2019, Plaintiffs provided Defendants a list of 22 children
8 who Plaintiffs believed were awaiting placement with a sponsor after their parent
9 waived reunification. On February 16, 2019, Defendants provided Plaintiffs with
10 information about each of these 22 children. Plaintiffs have not submitted any
11 follow-up requests with regard to these children.
12
13

14 **G. Government Processes, Procedures, and Tracking, for Separations Since** 15 **June 26, 2018.**

16 *1. Data Requested by Plaintiffs*

17 Defendants have provided Plaintiffs with a report containing information
18 regarding parents and children separated since the Court's June 26, 2018
19 preliminary-injunction order. Defendants intend to provide another update to
20 Plaintiffs by Friday April 5, 2019.
21
22

23 *2. Processes and Procedures*

24 Defendants have provided a summary outline memorializing the processes,
25 procedures, tracking, and communication between the agencies that have been
26 adopted by the agencies since June 26, 2018. The outline also included an overview
27
28

1 of the options for separated parents and children to obtain information about
2 reunification options. Defendants also have reached out to representatives for the
3 Bureau of Prisons and the U.S. Marshals Service to ensure that those entities are
4 included in discussions regarding these processes and procedures.
5

6 On March 4, 2019, Plaintiffs and lawyers for the children's legal service
7 providers sent comments and questions in response to the government's proposals.
8 Defendants are reviewing those comments and questions, and will provide further
9 information to Plaintiffs and the legal service providers soon in response to their
10 inquiries. Defendants will also provide the Court with an update in the next joint
11 status report.
12
13

14 **H. Additional Information Requests.**

15 Plaintiffs have submitted numerous additional requests for information related
16 to various individual class members. Defendants have been working with Plaintiffs
17 to provide the requested information.
18

19 **II. MS. L. PLAINTIFFS' POSITION**

20 **1. Relief For Expanded Class Pursuant to This Court's March 8 Order.**

21 Plaintiffs' aim is to ensure that every separated family has the opportunity to
22 reunite. At this stage, Plaintiffs request that the government identify the families
23 whom it separated on or after July 1, 2017 whose children were released from
24 ORR before June 26, 2018. The government must provide this list to class
25 counsel, along with information in the agencies' possession as to the parent and
26
27
28

1 child’s location and contact information. Once Plaintiffs are in possession of this
2 information, they will work with advocacy partners to create a steering
3 committee—similar to the Deported Parents Steering Committee—that can use the
4 information to locate, communicate with, and counsel the families regarding their
5 reunification options. Plaintiffs are willing to work with the Court and Defendants
6 to develop ultimate timelines to identify Class members but believe the
7 government must start the process immediately given how long these children were
8 separated.

9 The parties met and conferred on March 19, 2019, and Plaintiffs informed
10 Defendants of this position.

11 **2. Centralized Database and Procedures and Standards to Govern Further**
12 **Separations**

13 The parties are meeting and conferring on how to address the continuing
14 separations. Plaintiffs have sent the government initial responses to the outline
15 included in the February 20 JSR.

16 **3. Information Regarding Parents Separated from Children After June 26**

17 Plaintiffs have requested additional information and clarification from the
18 government regarding the bases for the post-June 26 separations. These requests
19 include that the government identify the criminal history it relied upon for some
20 parents; that the government provide further details of the criminal history it
21 identified for other parents; and that the government elaborate on separations
22 explained only as being for “other” reasons. The parties are meeting and conferring
23 on this issue.

24 **4. Steering Committee Progress**

25 The Steering Committee has successfully contacted and confirmed the
26 preferences of nearly all removed parents with respect to reunifications. On March
27 8, the government reported that, as of March 4, 39 children with removed parents
28

1 remained in ORR custody.¹³ The Committee has delivered preferences for the
 2 parents of 36 of those children, and those children are awaiting placement with
 3 sponsors in accordance with their parents' submitted preferences. The
 4 circumstances for the remaining three children are as follows: (i) one child's parent
 5 is seeking to return to the United States under the Settlement Agreement, and (ii)
 6 the Steering Committee has advised the government that no parental preference
 7 will be forthcoming from the parents of the other two children due to complex and
 8 individualized family circumstances.

9 The status of efforts based on the government's March 4 list of 39 children
 10 in ORR custody with removed parents appears in the table immediately below.

11	Removed parents identified by the government to the Steering	39
12	Committee as of 3/4/2019	
13		
14	Parent's final preference has been communicated to the government	36 ¹⁴
15	• Parent has elected reunification in Country of Origin	0
16		
17	• Parent has elected to waive reunification in Country of Origin	36
18	Total number of cases that the Steering Committee has indicated to	2
19	the government should be set aside	
20	• No parental preference will be forthcoming due to complex and	2
21	individualized family circumstances	
22	Total number of cases where the parent seeks to return to the U.S.	1

23
 24 ¹³ As discussed at the October 25 Status Conference, in this Joint Status Report
 25 Plaintiffs are reporting a set of detailed numbers based only on the government's
 most recent list of children in ORR custody with removed parents.

26 ¹⁴ The Steering Committee determined that for one child it was
 27 appropriate to report the preference of a non-removed parent because the Steering
 Committee was unable to reach the removed parent.

28

1 under the Settlement Agreement and has thus not yet made an
2 election

3
4 **E. Children Whose Parents Have Submitted Preferences and Are Still Detained**

5 On February 12, the Steering Committee provided to the government
6 information regarding 22 children who had been in ORR custody for at least five
7 months following the submission of a final reunification election. The government
8 provided detailed information regarding these children on February 16, which the
9 Steering Committee appreciates. According to the government's March 4 data, 12
10 of these 22 children had then been discharged to a sponsor. The Steering
11 Committee will continue to meet and confer with the Government regarding the
12 remaining children.

13
14 **III. MMM Plaintiffs' Position**

15 As reported in the prior JSR, and per the Court's February 22, 2019 Order
16 (ECF No. 362), the Government provided *Dora* and *M.M.M.* counsel with a list of
17 class members with removal orders, which includes individuals with either
18 expedited removal orders or final removal orders. Plaintiffs' counsel have examined
19 the list to determine how many of the individuals on the list have provided signed
20 settlement forms, and have reached the preliminary conclusion (subject to further
21 meet and confer with the Government) that less than 25% of the individuals on the
22 list have submitted forms. Plaintiffs' counsel have also done preliminary research
23 to determine whether any of the individuals on the list are currently in removal
24
25
26
27
28

1 proceedings. The parties met and conferred on this issue today (March 27), and plan
2 to continue to exchange information and discuss appropriate next steps, including
3 the best way to identify class members who may be in need of settlement relief.
4

5 The parties have also agreed to a proposed amendment to the Court's
6 protective order in Ms. L to clarify and confirm that protected information can be
7 used for purposes of settlement implementation, which will be important as
8 Plaintiff's counsel continue outreach to settlement class members. A joint motion
9 will be filed shortly.
10
11

12 In addition, the parties continue to work together to implement the settlement
13 agreement approved on November 15, 2018. Counsel for Plaintiffs are providing
14 the government with signed waiver forms as they are received from class members
15 (detained and released). The parties are meeting and conferring on settlement
16 implementation issues as they arise, and are working together to resolve (among
17 other issues) the discrepancy between the number of waiver forms submitted by class
18 counsel and the number of forms reported by the Government. The parties will alert
19 the Court of any issues that require the Court's guidance.
20
21
22
23

24 DATED: March 27, 2019

Respectfully submitted,

25 /s/ Lee Gelernt

26 Lee Gelernt*

27 Judy Rabinovitz*
28

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

Anand Balakrishnan*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
jrabinovitz@aclu.org
abalakrishnan@aclu.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
T: (619) 398-4485
F: (619) 232-0036
bvakili@aclusandiego.org

Stephen B. Kang (SBN 292280)
Spencer E. Amdur (SBN 320069)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
skang@aclu.org
samdur@aclu.org

Attorneys for Petitioners-Plaintiffs
**Admitted Pro Hac Vice*

JOSEPH H. HUNT
Assistant Attorney General
SCOTT G. STEWART
Deputy Assistant Attorney General
WILLIAM C. PEACHEY

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

Director
WILLIAM C. SILVIS
Assistant Director

/s/ Sarah B. Fabian
SARAH B. FABIAN
Senior Litigation Counsel
NICOLE MURLEY
Trial Attorney
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532-4824
(202) 616-8962 (facsimile)
sarah.b.fabian@usdoj.gov

ADAM L. BRAVERMAN
United States Attorney
SAMUEL W. BETTWY
Assistant U.S. Attorney

Attorneys for Respondents-Defendants