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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 13,
13 2018, in anticipation of the telephonic status conference scheduled for September
14 14, 2018, at 1:00 p.m. PST. The parties submit this joint status report in accordance
15 with the Court's instruction.
16

17
18 **I. DEFENDANTS' POSITIONS**

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

21 Defendants have appropriately discharged an additional 36 children since the
22 last Joint Status Report, for a total of 2,217 children.
23

24 Looking ahead, there are 211 children proceeding towards reunification or
25 another appropriate discharge. Specifically, there are:
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27
28

1 • 46 children in ORR care with a parent who is in the United States and
2 presently in the class. Of the 46 children, 7 cannot be reunified at this time
3 because their parents are in other federal, state, or local custody (e.g., state
4 criminal detention). One of the 46 children cannot be reunified at this time
5 because Defendants are still reviewing the parent’s “red flag.” Defendants
6 are working to appropriately discharge the remaining 38 of 46 children.
7
8 *See* Table 1: Reunification Update.

10 • 58 children in ORR care who have parents presently departed from the
11 United States, who have cleared Processes 1 through 3 of the court-
12 approved reunification plan, and who are proceeding towards reunification
13 with their parents in their home country. *See* Table 2: Reunification of
14 Removed Class Members.

17 • 107 children in ORR care who have parents presently departed from the
18 United States, and for whom the ACLU has not yet provided notice of
19 parental intent regarding reunification (or declination of reunification).
20 Defendants are supporting the efforts of the ACLU to obtain statements of
21 intent from those parents, as described in subsequent sections of this Joint
22 Status Report. Once Defendants receive the notices from the ACLU,
23 Defendants will either reunify the children or move them into the TVPRA
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1 sponsorship process, consistent with the intent of the parent. *See* Table 2:
2 Reunification of Removed Class Members.

3 Four groups of children in ORR care are not in the reunification process
4 because Defendants have concluded that their parents are out of the class. Those
5 groups include children who Defendants determined were not separated (55
6 children), children whose parents have final red flag determinations (29 children),
7 children with parents who are presently departed from the United States and have
8 declined reunification through the ACLU (114 children), and children with parents
9 who are in the United States and have indicated an intent not to reunify (28 children).
10 As discussed below, the parties are meeting and conferring regarding the status of
11 some of the children in some of those groups.
12

13 The current reunification status for children ages 0 through 17 is further
14 summarized in Table 1 below. The data in Table 1 reflects approximate numbers
15 maintained by ORR at least as of September 10, 2018. These numbers are dynamic
16 and continue to change as more reunifications or discharges occur. Changes in
17 format from last week's reporting are explained further below.
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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:	84	2,133	2,217
<ul style="list-style-type: none"> • Children discharged by being reunified with separated parent 	72	1,913	1,985
<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) 	12	220	232
<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:	6	205	211
<ul style="list-style-type: none"> • Parent presently outside the U.S. 	5	160	165
<ul style="list-style-type: none"> • Parent presently inside the U.S. 	1	45	46
<ul style="list-style-type: none"> ○ Parent in other federal, state, or local custody 	0	7	7
<ul style="list-style-type: none"> ○ Parent red flag case review ongoing – safety and well being 	0	1	1
<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	5	50	55
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	113	114
Children in care with parent in the United States who has indicated an intent not to reunify	0	28	28

1 As discussed above, Table 1 contains three new groups of children in ORR
2 care who are no longer in the reunification process because Defendants have
3 determined that the parents are out of the class.
4

5 The first new group is “Children in care where a final determination has been
6 made they cannot be reunified because the parent is unfit or presents a danger to the
7 child.” This group consists of cases where Defendants have resolved previous “red
8 flags” to reunification and made final determinations for exclusions based on
9 criminal history, parental fitness, or child safety. See Dkt. No 82 at 17 (defining
10 class). Defendants provided Plaintiffs with a line list of those cases on September
11 7, and are meeting and conferring with Plaintiffs about the same.
12
13

14 The second new group is “Children in care with parent presently departed
15 from the United States whose intent not to reunify has been confirmed by the
16 ACLU.” This group corresponds to the cohort of children reported in “Table 2:
17 Reunification of Removed Class Members” as “Children whose parents waived
18 reunification.” For each of these children, Plaintiffs have confirmed, supported by
19 declarations under penalty of perjury, that their parents have “affirmatively,
20 knowingly, and voluntary waive[d] reunification and have the child proceed through
21 the standard TVPRA-governed ORR sponsorship process.” This group is now in
22 the TVPRA sponsorship process.
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1 The third new group is “Children in care with parent in the United States who
 2 has indicated an intent not to reunify.” Under the court-approved reunification plan,
 3 the parents of these children are not in the class. Defendants have nevertheless
 4 agreed to meet and confer with Plaintiffs about this group
 5

6 **B. Update on Removed Class Members: Defendants are working**
 7 **with Plaintiffs’ counsel to implement parental intent**

8 The current reunification status of removed class members is set forth in Table
 9 2 below. The data presented in this Table 2 reflects approximate numbers
 10 maintained by ORR as of at least September 10, 2018. These numbers are dynamic
 11 and continue to change as the reunification process moves forward.
 12

13 **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.	279	Def’s.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no “red flags” for safety or parentage	279	Def’s.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	279	Def’s.
	Children with no contact issues identified by plaintiff or defendant	279	Def’s. & Pl.’s
	Children with parent contact information provided to ACLU by Government	279	Def’s.

PROCESS 3: Determine Parental Intention for Minor	Children for whom ACLU has communicated parental intent for minor:	172	Pl's.
	<ul style="list-style-type: none"> Children whose parents waived reunification 	114	Pl's.
	<ul style="list-style-type: none"> Children whose parents chose reunification in country of origin 	58	Pl's.
	Children for whom ACLU has not yet communicated parental intent for minor:	107	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	58	Pl's.
	<ul style="list-style-type: none"> Children in ORR care with orders of voluntary departure 	19	Def's.

C. Locating Removed Parents

According to the latest weekly list provided to Defendants by Plaintiffs there are zero children currently in care with removed parents for whom Plaintiffs' data shows that contact was unsuccessful or no phone number was provided. Today, Plaintiffs informed Defendants that there are 60 parents remaining for which Plaintiffs have phone numbers, but with whom Plaintiffs have not yet made contact. They are continuing to reach out the phone numbers that they have for those parents, and hope that contact will be made. Plaintiffs have not yet provided Defendants with a list of those 60 parents.

1 Given that ORR programs have had consistent success contacting all parents
2 for whom Defendants have phone numbers (which would likely include all 60
3 parents whom Plaintiffs are still seeking to contact), when the parties met and
4 conferred on September 12, 2018, the Government suggested that the best next step
5 to facilitate communication with those remaining parents would be for the
6 Government to coordinate three-way calls between the child, parent and Steering
7 Committee. As the Declaration of Commander Jonathan White (being filed
8 concurrently herewith) explains, in the Government's experience, contact with
9 parents through the ORR shelter care centers in which their children are housed is
10 the most expeditious and effective means to establish contact with parents in home
11 country. Put simply, where parents may not always be responsive to other
12 individuals, they are responsive to the ORR shelter programs. Plaintiffs agreed that
13 this would be helpful.
14
15
16
17

18 The government also will continue to work to ensure that the most up-to-date
19 contact information for those cases is provided to Plaintiffs. Moreover, as
20 Defendants further explained to Plaintiffs when the parties spoke, the Government
21 remains open to taking additional steps when there is an indication that a phone
22 number is legitimately inoperative. Such additional steps, however, should be
23 tailored to the individual case. That is, additional steps should be geographically and
24 strategically targeted to reach the specific parents who are not reachable
25
26
27
28

1 telephonically. Plaintiffs have suggested methods that they believe should be tried if
2 necessary for these cases, and Defendants are willing to consider whether any of
3 those methods (or others) would be effective once they receive information from
4 Plaintiffs regarding individuals for whom efforts to make contact have failed.
5

6 When the parties spoke, Plaintiffs also raised questions about the coordination
7 between Defendants and foreign governments to facilitate contact and reunifications.
8 Commander White's declaration explains the coordination that occurs between the
9 United States government and foreign embassies, and between ICE attachés and the
10 agencies of foreign governments on the ground. Defendants will meet and confer
11 with Plaintiffs further on this subject as the process moved forward.
12
13

14 **D. Information Sharing**

15 Defendants are now producing to Plaintiffs on a weekly basis spreadsheets
16 that identify the individuals who make up a majority of the numbers reported by
17 Defendants each week in Sections A and B of the Joint Status Report. Defendants
18 also are producing information on a weekly basis to Plaintiffs regarding waivers of
19 reunification and reunifications of families in ICE custody. Defendants also have
20 provided over the last few weeks many additional sets of information in response to
21 inquiries from Plaintiffs about data that was previously provided.
22
23
24

25 Defendants met and conferred with Plaintiffs on September 12, 2018, and
26 Defendants are following up regarding some further inquiries made by Plaintiffs on
27
28

1 that call. However, based on that discussion Defendants believe that the data that
2 they have provided, in conjunction with the weekly production, largely meets all of
3 Plaintiffs' needs for data that they have expressed to date. The parties will continue
4 to meet and confer regarding Plaintiffs' data needs.
5

6 **II. PLAINTIFFS' POSITIONS**

7 **A. Steering Committee Progress**

8 The Steering Committee has continued to make significant progress in
9 contacting parents and confirming parent and child wishes with respect to
10 reunifications. As of Wednesday, September 12, the Committee delivered final
11 preferences for 185¹ parents to the Government. As requested by the Court,
12 Plaintiffs' counsel and the Steering Committee have also met and conferred with
13 the Government regarding on-the-ground efforts in Central America, and are
14 working together to implement ideas for those efforts, as outlined below.

15 First, we report the status of our efforts based on the Government's
16 September 7 list of 304 children in ORR custody with removed parents. With
17 respect to those children and parents, the Steering Committee's progress in
18 contacting parents and delivering preferences to the Government is as follows:
19

20 ¹ This figure is based on the Government's September 7 report of 304
21 children remaining in ORR custody. Since the creation of the Steering Committee,
22 the Government first provided lists of children in ORR care with removed parents
23 on August 7th and 10th. Both lists combined included a total number of 412
24 children in ORR care with removed parents. On Fridays since this time, the
25 Government has sent new (shorter) lists of children in ORR care with removed
26 parents. Its August 24th list included one additional child, for a total of 413. Its
27 September 7th list included a further additional child in ORR care, for a total of
28 414. As noted *infra*, the Steering Committee has delivered the final preferences for
206 parents to the Government of 414 children reported by the Government in the
aggregate to have been in ORR custody.

1		
2	Removed parents identified by the Government to Steering Committee	304 (reported to Steering Committee on 9/7/2018)
3		
4		
5	<ul style="list-style-type: none"> Parents for whom Committee has no phone number (and hasn't otherwise contacted) 	0
6		
7	Steering Committee called phone number for parent (using Government-provided number or number otherwise obtained by Steering Committee)	304
8		
9	Steering Committee spoke to parent (either by phone or in person)	237
10		
11	<ul style="list-style-type: none"> Parents successfully reached through phone contact 	230
12		
13	<ul style="list-style-type: none"> Parents found through outreach by NGOs 	7
14		
15	<ul style="list-style-type: none"> Parents called and not reached (and not reached through NGO efforts) 	679 ²
16	<ul style="list-style-type: none"> <ul style="list-style-type: none"> Phone number determined to be inoperable or ineffective 	0
17		
18	<ul style="list-style-type: none"> <ul style="list-style-type: none"> Contact efforts ongoing 	679
19		
20	Parents reached by phone or NGO outreach	237
21	<ul style="list-style-type: none"> Reunified: confirmed reunifications in home country 	1
22		

23

24 ² Since last week's Status Conference, the Government has provided additional contact information for several of these parents. The Steering

25 Committee is actively using this information to attempt to make contact with those

26 parents (recognizing that multiple call attempts may be required for each parent)

27 and is meeting and conferring with the Government about any parents for whom

28 contact has not been possible, after exhausting repeated attempts.

1	• Parent's preference with respect to reunification has been confirmed to match child's	189
2		
3	• Preliminary indication of parent's wishes with respect to reunification	23
4		
5	• Ongoing discussions with parent about reunification	24
6		
7	• Parent's final preference has been communicated to government	185
8		

9 As discussed further below, the Steering Committee is meeting and
10 conferring with the government to clarify the bases for which children and parents
11 have been removed from the Government's operative list, and has continued to
12 reach out to parents who were on the Government's previous lists, but who have
13 been omitted Government's current list.³ The Government has provided
14 information that has clarified the status of a number of families, and we continue to
15 work with the Government and anticipate receiving additional information from
16 the Government relating to this issue.

17 Where the Steering Committee has identified parents and children who
18 remain separated and wish to be reunified, it has reported those family's decisions
19 to the Government, irrespective of whether the children appear on the
20 Government's most recent list. As of Wednesday, September 12, the Steering
21 Committee had reported on the preferences of an additional 21 families who were
22 on the Government's earlier lists, but are not on the September 7 list. The Steering
23 Committee's progress for this larger group of 414 is reported at the end of the
24 Steering Committee Report, so that the Court may compare progress in the past

25
26 ³ As noted above, the total number of children in ORR care with removed
27 parents who at some point have been identified by the Government to the Steering
28 Committee is 414.

1 week using the same baseline group.

2 **B. Effectuation of the Court-Approved Plan**

3 This week, the Steering Committee raised concerns with the Government
4 regarding its compliance with the Court-approved plan (the “Plan”). (ECF No.
5 189-1.) As set forth in the Plan, where a Notice to Appear (“NTA”) has been filed
6 in a child’s immigration proceedings and the Steering Committee has conveyed to
7 the Government a parent’s desire to be reunified with that child, DHS is required to
8 “move to dismiss proceedings without prejudice, noting in such motion that it is
9 based on *Ms. L* reunification” and the reunification should proceed accordingly in
10 the Country of Origin. (*Id.* at 6.)

11 The Steering Committee has learned of several instances where the Steering
12 Committee has submitted a declaration attesting to a parent’s wishes for
13 reunification but the child’s attorney was advised by DHS officials that it would
14 not dismiss the case (as called for in the Reunification Plan) and that a child must
15 instead request a Voluntary Departure order, which, among other things, has the
16 practical effect of delaying reunification. The Government has indicated, in
17 response, that it had been finalizing certain “documentation necessary for children
18 to be returned under the Plan” and that Voluntary Departure orders were being
19 pursued in the interim but that the documentation in question has now been
20 finalized and all future proceedings should occur with dismissals, as required under
21 the Plan. Plaintiffs therefore request that Voluntary Departure orders that were
22 previously obtained before this documentation was finalized be converted into
23 dismissals, as they should have been once the Reunification Plan went into effect,
24 and that the Government expeditiously move to terminate all proceedings that are
25 pending (where a Voluntary Departure order has not yet been obtained).

26 The Steering Committee has also brought to the Government’s attention
27 certain cases of very young children and children in distress that it asks be treated
28

1 with special care and expediency, and we expect to meet and confer with the
2 Government to ensure that these cases are appropriately addressed.

3 **C. On-the-Ground Efforts**

4 At last week's Status Conference, the Court asked the Steering Committee to
5 develop suggestions for steps the Government can take to assist with on-the-
6 ground efforts to locate and communicate with parents. The Steering Committee
7 has since met and conferred with the Government about the following ways in
8 which the Government may be able to assist with these efforts:

9 • Outreach Support

- 10 ○ The Steering Committee has suggested that Government place notices
11 in the countries of origin as outlined in Process 2 of the Plan,
12 specifically radio announcements, billboards, and notices in local
13 churches.
- 14 ○ The Steering Committee believes that some parents may not be
15 answering calls that appear to originate from the U.S. out of fear. Thus,
16 the Steering Committee requested that the Government procure and
17 provide local Guatemalan and Honduran telephone numbers/telephones
18 that the Steering Committee can use to contact parents.
- 19 ○ The Government has offered to coordinate three-way calls between the
20 child, parent and Steering Committee. As noted below, the Steering
21 Committee agrees that this would be helpful.

22 • Logistical Support

- 23 ○ To help address the innumerable logistical challenges on the ground,
24 the Steering Committee asks that the Government designate an
25 Ombudsman to work out of the U.S. Embassies/Consulates in
26 Guatemala and Honduras to assist with efforts to locate parents and
27 repatriate their children. This person would also be tasked with being
28

1 a point person for parents on logistical issues, such as ensuring
2 documents are in order, that parents are aware of the timing of
3 reunification, and coordinating travel by parents and children to the
4 place of reunification. Many parents do not have the means of making
5 this journey on their own. Moreover, because it may often take the
6 parents days to reach the location of the child's drop-off, it is critical
7 that the parents be given sufficient advance notice that their child is on
8 his or her way home. This coordination work is currently being done
9 largely by non-profits or by the governments of Guatemala and
10 Honduras. Non-profits are also operating at an information
11 disadvantage, because they do not receive advance notice of when
12 children are to be repatriated.

13 • Travel Support:

- 14 ○ The Steering Committee has also inquired about the possibility of the
15 Government making available helicopter and car transportation for
16 investigators and advocates on the ground to facilitate travel to locate
17 and meet with parents in remote locations.

18 **D. Outstanding Data-Related Issues for the Steering Committee**

19 The Steering Committee continues to meet and confer with the Government
20 regarding data requested from the Government in order to ensure that all parents
21 are accounted for and reunified with their children imminently, if that is the
22 parent's wish.

23 The parties have made progress regarding a number of issues previously
24 reported to the Court, and the Steering Committee continues to hope that these
25 issues will be resolved informally.

26 **2. Removals from Government Lists**

27 The Steering Committee continues to meet and confer with the Government
28

1 regarding information explaining why parents and children have been removed
 2 from or added to the lists of class members or children in ORR custody previously
 3 produced by the Government (in a desire to understand changes made to the
 4 Government's "Starting Population" documented in each week's Joint Status
 5 Report). The Parties have made progress with respect to these data discrepancies
 6 and the Steering Committee hopes the remaining issues can be resolved without
 7 Court intervention.

8 **3. Inoperative/Ineffective/Lack of Phone Numbers**

9 The Steering Committee continues to meet and confer with the Government
 10 over the apparent discrepancy in the Steering Committee's inability to contact
 11 certain parents due to inoperative or ineffective phone numbers, as compared to the
 12 Government's reported ability to contact these same parents. The Government has
 13 provided additional information in the form of new phone numbers, which has
 14 allowed the Steering Committee to make progress in contacting some parents. For
 15 parents the Steering Committee is still unable to reach, the Parties have agreed that
 16 the Steering Committee will identify such parents to the Government, and the
 17 Government will work to facilitate three-way calls among the child, parent and the
 18 Steering Committee.

19 **Steering Committee Progress on Total Reported Parents/Children** 20 **(414)**

21 Removed parents identified by the Government to Steering Committee (8/7/28, 8/10/18 and 8/24/18 lists)	414
22 • Parents for whom Committee has no phone 23 number (and hasn't otherwise contacted)	19
24 Steering Committee called phone number for parent 25 (using Government-provided number or number 26 otherwise obtained by Steering Committee)	395

27

28

1	Steering Committee spoke to parent (either by phone or in person)	302
2		
3	• Parents called and successfully reached	289
4	• Parents found through outreach by NGOs	13
5	• Parents called and not reached (and not reached through NGO efforts)	93
6		
7	○ Phone number inoperable or ineffective	9
8	○ Contact efforts ongoing	84
9		
10	Parents reached by phone or NGO outreach	302
11	Reunified: confirmed reunifications in home country	21
12	Parent's preference with respect to reunification has been confirmed to match child's	213
13		
14	Preliminary indication of parent's wishes with respect to reunification	31
15		
16	Ongoing discussions with parent about reunification	37
17	Parent's final preference has been communicated to government	206
18		

19 **E. Information Sharing Regarding Government's JSR Numbers**

20 Plaintiffs have now received A#s identifying the cases described in the
 21 Government's September 6 status report for most categories that the Government
 22 reports. The parties have met and conferred on remaining issues, including timely
 23 updates of those A#s underlying the Government's numbers reported in weekly
 24 status reports, and Plaintiffs' request for updated data to show which Class
 25 members are subject to final removal orders. Plaintiffs will continue to meet and
 26 confer with the Government on these issues.

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1
2 DATED: September 13, 2018

Respectfully submitted,

3 /s/ Lee Gelernt

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