

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3  
4 MS. L, et al.

5 Petitioners-Plaintiffs,

6 vs.

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

9 Respondents-Defendants.

Case No. 18-cv-428 DMS MDD

Hon. Dana M. Sabraw

10  
11 **DECLARATION OF JONATHAN WHITE**

12 I, Jonathan White, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,  
13 that my testimony below is true and correct:

14 1. I am a Commander with the United States Public Health Service  
15 Commissioned Corps, and have served at the Department of Health and Human Services  
16 (HHS) in three successive presidential administrations. I am presently assigned to the  
17 Office of the Assistant Secretary for Preparedness and Response (ASPR), and previously  
18 served as the Deputy Director of the Office of Refugee Resettlement (ORR).

19 2. I am HHS' agency lead in the Unaccompanied Alien Children (UAC or  
20 UACs) Reunification Coordination Group for removed parents with minor children in  
21 ORR care. *See* ECF No. 182.

22 3. The statements in this declaration are based on my personal knowledge,  
23 information acquired by me in the course of performing my official duties, information  
24 supplied to me by federal government employees, and government records.

25 4. I am providing this declaration for use in *Ms. L. v. ICE*, No. 18-cv-428 (C.D.  
26 Cal.). Specifically, I am providing it to support HHS compliance with the Court's order  
27 that HHS file a response to the HHS OIG report entitled "Separated Children Placed in  
28 Office of Refugee Resettlement Care," OEI-BL-18-00511 (January 2019).

1           5.     The OIG report includes a response from Lynn Johnson, the Assistant  
2 Secretary for Children and Families for HHS. Assistant Secretary Johnson oversees the  
3 Administration for Children and Families (ACF). ORR is an ACF program office.

4           6.     I reviewed Assistant Secretary Johnson's response to the OIG report before  
5 she submitted it. I concurred generally with her response at that time, and still do.

6           7.     Given that HHS has already responded formally to the OIG report through  
7 Assistant Secretary Johnson, my testimony below seeks to answer questions regarding the  
8 OIG report that class counsel noted for the Court.

9           **A. HHS' reporting in July 2018 of possible children of potential class members in**  
10 **ORR care was based on good-faith, reasonable programmatic judgment**

11           8.     This Court granted the Plaintiffs' Motions for Class Certification and  
12 Preliminary Injunction on June 26, 2018. *See* ECF Nos. 82 and 83.

13           9.     The Court defined the class as "All adult parents who enter the United States  
14 at or between designated ports of entry who (1) have been, are, or will be detained in  
15 immigration custody by the DHS, and (2) have a minor child *who is or will be separated*  
16 *from them by DHS and detained in ORR custody, ORR foster care, or DHS custody,*  
17 *absent a determination that the parent is unfit or presents a danger to the child."* ECF No.  
18 82 (emphasis added). The Court added that "the class does not include migrant parents  
19 with criminal history or communicable disease, or those who are in the interior of the  
20 United States or subject to the EO." *Id.*

21           10.    To comply with the Court's orders, HHS undertook a significant new effort  
22 to rapidly identify children in ORR care who had been separated from *Ms. L.* class  
23 members and reunify them. As part of that effort, HHS first sought to identify every  
24 *possible* child of a *Ms. L.* class member in ORR care as of June 26, 2018.

25           11.    As OIG correctly observed, the effort was challenging because the data that  
26 were available for use in identifying possible children of class members were kept by  
27 multiple government agencies in different systems. Some of the data were aggregated.  
28 Some were not. Indeed, some of the most critical data were individualized.

1           12. By way of example, HHS knew and knows the name, location, and clinical  
2 status of each child in ORR care and custody at all times because ORR maintains that data  
3 in the individualized case management record for the child in the ORR online case  
4 management portal. The case management records on the ORR portal include data about  
5 each child that the U.S. Department of Homeland Security (DHS) provided when DHS  
6 transferred the child to ORR care. Historically, certain DHS components provided any  
7 anecdotal information about their separation of children to ORR on a discretionary, *ad hoc*  
8 basis by transmitting the information into the child's record on the ORR portal. For  
9 instance, certain Customs and Border Patrol (CBP) stations created notes in the records of  
10 children on the ORR Portal, using terms such as "separation" in order to identify  
11 separation cases. Sometimes, but not always, such CBP notes described the basis for  
12 separations, such as criminality or health problems. When DHS provided such  
13 information, ORR generally used it for ordinary program operations, such as identifying  
14 and vetting the parents or their close relatives as potential sponsors for the child under the  
15 Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and consulting and  
16 involving the parents in case management decisions for the child.

17           13. The ORR portal was not originally designed for aggregated tracking of  
18 separated children in ORR care. Instead, it was designed to enable ORR to care for  
19 children by conducting case management activities for the children. Such activities  
20 include: locating children in care; accessing records documenting the status of releases;  
21 accessing records and notes relating to specific services and care plans for children;  
22 creating and assessing case reviews for each child; and creating and assessing reports  
23 regarding health conditions, acts of aggression or violence, or other significant incidents.  
24 Historically, the ORR portal did not have the functionality to generate lists of separated  
25 children based on the information (if any) transmitted by DHS. To my knowledge, DHS  
26 did not track separations of children in an aggregated manner either. So when the Ms. L.  
27 Court issued its orders on June 26, 2018, there was not an aggregated list of the children  
28 who had been separated by DHS and were then in ORR care.

1 14. Another complicating factor was that class membership is not static. It can  
2 change due to transfers of putative parents from Immigration and Customs Enforcement  
3 (ICE) to the Bureau of Prisons (BOP) (or vice-versa). It can also change based on new  
4 information related to the health, social, or criminal history of the parent.

5 15. To overcome these challenges—and exhaust all reasonable efforts to comply  
6 with the Court’s orders—HHS conducted a rigorous, forensic data review to identify any  
7 and all indicators of potential separation for every child in ORR care as of June 26, 2018.  
8 The review encompassed the following: more than 60 sets of aggregated data regarding  
9 potentially separated children provided by DHS; ORR case management records for *every*  
10 child in ORR care as of June 26, 2018; and sworn testimony from each ORR grantee on  
11 the separated children at the grantee’s shelters as of June 26, 2018.

12 16. HHS initially identified approximately 3,600 children in ORR care as of June  
13 26, 2018 for whom there was at least some information, in any data source reviewed, that  
14 indicated potential separation from a parent. On July 10, 2018, following further data  
15 analysis, ORR certified internally that the number of possible children of potential class  
16 members was 2,654—comprised of 103 children aged zero to four, and 2,551 children  
17 aged five to seventeen. The 2,551 children aged five to seventeen were reported to the  
18 Court in the Joint Status Report filed on July 19, 2018. *See* ECF No. 124.

19 17. Class counsel points out that the OIG report states that “even as ORR  
20 certified this list, some ASPR staff believed that between 50 and 100 additional children  
21 should have been included.” My best recollection is that some ASPR staff believed that  
22 the available data supported the inclusion of additional children in the count of children  
23 that HHS reported to the Court in July 2018. The data, however, were sometimes  
24 ambiguous and open to different interpretations. ORR’s decision to include some children  
25 but not others in the count was a good-faith, reasonable exercise of programmatic  
26 judgment under the circumstances (which included the need to begin quickly reunifying  
27 thousands of children nationwide within the Court’s deadlines). Indeed, that is why the  
28 leadership of ASPR (including me) accepted ORR’s internal certification of the count.

1 The professional debate about the count within HHS was consistent with a rigorous  
2 forensic data analysis and robust administrative process.

3 18. Moreover, any lingering internal debates about the count of possible children  
4 of potential class members from July 2018 was fully resolved by subsequent reviews of  
5 the data, including new data that ORR received after July 10, 2018. Those subsequent  
6 reviews are discussed below.

7 **B. HHS updated its reporting of possible children of potential class members**  
8 **after considering new information and re-categorizing 162 children**

9 19. After counting 2,654 possible children of potential class members in July  
10 2018, HHS amassed new case management information regarding children who were in  
11 ORR care as of June 26, 2018. It collected some of the new information in the ordinary  
12 course of ORR program operations (*e.g.*, case management at ORR shelters). In addition,  
13 HHS received new information through DHS, class counsel and other plaintiffs' attorneys,  
14 and other reports (*e.g.*, the September 2018 report issued by the DHS OIG).

15 20. As OIG noted, HHS has twice updated its reporting of possible children of  
16 potential class members after considering new information. These two re-categorizations  
17 of children were for only the limited purpose of litigation reporting to the Court. It is  
18 critical to understand that HHS knew the identity, location, and clinical condition of all re-  
19 categorized children at all times during their stays in ORR shelters. HHS did not "lose"  
20 any of them. The OIG found no evidence to the contrary.

21 21. First, as explained in the Declaration of Jallyn Sualog (attached hereto as  
22 Exhibit 1), HHS conducted a data analysis to determine whether any children from its  
23 initial list of approximately 3,600 children who were not included in the count of 2,654  
24 children—and who were still in ORR care as of October 1, 2018—should be re-  
25 categorized as possible children of potential class members.

26 22. There was a delta of approximately 946 children between the initial list of  
27 approximately 3,600 children and the count of 2,654. Of those approximately 946  
28 children, 176 children remained in ORR care as of October 1, 2018. HHS reviewed its



1 updated data for all 176 children and determined that it should re-categorize 13 (7.39%) as  
2 possible children of potential class members. My understanding from the ORR staff is  
3 that many of re-categorizations resulted from ORR grantees changing their prior  
4 conclusions after determining through the case management process that the children were  
5 likely separated. HHS reported the re-categorization of the 13 children to the Court in the  
6 October 25, 2018 Joint Status Report. *See* ECF No. 291.

7 23. Second, HHS conducted a data analysis to determine whether children from  
8 its initial list of approximately 3,600 children who were not included in the count of 2,654  
9 children—and who were discharged to sponsors before October 25, 2018—should be re-  
10 categorized as possible children of potential class members. Based on that analysis, HHS  
11 re-categorized 149 discharged children as possible children of potential class members.  
12 My understanding from the ORR staff is that some re-categorizations occurred after ORR  
13 grantees changed their conclusions and found, in hindsight, that the children were likely  
14 separated. In some cases, the re-categorizations occurred after DHS provided new  
15 information to HHS. HHS reported the 149 re-categorizations to the Court on December  
16 12, 2018. *See* ECF No. 334.

17 24. One hundred and thirty one (131) of the 149 re-categorized children  
18 (87.92%) were discharged to sponsors on or between June 26 and July 10, 2018, when  
19 HHS was still determining the initial count of possible children of potential class members  
20 (2,654), and during which time the inter-agency reunification plans that provided detailed  
21 frameworks for compliance with the Court's orders were evolving.

22 25. Eleven (11) of the 149 children had parents who were excluded from the *Ms.*  
23 *L.* class due to criminal history. HHS reported to the Court that one hundred and twenty  
24 three (123) of the remaining 137 children (89.78%) were discharged by ORR to a parent  
25 or a close relative (*e.g.*, aunt or uncle). Returning the child to the family system is a  
26 positive child welfare outcome, consistent with the best interests of the child, as a parent  
27 or close relative vetted to the TVPRA standard by ORR has been determined to be capable  
28

1 of providing for the needs of the child and is in a strong position to facilitate contact with  
2 other members of the family system (including any separated parent).

3 26. Altogether, HHS concluded that a total of 162 children who were in ORR  
4 care as of June 26, 2018, but whom HHS did not initially count as possible children of  
5 potential class members in July 2018, should be re-categorized and added to the count of  
6 possible children of potential class members. This increased the total to 2,816 possible  
7 children of potential class members, which is a complete and accurate reporting of those  
8 who were in ORR care as of June 26, 2018. The reporting is complete and accurate  
9 because HHS has now reviewed both original and new data for children who were in ORR  
10 care as of June 26, 2018.

11 **C. HHS has not tried to identify separated children who were discharged by ORR**  
12 **before June 26, 2018 for good reasons**

13 27. Class counsel posits that OIG concluded that “it is likely that the Government  
14 separated thousands more families than it previously reported.” Class counsel seems to  
15 suggest that HHS’ reporting to the Court is inaccurate.

16 28. The OIG states in its report only that “the total number of children separated  
17 from a parent or guardian by immigration authorities is unknown,” and “thousands of  
18 children may have been separated during an influx that began in 2017, before the  
19 accounting required by the Court.”

20 29. HHS has not tried to determine the “total number of children separated from  
21 a parent or guardian by immigration authorities,” much less reported such a total to the  
22 Court. HHS has reported the possible children of potential class members to the Court,  
23 and the class (as I understand it) includes only certain parents of separated children in  
24 ORR care on or after June 26, 2018. The parents of separated children who ORR  
25 discharged before June 26, 2018 are not members of the *Ms. L.* class.

26 30. In my view, the OIG’s statements do not bear on the accuracy of HHS’  
27 reporting because the parents of children separated by DHS and discharged by ORR  
28 “before the accounting required by the Court” are not *Ms. L.* class members.

1 31. I have reviewed Jallyn Sualog's attached declaration regarding the burden  
2 associated with trying to identify the separated children who ORR discharged before June  
3 26, 2018. I concur generally with her testimony.

4 32. It also bears noting that the identification of separated children in ORR care  
5 as of June 26 required a time-intensive and coordinated effort within HHS and with DHS.  
6 It was operationally feasible because the children were still in ORR custody, and ORR  
7 grantees were able to talk with them about separation and share the information with  
8 HHS. HHS has no statutory authority over discharged children, much less routine contact  
9 with all of them. ORR grantees would face significant hurdles if they tried to collect  
10 information from separated children who were discharged before June 26, 2018.

11 33. Regardless of how many separated children ORR discharged before June 26,  
12 2018, ORR would have discharged each of them within the framework established by the  
13 Homeland Security Act of 2002 and the TVPRA. That framework protects child welfare  
14 by: prioritizing releases to closely related sponsors; requiring safety and suitability  
15 assessments of sponsors, including criminal and sexual abuse background checks; and  
16 providing for home studies.

17 34. My understanding from the ORR staff is that in FY 2018, 86% of children  
18 discharged were released to an individual sponsor. Of those, ORR discharged 42% to  
19 parents, 47% to close relatives, and 11% to more distant relatives or family friends.  
20 Similarly, in FY 2019, 89% of children discharged were released to an individual sponsor.  
21 Of those sponsors, 46% were parents, 45% were close relatives, and 9% were more distant  
22 relatives or family friends. These statistics suggest that if a separated child who ORR  
23 discharged before June 26, 2018 remains in the United States then he or she is probably  
24 with their family.

25 35. HHS has no statutory authority to resume custody over a discharged child  
26 absent a referral from another federal government agency. Typically, such referrals come  
27 from DHS. To reunify a discharged child with their separated parent, HHS would have to  
28 obtain the consent of the sponsor or the discharged child (or both), or intervene over their

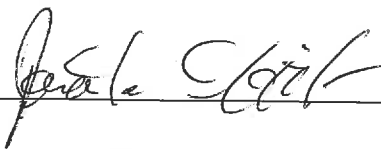


1 objections. A forcible intervention would likely have to involve DHS because neither  
2 ACF nor ASPR is a law enforcement agency, and both lack the field personnel required to  
3 separate the child from the sponsor, reassume custody of the child, and reunify the child  
4 with their separated parent.

5 36. Moreover, my professional opinion as a social worker, and based on my  
6 years of experience working with the UAC population, is that entering households to  
7 remove previously-separated minors, bring them back into ORR custody, and reunify  
8 them with separated parents would present grave child welfare concerns. It would  
9 destabilize the permanency of their existing home environment, and could be traumatic to  
10 the children. The option more consistent with the best interest of the child would be to  
11 allow the child to remain with their sponsor, and focus instead on the ongoing work of  
12 reunifying parents with separated children presently in ORR care.

13 37. I reserve the right to amend my opinions based on any new information that  
14 becomes known to me in the future.

15  
16 Executed on February 1, 2019.

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20 Jonathan White  
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