

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*

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 MS. L, et al.,

Case No. 18cv428 DMS MDD

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5 Petitioners-Plaintiffs,

**JOINT STATUS REPORT**

6 vs.

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

10 Respondents-Defendants.  
11

12 The Court ordered the parties to file a joint status report on November 8, 2018,  
13 in anticipation of the status conference scheduled at 1:00pm PST on November 9,  
14 2018. The parties submit this joint status report in accordance with the Court's  
15 instruction.  
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17  
18 **I. DEFENDANTS' POSITIONS**

19 **A. Update on Reunifications**

20 Defendants have appropriately discharged an additional 54 children since the  
21 October 25, 2018 Joint Status Report, for a total of 2,404 children.  
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23 Looking ahead, there are 25 children proceeding towards reunification or  
24 another appropriate discharge. Specifically, there are:  
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1 • 7 children in ORR care with a parent who is in the United States and  
2 presently in class. This total of 7 children includes 2 children who were  
3 previously reported as having parents outside the United States, but whom  
4 the ACLU identified as having parents who recently returned to the United  
5 States.<sup>1</sup> Of the 7 children, 1 cannot be reunified at this time because their  
6 parent is in other federal, state, or local custody (e.g., state criminal  
7 detention). Defendants are working to appropriately discharge the  
8 remaining 6 of 7 children, and to identify any possible barriers to their  
9 discharge, meeting and conferring with Plaintiffs where appropriate for  
10 resolution. *See* Table 1: Reunification Update.

14 • 7 children in ORR care who have parents presently departed from the  
15 United States, who have cleared Processes 1 through 3 of the Court  
16 approved reunification plan, and who are proceeding towards reunification  
17 with their parents in their home country. *See* Table 2: Reunification of  
18 Removed Class Members.

21 ○ Of these 7 children, 1 has a voluntary departure order. The  
22 government is actively arranging travel to that child's home country.

24 Another 4 of the 7 children have immigration proceedings that have

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27 <sup>1</sup> These children have concurrently been removed from reporting on children of  
28 removed class members in Table 2.

1           been dismissed or canceled by the government. The government is  
2           actively arranging travel to their home countries as well. *See* Table  
3           2: Reunification of Removed Class Members.

- 4           • 11 children in ORR care who have parents presently departed from the  
5           United States, and for whom the ACLU has not yet provided notice of  
6           parental intent regarding reunification (or declination of reunification).  
7           Defendants are supporting the efforts of the ACLU to obtain statements of  
8           intent from those parents. Once Defendants receive the notices from the  
9           ACLU, Defendants will either reunify the children or move them into the  
10          TVPRAs sponsorship process, consistent with the intent of the parent. For  
11          2 of the 11 children, the ACLU has been in contact with their parents for  
12          more than 28 days without providing Defendants with notice of parental  
13          intent. *See* Table 2: Reunification of Removed Class Members.

14           The data in Table 1 includes the additional re-categorized children referenced  
15           in the October 25, 2018 Joint Status Report, for a total of 2,667 children.<sup>2</sup> Table 1  
16           also includes a new category of children with parents presently departed from the  
17           United States. This new category is included at the request of the Steering

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24           <sup>2</sup> Defendants determined after filing the October 25, 2018 Joint Status Report that  
25           one child included in the 14 re-categorized children was already included in the  
26           children originally identified as possible children of potential class members.  
27           Accordingly, the total number of possible children of potential class members is  
28           2,667: 2,654 children originally identified plus 13 children re-categorized.

1 Committee, to identify 3 children whose cases the Steering Committee has advised  
2 will be delayed due to unique circumstances.

3 The current reunification status for children ages 0 through 17 is further  
4 summarized in Table 1 below. The data in Table 1 reflects approximate numbers  
5 maintained by ORR at least as of November 6, 2018. These numbers are dynamic  
6 and continue to change as more reunifications or discharges occur.  
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9 **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	103	2,564	2,667
<b><u>Discharged Children</u></b>			
Total children discharged from ORR care:	96	2,362	2,458
<ul style="list-style-type: none"> <li>• Children discharged by being reunified with separated parent</li> </ul>	78	2,032	2,115
<ul style="list-style-type: none"> <li>• 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)</li> </ul>	18	330	343
<b><u>Children in ORR Care, Parent in Class</u></b>			
Children in care where the parent is not eligible for reunification <u>or</u> is not available for discharge at this time:	0	25	25
<ul style="list-style-type: none"> <li>• Parent presently outside the U.S.</li> </ul>	0	18	18
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>○ Steering Committee has advised that resolution will be delayed</li> </ul> </li> </ul>	0	3	3
<ul style="list-style-type: none"> <li>• Parent presently inside the U.S.</li> </ul>	0	7	7

1	○ Parent in other federal, state, or local custody	0	1	1
2	○ Parent red flag case review ongoing – safety and well being	0	0	0
3	<b><u>Children in ORR Care, Parent out of Class</u></b>			
4	Children in care where further review shows they were not separated from parents by DHS	3	35	38
5	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	4	26	30
6	Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	99	99
7	Children in care with parent in the United States who has indicated an intent not to reunify	0	17	17
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#### **B. Update on Removed Class Members**

12 The current reunification status of removed class members is set forth in Table  
13 2 below. The data in Table 2 includes the additional re-categorized children  
14 referenced in the October 25, 2018 Joint Status Report. The data presented in this  
15 Table 2 reflects approximate numbers maintained by ORR as of at least November  
16 6, 2018. These numbers are dynamic and continue to change as the reunification  
17 process moves forward.  
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**Table 2: Reunification of Removed Class Members**

<b><u>REUNIFICATION PROCESS</u></b>	<b><u>REPORTING METRIC</u></b>	<b><u>NO.</u></b>	<b><u>REPORTING PARTY</u></b>
<b>STARTING POPULATION</b>	Children in ORR care with parents presently departed from the U.S.	117	Def's.
<b>PROCESS 1: Identify &amp; Resolve Safety/Parentage Concerns</b>	Children with no "red flags" for safety or parentage	117	Def's.
<b>PROCESS 2: Establish Contact with Parents in Country of Origin</b>	Children with parent contact information identified	117	Def's.
	Children with no contact issues identified by plaintiff or defendant	117	Def's. & Pl.'s
	Children with parent contact information provided to ACLU by Government	117	Def's.
<b>PROCESS 3: Determine Parental Intention for Minor</b>	Children for whom ACLU has communicated parental intent for minor:	106	Pl's.
	<ul style="list-style-type: none"> <li>Children whose parents waived reunification</li> </ul>	99	Pl's.
	<ul style="list-style-type: none"> <li>Children whose parents chose reunification in country of origin</li> </ul>	7	Pl's.
	Children for whom ACLU has not yet communicated parental intent for minor:	11	Pl's.
	<ul style="list-style-type: none"> <li>Children with voluntary departure orders awaiting execution</li> </ul>	0	Def's.
	<ul style="list-style-type: none"> <li>Children with parental intent to waive reunification documented by ORR</li> </ul>	9	Def's.

	<ul style="list-style-type: none"> <li>Children whose parents ACLU has been in contact with for 28 or more days without intent determined</li> </ul>	2	Pl's.
<b>PROCESS 4: Resolve Immigration Status of Minors to Allow Reunification</b>	Total children cleared Processes 1-3 with confirmed intent for reunification in country of origin	7	Pl's.
	<ul style="list-style-type: none"> <li>Children in ORR care with orders of voluntary departure</li> </ul>	1	Def's.
	<ul style="list-style-type: none"> <li>Children in ORR care w/o orders of voluntary departure</li> </ul>	6	Def's.
	<ul style="list-style-type: none"> <li>Children in ORR care whose immigration cases were dismissed</li> </ul>	4	Def's.

**C. Update Regarding Government's Implementation of Agreement**

- Number of orientation notices given: 70 families = 137 Ms.L/MMM individual class members
- Number of class members who received orientation: 70 families = 137 Ms.L/MMM individual class members
- Number of parents who received interviews: 62
- Number of CFI/RFI decisions issued by USCIS for parents: 57
- Number of children who received CFIs: 58
- Number of CF decisions issued by USCIS for children: 63

**D. Update Regarding Travel Arrangements**

Defendants continue to coordinate with the ACLU Steering Committee regarding travel information for children being reunified with their parents abroad. ICE and HHS are coordinating with DOJ to provide the Steering Committee with the most up-to-date information available in a timely manner. Defendants will



1 continue to work to provide timely travel information and continue to invite  
2 Plaintiffs' counsel to confer with them about any concerns.

### 3 **E. Information Sharing and Reporting on Removed Parents**

4 The parties continue to work collaboratively on the sharing of data and  
5 information requested by Plaintiffs.  
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## 7 **II. MS. L. PLAINTIFFS' POSITION**

### 8 **A. Steering Committee Progress**

9 The Steering Committee has successfully contacted and confirmed the preferences  
10 of the vast majority of removed parents with respect to reunifications. The  
11 Government reported that, as of November 2, 145 children with removed parents  
12 remained in ORR custody. The Committee has delivered preferences for the  
13 parents of 128<sup>3</sup> of those children, and those children are awaiting either  
14 reunification with their parents or placement with sponsors in accordance with  
15 their parent's submitted preferences. The status of the final 17 remaining cases are  
16 specified below, in Part I.B.  
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20 <sup>3</sup> As discussed at the October 25 status conference, in this Joint Status Report Plaintiffs  
21 are reporting a set of detailed numbers based only on the Government's most recent list  
22 of children in ORR custody with removed parents. Previously, Plaintiffs also reported a  
23 set of numbers based on the Government's original lists of children in ORR custody with  
24 removed parents (originally numbering 414 children, and now 420, including those  
25 children of parents recently "re-categorized" as potential class members as explained by  
26 the Government in the October 25 Joint Status Report). Plaintiffs continue to work to  
27 confirm that the placement of the children who are no longer in ORR custody conforms  
28 with the deported parents' wishes, and reserve the right to challenge and/or to seek more  
information regarding these placements. Using this 420 number, the Steering Committee  
has reported the preferences of a total of 298 parents who have been removed from the  
United States following separation from their children.

1	Removed parents identified by the Government to the Steering	145
2	Committee by 11/3/18	
3	• Removed parents identified by the Government by 10/20/18	140
4	• Removed parents newly identified by the Government on	5
5	10/26/18	
6		
7	Steering Committee called phone number for parent (using a	145
8	Government-provided number or a number otherwise obtained by the	
9	Steering Committee)	
10	• Parents successfully reached (by phone or through NGO	141
11	efforts)	
12	• Parents not reached (by phone or through NGO efforts)	4
13	○ Contact efforts ongoing	3
14	○ Cases that the Steering Committee and Government has	1
15	agreed should be set aside – see Section B below	
16		
17	Parents successfully reached (by phone or through NGO efforts)	141
18	• Parent’s final preference has been communicated to the	128
19	Government	
20	○ Parent has elected reunification in Country of Origin	8
21	○ Parent has elected to waive reunification in Country of	120
22	Origin	
23	• Parent’s final preference has not yet been communicated to the	9
24	Government, but the Steering Committee is actively seeking the	
25	parent’s preference	
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|---|---|
| <ul style="list-style-type: none"> <li>• Cases that the Steering Committee and Government has agreed should be set aside – see Section B below</li> </ul> | 4 |
|---|---|

**B. The 17 Remaining Cases**

There are 17 parents, of the 145 parents in the Government’s November 2 list of children in ORR custody with removed parents, for whom the Steering Committee has not yet submitted to the Government a final reunification preference.

- Five are parents who were only recently identified to the Steering Committee on October 26. Efforts to obtain those parents’ preferences are underway and proceeding in the normal course. The Steering Committee has already been in touch with four of these five parents, and expects to be able to return preferences in the normal course.
- Five are parents whom the Parties have agreed should be set aside because they involve complex and individualized circumstances that necessitate treatment outside of the Plan’s usual process.<sup>4</sup>
- Of the remaining seven cases, this group can be broken down as follows:
  - One is a parent who speaks a rare, indigenous language. After much effort, the Steering Committee finally located a translator who speaks this language and has obtained a preference from that parent. We are in the process of confirming that preference with the child’s counsel, and expect to return a preference shortly.
  - One is a father who we have been unable to reach, although we have been able to reach the child’s mother and the child’s attorney. We are

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<sup>4</sup> One of these is a parent with whom the Steering Committee has never been able to speak; the other 4 are parents whom the Steering Committee has reached.

1 currently discussing with the Government potential resolutions of this  
2 case.

- 3 ○ One is a parent who, after much effort, we were first able to speak  
4 with a few days ago. He and his child are currently considering their  
5 options, and we expect to be able to report a preference within a few  
6 days.
- 7 ○ Two are parents who had left their country of origin and we were  
8 unable to locate as a result. As a result of repeated searches of  
9 government databases by the Committee, we determined recently that  
10 both of these parents have returned to the United States and are in  
11 Government custody. We are now in contact with these parents and  
12 expect to discuss their options with them and the Government within  
13 the next week.
- 14 ○ One is a parent with whom we had an initial contact, but then were  
15 unable to reach for many months. We have recently reestablished  
16 contact through his separate counsel, and are awaiting return of that  
17 preference from that counsel.
- 18 ○ One is a parent whose case has been delayed, but for whom we have a  
19 preliminary preference that we expect to be confirmed within a few  
20 days.

21 **C. Information-Sharing**

22 **2. Coordinating Repatriations**

23 The Government has made efforts to provide more consistent advance notice  
24 to the Steering Committee regarding the timing of repatriations, and Commander  
25 White has been responsive to inquiries regarding particular cases. The Steering  
26

1 Committee continues to raise concerns about timely information for repatriations  
2 as they arise with the Government’s counsel.

3 **3. Parents First Contacted 28 Days Or More Ago**

4 Beginning with the September 20 status report, the Government has been  
5 reporting the number of parents with whom the Steering Committee first made  
6 contact 28 days or more ago, and for whom the Government has not yet received  
7 the parent’s reunification preference. As discussed in Section B above, the  
8 Steering Committee and the Government have agreed that certain cases should be  
9 treated differently, and the Steering Committee and the Government have agreed  
10 that such cases will be removed from the list of parents with whom the Steering  
11 Committee first made contact 28 days ago, and for whom the Government has not  
12 yet received the parent’s reunification preference. Having set those cases aside,  
13 there are now only three parents with whom the Steering Committee first made  
14 contact 28 days ago, for whom the Government has not yet received the parent’s  
15 reunification preference, and for whom the Steering Committee anticipates  
16 delivering a final preference shortly.

17 **4. Removals from Government Lists**

18 The Steering Committee continues to meet and confer with the Government  
19 to clarify the bases for which children and parents have been removed from the  
20 lists of class members or children in ORR custody previously produced by the  
21 Government, as reflected in each week’s Joint Status Report. The Steering  
22 Committee’s priority is to ensure that the parents’ and children’s interests are  
23 properly addressed and that no families are forgotten.  
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## MMM Counsel Position: Status of Settlement Implementation

### A. Status of Families Detained at Dilley and Karnes

All of the Dilley class member parents who elected to invoke the settlement procedures have received new interviews with the Asylum Office, per the settlement agreement. These interviews were complete as of October 26, 2018. At Karnes, 27 parent class members have completed their interviews as of this filing.<sup>5</sup> However, none of these class members at Karnes or Dilley have received the results of their interview. Credible fear and reasonable fear determinations are normally served by ICE within a few days of an interview. Moreover, the government's last status report, filed on October 25, stated that USCIS had already "issued" 27 decisions with respect to the interviews completed at Dilley. *See* Dkt. 291 at 8. As noted, no such decisions have been served. On Monday, November 5, Plaintiffs' counsel asked counsel for the government when class members could expect to receive the interview decisions. Counsel for the government indicated that he would check and get back to Plaintiffs' counsel. As of this filing, the government has not provided any additional information. Any delay in implementing the results of these interviews would be inconsistent with the government's commitment (and the Court's mandate) to implement the agreement as expeditiously as possible. Accordingly, Plaintiffs respectfully request that the government be required to serve all interview decisions that have been reached by the Asylum Office.

### B. Ongoing Reporting

The Court previously stated that it wants the parties to provide ongoing reports with respect to the implementation of the *M.M.M./Dora/Ms. L* settlement agreement. In the October 25, 2018 status report, Plaintiffs reported that "on October 23, Plaintiffs' counsel sent the government a list of proposed data points to track and report with respect to the implementation of the settlement agreement. The parties plan to meet and confer on this issue early next week." Plaintiffs raised the reporting issue with the government during a call on November 5, 2018, explaining that the parties should at least agree on what information should be tracked and reported to the Court. However, the government has not committed to any such reporting. Accordingly, Plaintiffs request the Court's guidance on what information the parties should report on an ongoing basis with respect implementation of the agreement. Plaintiffs request that, at this point, the parties report on the following:<sup>6</sup>

- Total estimated number of parent class members
- Total estimated number of children class members
- Total number of executed parent election forms provided to the government
- Total number of executed child election forms provided to the government
- Number of parent class members who have received new fear interviews
  - Number of parents whose negative CFI/RFI determination was reconsidered
  - Number of parents whose negative CFI/RFI determination was unchanged

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<sup>5</sup> At least three more are scheduled to take place this week.

<sup>6</sup> Plaintiffs reserve the right to request additional reporting in the future as the focus of implementation shifts to class members who have been released.

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- Number of child class members who have received fear interviews
  - Number of children who established a credible fear
  - Number of children determined not to have a credible fear
- Number of parent class members who affirmatively waived settlement procedures
- Number of child class members who affirmatively waived settlement procedures
- Number of parent and child class members who remain in detention after receiving interview decisions

1 DATED: November 8, 2018

Respectfully submitted,

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/s/ Lee Gelernt  
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*



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