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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 CUSTOMS
8 ENFORCEMENT, et al.,

9 Respondents-Defendants.
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11
12 The Court ordered the parties to file a joint status report (“JSR”) by 3:00 pm
13 on July 11, 2019, in anticipation of the status conference scheduled at 1:00 pm on
14 July 12, 2019. The parties submit this joint status report in accordance with the
15 Court’s instruction.
16

17 **I. DEFENDANTS’ POSITIONS**

18 **A. Update on Reunifications for the Original Class Period**

19
20 As of July 7, 2019, Defendants have discharged 2,778 of 2,814 possible
21 children of potential class members for the original class period. That is, Defendants
22 have discharged 2,778 of the 2,814 possible children of potential class members who
23 were in the care of the Office of Refugee Resettlement (ORR) as of June 26, 2018.
24
25 *See* Table 1: Reunification Update. This is an increase of five discharges reported
26 in Table 1 since the JSR filed on June 6, 2019. *See* ECF No. 422. The five children
27
28

1 had parents who are out of the class, and were discharged under other appropriate
2 circumstances, such as discharges to sponsors.

3 Currently, there is one child of a class member from the original class period
4 who remains in ORR care and is proceeding towards reunification or other
5 appropriate discharge. This child has a parent who departed from the United States,
6 but the Steering Committee has advised that resolution of parental preference will
7 be delayed. Defendants are supporting the efforts of the Steering Committee to
8 obtain a statement of intent from the parent. Once Defendants receive notice from
9 the Steering Committee, Defendants will either reunify the child or move him into
10 the TVPRA sponsorship process, consistent with the intent of the parent.

14 The current reunification status for the 2,814 children ages 0 through 17 for
15 the original class period, who have been the focus of Defendants' reporting to date,
16 is further summarized in Table 1. The data in Table 1 reflects approximate numbers
17 on these children maintained by ORR at least as of July 7, 2019. These numbers are
18 dynamic and continue to change as more reunifications, determinations on class
19 membership, or discharges occur.

22 **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:	107	2671	2778

1	• Children discharged by being reunified with separated parent	82	2085	2167
2	• 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)	25	586	611
3				
4				
5				
6	<u>Children in ORR Care, Parent in Class</u>			
7	Children in care where the parent is not eligible for reunification <u>or</u> is not available for discharge at this time:	0	1	1
8				
9	• Parent presently outside the U.S.	0	1	1
10	○ Steering Committee has advised that resolution will be delayed	0	1	1
11	• Parent presently inside the U.S.	0	0	0
12	○ Parent in other federal, state, or local custody	0	0	0
13	○ Parent red flag case review ongoing – safety and well being	0	0	0
14				
15	<u>Children in ORR Care, Parent out of Class</u>			
16	Children in care where further review shows they were not separated from parents by DHS	0	6	6
17	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	13	13
18	Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	14	14
19	Children in care with parent in the United States who has indicated an intent not to reunify	0	1	1
20	Children in care for whom the Steering Committee could not obtain parental preference	0	1	1
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B. Update on Removed Class Members for the Original Class Period

The current reunification status of removed class members for the original class period is set forth in Table 2 below. The data presented in this Table 2 reflects approximate numbers maintained by ORR as of at least July 7, 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.	16	Defs.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no “red flags” for safety or parentage	16	Defs.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	16	Defs.
	Children with no contact issues identified by plaintiff or defendant	16	Defs. & Pls.
	Children with parent contact information provided to ACLU by Government	16	Defs.
PROCESS 3: Determine Parental Intention for Minor	Children for whom ACLU has communicated parental intent for minor:	14	Pls.
	• Children whose parents waived reunification	14	Pls.
	• Children whose parents chose reunification in country of origin	0	Pls.
	• Children proceeding outside the reunification plan	0	Pls.

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	Children for whom ACLU has not yet communicated parental intent for minor:	1	Pls.
	<ul style="list-style-type: none"> Children with voluntary departure orders awaiting execution 	0	Defs.
	<ul style="list-style-type: none"> Children with parental intent to waive reunification documented by ORR 	0	Defs.
	<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"> o 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 Forms¹	Total number of executed election forms received by the Government	408 (237 Parents/171 Children)²
	<ul style="list-style-type: none"> Number who elect to receive settlement procedures 	249 (136 Parents/113 Children)
	<ul style="list-style-type: none"> Number who waive settlement procedures 	159 (101 Parents/58 Children)³
Interviews	Total number of class members who received interviews	141⁴
	<ul style="list-style-type: none"> Parents who received interviews 	74
	<ul style="list-style-type: none"> Children who received interviews 	67
Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	66⁵

¹ The number of election forms reported here is the number received by the Government as of July 5, 2019.

² 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.

³ 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.

⁴ Some individuals could not be interviewed because of rare languages; these individuals were placed in Section 240 proceedings. This number includes credible fear and reasonable fear interviews, as well as affirmative asylum interviews.

⁵ This number is the aggregate of the number of parents whose negative

1		• Number of parents determined to establish CF or RF upon review by USCIS	66 ⁶
2			
3		• Number of parents whose CF or RF finding remains negative upon review by USCIS	0
4			
5			
6		Total number of CFI decisions issued for children by USCIS	73 ⁷
7			
8		• Number of children determined to establish CF by USCIS	73 ⁸
9			
10		• Number of children determined not to establish CF by USCIS	0
11			
12			
13		Total number of affirmative asylum decisions by USCIS	2
14			

15 CF/RF determinations were reconsidered, number of parents whose negative CF/RF
16 determination was unchanged, and individuals who were referred to Section 240
17 proceedings without interview because of a rare language. This number excludes 12
18 cases where a parent already had a Notice to Appeal from ICE or was already ordered
19 removed by an IJ (which are included in the interview totals).

20 ⁶ This number includes parents who received positive CF/RF determinations
21 upon reconsideration, parents who received a Notice to Appear based on their child's
22 positive CF determination, and parents who were placed in Section 240 proceedings
23 due to a rare language.

24 ⁷ This number is the aggregate of the number of children who received a
25 positive CF determination, the number of children who received a negative CF
26 determination, and children who were referred to 240 proceedings without interview
27 because of a rare language.

28 ⁸ 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.

	<ul style="list-style-type: none"> • Number of parents granted asylum by USCIS 	1
	<ul style="list-style-type: none"> • Number of children granted asylum by USCIS 	1⁹
Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	101 Parents¹⁰

D. Parents Who ICE Records Reflect Have Absconded After Being Released

Absconders	Number of Parents who absconded from enrollment in ATD (Alternatives To Detention)	165¹¹
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E. Update Regarding Identification of Expanded Class Members

On April 25, 2019, the Court approved Defendants’ Plan for identifying members of the expanded class. On June 7, based on discussions at the status conference on that same day, the Court ordered Defendants to “deliver to Plaintiffs’ counsel the first packet of information concerning children of the expanded Ms. L. class members,” no later than June 14, 2019. ECF No. 424. On June 14, Defendants delivered to Plaintiffs the first batch of information regarding the expanded class.

⁹ This number includes children granted asylum as a dependent on their parent’s asylum application.

¹⁰ This number is as of July 5, 2019.

¹¹ Data from time period of May 4, 2018 to July 5, 2019.

1 Defendants delivered the second batch of information regarding the expanded class
2 to Plaintiffs on July 10.

3 The agencies were unable to produce the second list of expanded-class
4 members by June 14. The government regrets not making that date, which appears
5 to have resulted from the agencies' lack of a fully settled, agreed-upon understanding
6 of the duration and sequencing of the steps that needed to be taken to complete the
7 list. After the agencies learned of the issue, they worked together to resolve it and
8 to take the steps needed to produce the second list. The agencies ultimately
9 completed it and that second list was sent to the plaintiffs on July 10. The agencies
10 have adopted a firmer and better settled process based on the experience just
11 described and can continue to refine the process as they proceed through each list.
12 The government appreciates the Court's understanding as it works through this first-
13 of-its-kind process.
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18 Defendants continue to work on the remaining batches of information
19 regarding the expanded class, and will continue to produce these on a rolling basis.
20 ICE reports that it has received each of the remaining four lists of potential class
21 members and is reviewing those lists.
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23 **F. Pending Motion Regarding Released Settlement Class Members**
24

25 Based on recent discussions with Plaintiffs, Defendants believe this issue to
26 have been resolved.
27
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1 **G. Children Awaiting Placement.**

2 Plaintiffs sent an inquiry on May 15, 2019, regarding nine children who they
3 believed remained in ORR custody. Defendants have reviewed those cases and
4 provided a response to Plaintiffs regarding these nine children on June 3, 2019.
5 Defendants have received no follow up inquiries from Plaintiffs on this issue and
6 believe it to have been resolved.
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9 **H. Government Processes, Procedures, and Tracking, for Separations Since
10 June 26, 2018.**

11 *1. Data Requested by Plaintiffs*

12 Defendants are providing Plaintiffs updated reports containing information
13 regarding parents and children separated since the Court's June 26, 2018
14 preliminary-injunction order on the Friday following the filing of each JSR.
15

16 *2. Processes and Procedures*

17 Defendants provided a summary outline to the Court and to Plaintiffs
18 memorializing the processes, procedures, tracking, and communication between the
19 agencies that have been adopted by the agencies since June 26, 2018. The outline
20 also included an overview of the options for separated parents and children to obtain
21 information about reunification options.
22

23
24 On March 4, 2019, Plaintiffs and lawyers for the children's legal service
25 providers sent comments and questions in response to the government's proposals.
26 Defendants reviewed those comments and questions, and the parties met and
27
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1 conferred on April 15, 2019, regarding those inquiries. On May 28, 2019, Plaintiffs
2 sent additional comments related to Defendants' proposals. Since receiving those
3 comments, Defendants have held several internal telephonic meetings, and have
4 spoken with representatives for the Bureau of Prisons and the U.S. Marshals Service
5 to ensure that those entities are included in discussions regarding these processes
6 and procedures. On July 11, 2019, Defendants provided a comprehensive response
7 to Plaintiffs' comments, and requested that the parties schedule a follow-up meet
8 and confer on these issues once Plaintiffs have reviewed Defendants' response.
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11 12 **II. MS. L. PLAINTIFFS' POSITION**

13 **A. Steering Committee Outreach to Sponsors of Children of Expanded Class** 14 **Members**

15 Defendants provided Plaintiffs on June 14 with the first list of information
16 concerning 189 children of expanded class members. The Steering Committee has
17 been working steadily to reach as many children, parents, and sponsors in this
18 group as possible.

19 Defendants provided a second list of children of expanded class members on
20 July 10. This second lists adds 602 more children.¹² Across both lists there are 791
21 children of expanded class members identified so far.
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25 ¹² There were 139 children in the second list who were already on the first
26 list. The figure of 602 children on the second list counts only children newly
27 disclosed. Plaintiffs continue to analyze the second list for any other errors that
28 could affect the number of children disclosed.

1 **Contact Efforts For First List Of 189 Children**

2 The government has provided phone numbers for sponsors of 183 children
3 out of the 189 in the first list,¹³ and phone numbers for parents of six children. The
4 Steering Committee has attempted to call all parents and all sponsors for whom the
5 government provided phone numbers. By asking sponsors for the phone numbers
6 of the child's parent, the Steering Committee has been able to reach the parents of
7 38 children.

8 The Steering Committee continues with this outreach. It has had difficulty
9 reaching sponsors due to incorrect numbers (e.g. numbers no longer in service) and
10 unanswered calls. The government indicated to Plaintiffs on June 24 that they were
11 confirming whether ICE possessed any additional contact information for this first
12 list of children; Plaintiffs await a response and will continue to confer with the
13 government about providing all phone numbers it has for the expanded class.

14 **Second List of 602 More Children**

15 On July 10, Defendants provided Plaintiffs with a 602 additional children of
16 expanded class members, with phone numbers for most parents of these children.
17 Plaintiffs are reviewing this information and will meet and confer with Defendants.

18 **B. Steering Committee Progress For June 26 Initial Class**

19 The Steering Committee has successfully contacted and confirmed the
20 preferences of nearly all removed parents with respect to reunifications. On June
21 7, the government reported that, as of June 4, 19 children with removed parents
22 remained in ORR custody. The Committee has advised the government that no
23 preference will be forthcoming for one of those parents due to complex and
24 individualized family circumstances, leaving 18 children with removed parents in
25

26 ¹³ The government initially gave Plaintiffs phone numbers or address
27 information for 82 sponsors. It added more phone numbers for sponsors on June
28 24, after a request from Plaintiffs.

1 the operative group. The Committee has delivered preferences for the parents of 17
 2 of those children. The parent of the remaining child is seeking to return to the
 3 United States under the Settlement Agreement, and the Steering Committee has
 4 advised the government that the delivery of a parental reunification election in this
 5 case will therefore be delayed.

6 **C. Children Whose Parents Have Submitted Preferences and Are Still Detained**

8 The Steering Committee continues to meet and confer with the
 9 Government about children who are still in ORR after the Steering Committee has
 10 submitted a final reunification election.

11 **D. Information-Sharing Proposals**

12 On July 11, shortly before this JSR was due, the government provided
 13 Plaintiffs with a response to Plaintiffs' May 28 proposal about information-sharing
 14 protocols for separations. Plaintiffs have not had a chance yet to review the
 15 government's response.

17 **III. MMM-Dora Plaintiffs' Report Regarding Settlement Implementation**

18 The parties continue to work together to implement the settlement agreement approved
 19 on November 15, 2018. For purposes of this status report, the *Dora* and *MMM* Plaintiffs note the
 following issues.

20 **A. Reports of planned ICE raids and possible impact on Dora and MMM class members:**

21 Over the past few weeks, there have been numerous reports of planned ICE raids
 22 targeting families who have received final orders of removal. *See, e.g., Agency Says It Plans*
 23 *Deportation Operation Aimed at Undocumented Families*, NY Times June 19,
 2019, <https://www.nytimes.com/2019/06/19/us/politics/trump-immigration-deportation-family-separation.html?module=inline>. Because a number of the targeted families may include Dora and
 24 MMM class members, class counsel emailed Government attorney Sarah Fabian on June 21,
 2019 to inquire about the Government's plans to ensure that no class members are wrongfully
 25 deported. Class counsel noted concern that Dora and MMM class members, who may have final
 26 orders but be entitled to settlement relief, may be targeted during those raids and removed,
 notwithstanding the binding settlement agreement and this Court's order that settlement class
 27 members cannot be removed before making a knowing and voluntary settlement election. Class
 counsel therefore requested that the Government provide information about procedures that are
 28 in place to identify such class members in advance of the raids, to provide notice to class counsel

1 of their arrest, and to ensure that they are not deported without an opportunity to take advantage
 2 of the settlement procedures that apply to them. Having received no response from the
 3 Government, class counsel emailed again requesting an update on June 27, 2019 but have
 4 received no response from the Government.

5 Today, several reputable news sources have reported that the ICE raids are now planned
 6 for this weekend. *See, e.g., ICE Deportation Raids Will Likely Start This Weekend*, Vox, July 11,
 7 2019, [https://www.vox.com/2019/7/11/20690251/immigration-raids-deportation-ice-trump-new-](https://www.vox.com/2019/7/11/20690251/immigration-raids-deportation-ice-trump-new-york-times)
 8 [york-times](https://www.vox.com/2019/7/11/20690251/immigration-raids-deportation-ice-trump-new-york-times). Advocates in border areas have received word that up to a one thousand families
 9 detained in the course of the ICE raids are expected to arrive at the South Texas Family
 10 Residential Center, an ICE detention facility in Dilley, Texas that houses detained immigrants. In
 11 light of these reports and the Government's lack of response to our queries, class counsel are
 12 concerned about whether there are procedures in place to ensure that the settlement agreement
 13 will be honored during this process and that class members will not be removed without notice or
 14 an opportunity to take advantage of their rights under the settlement agreement.

15 **B. Update relating to the pending motion regarding released settlement class members**

16 On January 10, 2019, the *Dora* and *MMM* Plaintiffs filed a Motion to Enforce the Settlement
 17 Agreement for Class Members Who Have Not Submitted Executed Waiver Forms (ECF
 18 342). After that motion was filed, the Government agreed to put in place a system where class
 19 members would be identified and not deported without being given notice of their rights
 20 under the November 15, 2018 settlement agreement and an opportunity to make an election with
 21 respect to those rights. The Court confirmed this agreement in its Court Order dated February 22,
 22 2019 (ECF 362).

23 After further discussions, the Government provided additional data relating to class
 24 members, and class counsel are using that data to conduct further outreach to released class
 25 members. Although the data continues to be incomplete, class counsel are continuing to conduct
 26 outreach based on the data that has been provided and will reassess. The Government has agreed
 27 to inform class counsel of any additional data they may obtain that could assist with this
 28 outreach. Plaintiffs reserve their right to return to the Government for more information and/or to
 seek relief from this Court if needed.

Finally, the Government has taken the position that class members are required to submit an
 affirmative election by submitting a completed waiver form before receiving an interview.
 Plaintiffs do not agree that that is a requirement under the settlement, and continue to reserve
 their rights on this issue. However, in order to help facilitate administration of the
 settlement, class counsel have continued to obtain forms for class members as they are identified
 and to transmit those forms to the Government as they are received.

At this time, and in light of the agreements made with the Government described in the
 preceding paragraphs, Plaintiffs withdraw their pending motion (ECF 342) and will continue to
 report to this Court on the status of issues relating to that motion in subsequent joint status
 reports. Should any further disputes on these issues arise, Plaintiffs reserve their right to seek
 relief from this Court as necessary and appropriate.

C. Discrepancies in statistical reporting on settlement implementation

As the Court is aware, the Government has included in the ongoing status reports certain
 statistics related to implementation of the *MMM/Dora/Ms. L* settlement agreement, including the
 total number of executed settlement forms provided to the Government and the number of forms
 in which a class member elected to receive settlement procedures. For the last several weeks,
 class counsel have been attempting to resolve a discrepancy between the numbers reported by the

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Government and the numbers reflected in class counsel’s internal records. Specifically, class counsel’s internal records reflect that the Government has been provided with approximately 60 more forms than what the Government has been reporting in the joint status reports. Class counsel have refrained from raising this issue with the Court based on the belief that the parties could resolve the issue on their own. However, given that this ongoing issue is still unresolved and the parties have not made progress since the last status report (despite class counsel providing the Government with its internal tracking records and several forms that may have been missing from the Government’s reporting), class counsel felt compelled to bring this issue to the Court’s attention. Below are the statistics, as of July 1, 2019, that class counsel are able to report based on their internal records:

Settlement Process	Description	Number
Election Forms	Total number of executed election forms sent to the Government	428 (254 parents; 174 children)
	<ul style="list-style-type: none"> Number who elected to receive settlement procedures 	259 invoke (145 parents; 114 children)
	<ul style="list-style-type: none"> Number who waived settlement procedures 	169 waive (109 parents; 60 children)

1 DATED: July 11, 2019

Respectfully submitted,

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