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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 Petitioners-Plaintiffs,

JOINT STATUS REPORT

5 vs.

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

9 Respondents-Defendants.
10

11
12 The Court ordered the parties to file a joint status report on August 23, 2018,
13 in anticipation of the telephonic status conference scheduled for August 24, 2018, at
14 1:00 p.m. PST. The parties submit this joint status report in accordance with the
15 Court's instruction.
16

17
18 **I. DEFENDANTS' POSITIONS**

19 **A. Update on Reunifications**

20 Defendants report the current status on reunification of families with children
21 ages 0 through 17 in the table below. The data presented in this section reflects
22 approximate numbers maintained by ORR as of at least August 20, 2018. These
23 numbers are dynamic and continue to change as more reunifications or discharges
24 occur.
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Description	Phase 1 (Under 5)	Phase 2 (5 and above)	Total
Total number of possible children of potential class members originally identified	103	2,551	2,654
Discharged Children			
Children discharged by being reunified with separated parent	61	1,862	1,923
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)	19	184	203
Total children discharged	80	2,046	2,126
Children Remaining in Care with ORR			
Children remaining in care where the adult associated with the child is not eligible for reunification or is not available for discharge at this time:	23	505	528
<ul style="list-style-type: none"> • Children still in care where further review shows they were not separated from parents by DHS: 	4	41	45
<ul style="list-style-type: none"> • Parent indicated desire against reunification (includes a significant number of parents outside the U.S.): 	0	139	139
<ul style="list-style-type: none"> • Adult presently outside the U.S.: 	6	337	343
<ul style="list-style-type: none"> • Adult in other federal, state, or local custody: 	3	16	19
<ul style="list-style-type: none"> • Adult red flag background check: 	9	26	35
<ul style="list-style-type: none"> • Adult red flag case review – safety & well-being 	0	17	17
<ul style="list-style-type: none"> • Adult red flag case review – parentage: 	1	9	10

Defendants have made two changes to the categories in this table relative to the Joint Status Report (JSR) filed on August 16, 2018. First, the category entitled “Children discharged by being reunified with separated parent” has been expanded from the previous category in the August 16 JSR, “Children discharged by being reunified with parents in ICE custody under the government’s plan,” to include all

1 reunifications with a separated parent, whether in ICE custody or not. As a result,
2 the current category now contains a number of children who were previously
3 categorized as “Children discharged under other appropriate circumstances.”
4

5 Second, Defendants have removed the subcategories entitled “Children
6 Remaining in Care with ORR – Adult released to interior” and “Children Remaining
7 in Care with ORR – Adult location under case file review” from the current table.
8
9 Consistent with the Court’s direction during the August 17 status conference,
10 Defendants are providing the details below regarding the children who were
11 included in those subcategories in the August 16 JSR.
12

13 Nine children reported in August 16, 2018 JSR as “Children Remaining in
14 Care with ORR – Adult released to interior”

15 Of the nine children, four children no longer meet the criterion: two children
16 have been discharged from ORR care, and two children are associated with adults
17 who are no longer in the interior.

18 Of the remaining five of nine children, two have separated parents with a red
19 flag for a background check, and the remaining three continue to process towards
20 appropriate discharge.
21

22 These children are accounted for as appropriate in other categories in the table
23 above.
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1 Ten children reported in August 16, 2018 JSR as “Children Remaining in Care
2 with ORR – Adult location under case file review”

3 As of Wednesday, August 22, three of the ten children no longer meet the
4 criterion, as contact has since been established with the adult associated with the
5 child.

6 Of the remaining seven of ten children:

- 7
- 8 • Two are under review to determine whether they were separated from their
9 parent by the United States Government;
 - 10 • Two have had contact made with a non-separated parent, but not yet the
11 separated parent;
 - 12 • Two have not had contact made with a separated or non-separated parent,
13 though case managers continue to work to establish contact; and
 - 14 • One has a parent who is in custody in his country of origin (COO).

15 **B. Reunification of Removed Class Members**

16 Defendants report on the current status of reunification of released and
17 removed class members in the table below. The data presented in this section reflects
18 approximate numbers maintained by ORR as of at least August 20, 2018. These
19 numbers are dynamic and continue to change as the reunification process moves
20 forward.
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REUNIFICATION PROCESS	REPORTING METRIC	NO.	REPORTING PARTY
STARTING POPULATION	Children in ORR care with parents presently departed from the U.S.	343	Def's.
PROCESS 1: Identify & Resolve Safety/Parentage Concerns	Children with no "red flags" for safety or parentage	337	Def's.
	Children with "red flags" for safety per background check	4	Def's.
	Children with "red flags" for safety per case file review	0	Def's.
	Children with "red flags" for parentage	2	Def's.
PROCESS 2: Establish Contact with Parents in Country of Origin	Children with parent contact information identified	343	Def's.
	Children with parent contact information identified and parents actually contacted	339	Def's.
	Children with no parent contact information/parent contact information in development	0	Def's.
	Children with parent contact information provided to ACLU by Government	343	Def's.
PROCESS 3: Determine Parental Intention for Minor	Plaintiffs to address in their portion of Joint Status Report	N/A	Pl's.

Defendants will report on Processes 4 (Resolve Immigration Status of Minors to Allow Reunification) and 5 (Transportation of Minors for Physical Reunification with Parents in Country of Origin) when those Processes are under way.

C. Court's Order Granting Joint Motion Regarding Scope of the Court's Preliminary Injunction

In accordance with the Court's Order Granting Joint Motion Regarding Scope of the Court's Preliminary Injunction, ECF No. 192 (Aug. 16, 2018), the parties met and conferred regarding whether or in what circumstances a waiver described in that

1 Order cannot be reconsidered. The parties do not have any issue to raise with the
2 Court about that issue at this time, and ask that the Court permit them to continue to
3 meet and confer on the issue as necessary and report to the Court as needed.
4

5 **D. M.M.M. TRO Negotiations**

6 As ordered by the Court, the parties are meeting and conferring on the issues
7 set forth in the Court's August 17 order, ECF No. 196. The parties request that they
8 be permitted a short extension until 11:00 a.m. Pacific on Friday, August 24, to
9 submit a proposed briefing schedule if they cannot reach resolution.
10

11 **E. Information Sharing**

12 Defendants have provided the data previously requested by Plaintiffs, and are
13 supplementing some pieces of that data as appropriate. Plaintiffs recently raised a
14 number of questions about data that had been previously provided. Defendants have
15 reiterated their request to Plaintiffs that Plaintiffs consolidate and prioritize such
16 requests, so that Defendants can determine how to respond in a manner that
17 minimizes interference with the ongoing data needs related to reunifications.
18 Defendants propose that Plaintiffs would keep an updated list of their requests for
19 information and data that prioritizes those requests and is provided to Defendants
20 each Monday and Thursday, so that Defendants can do their best to provide
21 information to Plaintiffs in accordance with Plaintiffs' identified priorities. Requests
22 for information or assistance should be submitted outside that timeframe only on an
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1 emergency basis, identifying why it is an emergency, and specifying whether the
2 request should be prioritized above other pending requests.

3 **F. Individual Requests for Relief from *M.M.M.* TRO**

4
5 A number of children of class members in this case, as well as some class
6 members themselves, are separately represented by counsel other than class counsel
7 in *Ms. L* or *M.M.M.* Several of those counsel have reached out to Government
8 counsel, or to other employees of Defendants, seeking relief from the *M.M.M.* TRO
9 so that they can depart from the United States. Government counsel have told these
10 individuals and their counsel that in order to be removed, or take voluntary departure,
11 they must reach out to *M.M.M.* class counsel who can either agree that such
12 individuals are not subject to the TRO, or seek relief from the TRO from this Court
13 on behalf of those individuals.
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17 **II. PLAINTIFFS' POSITION**

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19 Over the past week, the Steering Committee has been actively engaged in
20 outreach to removed parents and representatives for their children who remain in
21 the United States. On August 7 and August 10, the Government produced lists of
22 removed parents with contact information for most parents. The August 7th list
23 included 14 parents not on the August 10th list; combined the Government lists
24 have a total of 412 parents.

25 The Steering Committee has asked the Government to clarify why those 14
26 parents on the August 7 list are not listed on the August 10 list. The Government
27 has indicated that it is investigating. The following table summarizes Steering
28

1 Committee progress:

2	Removed parents identified by the Government (8/7 and 8/10	412
3	lists)	
4	<ul style="list-style-type: none"> • Parents for whom Committee has no phone number 	41
5	Steering Committee called parent	371
6	Steering Committee spoke to parent (either by phone or in	231
7	person)	
8	<ul style="list-style-type: none"> • Parents called and successfully reached 	225
9	<ul style="list-style-type: none"> • Parents found through outreach by NGOs 	6
10	<ul style="list-style-type: none"> • Parents called and not reached (and not reached 	140
11	through NGO efforts)	
12	<ul style="list-style-type: none"> o Phone number inoperable or ineffective 	38
13	<ul style="list-style-type: none"> o Phone calls ongoing 	102
14		
15	Parents reached by phone or NGO outreach	231
16	Reunified: confirmed reunifications in home country	10
17	Ready for reunification: parent's reunification wish confirmed to match child's	15
18	Preliminary indication of parent's wishes for reunification	183
19	Ongoing discussions w parent about reunification	23

20 The Steering Committee has placed calls to all parents for whom it has
 21 phone numbers — 371¹ out of the 412 — and has successfully spoken to 231 (225
 22 through phone calls, six reached by NGO partners in Central America). Of these
 23 231, we have obtained a preliminary indication of the desires of 183 parents. We
 24 are having ongoing discussions with 23 parents to ascertain their wishes. Ten

25 _____
 26 ¹ The Steering Committee received 366 phone numbers for removed parents
 27 from the Government. The additional five parents contacted were found through
 28 the Committee's efforts.

1 children have been reunified with their parents in their country of origin.

2 As required by the Reunification Plan, the Steering Committee has also been
3 communicating with attorneys for the children of removed parents to ensure that
4 the desires expressed by parents and children are aligned before a final decision is
5 communicated to the Government. On August 16, the Government provided a list
6 of 236 children and their associated attorneys. This list did not include the names,
7 locations, or contact information for their parents, so we have been working to
8 correlate this information with the information provided concerning parents. Of
9 these 236 children, 73 were not included on the previous two lists of children with
10 removed parents provided by the Government on August 7 and 10, and the
11 Steering Committee has asked for clarification in this regard. For the remaining
12 children—for whom the parents are understood to be removed—the Steering
13 Committee has reached out to all of the children’s attorneys and is awaiting
14 confirmation of the children’s wishes. To identify the legal representatives of the
15 249 children for whom the Government has not provided information, the Steering
16 Committee has worked with the Vera Institute of Justice to determine the
17 designated legal service providers for all ORR shelters, and has reached out to all
18 of these providers to determine which children they represent. Within the coming
19 days, the Steering Committee will identify children who do not appear to be
20 represented and will work with Vera to secure counsel for them.

21 For 15 sets of parents and children, the Steering Committee has confirmed
22 that the desires of parents and children are aligned and the Steering Committee is
23 in the process of obtaining or preparing documentation of those desires to provide
24 final confirmation to the Government. Of the 15 families that fall within this
25 group, 12 have elected reunification in the country of origin, and 3 have decided to
26 decline such reunification.

27 Of the 140 parents for whom outreach attempts have been unsuccessful to
28

1 date, the Steering Committee has determined that 38 of the phone numbers
2 provided are inoperative or ineffective and the Steering Committee is continuing
3 efforts to reach the remaining 102 parents. The Steering Committee is determining
4 a phone number to be inoperative or ineffective under the following circumstances:
5 (1) the person answering the phone accepted the call and indicated that the number
6 was incorrect; (2) the number does not ring or leads to a pre-recorded error
7 message; or (3) the Steering Committee has attempted to dial the phone number
8 provided by the Government at least five times, over multiple days, and has been
9 unable to reach the parent (e.g., the call reaches a voicemail that has not been set
10 up, the call rings with no answer). The Steering Committee provided a list of such
11 inoperative or ineffective phone numbers to the Government on Tuesday, August
12 21, and will continue to provide updates lists as numbers are determined to be
13 inoperative or ineffective.

14 For parents for whom the Government has not yet provided phone numbers
15 (41), or for whom the Steering Committee has determined the numbers to be
16 inoperative or ineffective (38), Steering Committee member Justice in Motion is
17 currently engaged in on-the-ground efforts in Honduras and Guatemala to locate
18 parents. Justice in Motion representatives who speak indigenous languages have
19 obtained birth certificates of parents to determine their locations and have travelled
20 to remote villages to seek to interview the parents in person. These efforts have
21 reached six parents and will continue, supported by Steering Committee member
22 KIND's local partners in Central America and other NGO partners.

23 Finally, in communicating with removed parents, the Steering Committee
24 has indications that some parents may have been coerced or misled by U.S.
25 government actions that deprived the parents of their right to seek asylum. These
26 incidents include parents who were told that they needed to accept removal and not
27 pursue asylum in order to be reunited with their children, and parents who were
28

1 required to sign documents they did not understand, in languages they do not
2 speak, that had the effect of waiving their right to seek asylum. The Steering
3 Committee is further investigating these cases.

4
5 DATED: August 23, 2018

Respectfully submitted,

6 /s/ Lee Gelernt

7 Lee Gelernt*

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