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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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12 The Court ordered the parties to file a joint status report (JSR) by 3:00 pm on
13 December 2, 2020, in anticipation of the status conference scheduled at 1:30 pm on
14 December 4, 2020. The parties submit this joint status report in accordance with the
15 Court's instruction.
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1 **I. DEFENDANTS' POSITIONS**

2 **A. Update Regarding Government's Implementation of Settlement**
 3 **Agreement**

4 SETTLEMENT PROCESS	5 DESCRIPTION	6 NUMBER
7 Election Forms¹	8 Total number of executed election forms received by the Government	9 444 (260 Parents/184 Children)²
	10 • Number who elect to receive settlement procedures	11 282 (157 Parents/125 Children)
	12 • Number who waive settlement procedures	13 162 (103 Parents/59 Children)³
14 Interviews	15 Total number of class members who received interviews	16 173⁴
	17 • Parents who received interviews	18 91
	19 • Children who received interviews	20 82
21 Decisions	22 Total number of CFI/RFI decisions issued for parents by USCIS	23 71⁵

24 ¹ The number of election forms reported here is the number received by the Government as of November 18, 2020.

25 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.

26 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.

27 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.

28 ⁵ This number is the aggregate of the number of parents whose negative CFI/RFI determinations were reconsidered, number of parents whose negative CFI/RFI determination was unchanged, and individuals who were referred to 240 proceedings without interview because of a rare language. This number excludes 12 cases where a parent already had an NTA from ICE or was already ordered removed by an IJ (which are included in the interview totals).

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	<ul style="list-style-type: none"> Number of parents determined to establish CF or RF upon review by USCIS 	69⁶
	<ul style="list-style-type: none"> Number of parents whose CF or RF finding remains negative upon review by USCIS 	2
	Total number of CFI decisions issued for children by USCIS	73⁷
	<ul style="list-style-type: none"> Number of children determined to establish CF by USCIS 	73⁸
	<ul style="list-style-type: none"> Number of children determined not to establish CF by USCIS 	0
	Total number of affirmative asylum decisions by USCIS	22
	<ul style="list-style-type: none"> Number of parents granted asylum by USCIS 	2
	<ul style="list-style-type: none"> Number of parents referred to immigration court 	5
	<ul style="list-style-type: none"> Number of children granted asylum by USCIS 	3⁹
	<ul style="list-style-type: none"> Number of children referred/returned 	12

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

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

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.

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

	to immigration court	
Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	109 Parents¹⁰

B. Expanded Class Members

On April 25, 2019, the Court approved Defendants' Plan for identifying members of the expanded class. In advance of the Court's October 25, 2019 deadline, Defendants completed the process of identifying members of the expanded class and produced spreadsheets identifying those individuals to Plaintiffs' counsel and providing the latest available contact for those individuals from the government's databases.

On February 7, 2020, Defendants reached out to Plaintiffs to request that Plaintiffs provide Defendants with an update regarding their efforts to locate and reunify members of the expanded class. Plaintiffs declined to provide much of the information requested by Defendants. Following multiple meet and confer discussions, on July 5, 2020, Plaintiffs provided Defendants with an updated spreadsheet containing some information on members of the expanded class. Plaintiffs also identified members of that class about whom Plaintiffs requested to meet and confer regarding whether the government would agree to return those

¹⁰ This number is as of November 18.

1 individuals to the United States. The parties are continuing to discuss this issue to
2 determine if it can be resolved or whether it will require intervention from the Court.

3 Having declined to provide the government with much of the information the
4 government requested regarding the Steering Committee's efforts to contact
5 members of the expanded class, Plaintiffs also never indicated to Defendants any
6 need for additional information or resources to assist their efforts. Nonetheless, since
7 the last status conference on October 22, 2020, Defendants have held multiple meet
8 and confer discussions with Plaintiffs regarding additional information that would
9 assist with those efforts, and have provided spreadsheets containing updated
10 information from at least four different government databases, and expect to provide
11 additional information in the near future. Defendants are continuing to search for
12 additional updated contact information and will provide it to Plaintiffs on a rolling
13 basis.
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18 **C. Government Processes, Procedures, and Tracking, for Separations Since**
19 **June 26, 2018.**

20 Data Requested by Plaintiffs. Defendants continue to provide Plaintiffs
21 updated reports containing information regarding parents and children separated
22 since the Court's June 26, 2018 Order on a monthly basis. Given the relatively low
23 number of separations, and the fact that Defendants have been complying with the
24 Court's preliminary injunction for more than two years, Defendants propose that
25 going forward they will update Plaintiffs on a quarterly, rather than monthly, basis.
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1 Processes and Procedures.

2 In the May 27, 2020 Joint Status Report, Defendants provided the court with
3 updated reporting regarding the various steps it has taken to implement Paragraph 5
4 of the preliminary injunction, ECF No. 83 at 24, ¶ 5, and improve the processes and
5 procedures for information sharing between the agencies related to family
6 separations. Following the July 10, 2020 status conference, the Court ordered that
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8 “Defendants shall provide a declaration from the Assistant Commissioner of OIT or
9 other appropriate designee setting out the status of the development of the UIP and
10 estimated completion date. The declarant should also address the Court’s concerns
11 about how the UIP will enable parents in criminal custody access to their children’s
12 location information and how the UIP will assist in reunification efforts when a
13 parent is transferred from criminal custody to immigration custody.” ECF No. 543
14 at 2. Defendants provided that information in the August 19, 2020, Joint Status
15 Report, including a declaration from Robert J. Costello, Executive Director, Office
16 of Information Technology, Enterprise Services, U.S. Customs and Border
17 Protection, U.S. Department of Homeland Security. ECF No. 547. On October 20,
18 2020, Defendants provided another declaration from Mr. Costello on the progress of
19 the UIP. ECF No. 556-1. In accordance with the Court’s most recent Order
20 Following Status Conference, ECF No. 558 at ¶ 3, Defendants attach hereto another
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1 supplemental declaration from Mr. Costello regarding the continued progress of the
2 UIP.

3 The Court also ordered that the parties “shall continue to meet and confer on
4 the information gap between the Department of Justice (Bureau of Prisons and U.S.
5 Marshal) and the Department of Health and Human Services (ORR).” *Id.* ¶ 1. The
6 parties held a call regarding this issue on December 1, 2020. The government also
7 has an internal call regarding these issues scheduled for December 3, 2020. The
8 government will continue to address this issue internally and with Plaintiffs, and
9 expect to provide a further update to the Court on this issue in the next Joint Status
10 Report.
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12 **II. MS. L. PLAINTIFFS’ POSITION**

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

15 The government has provided eleven lists identifying 1,134 children of
16 expanded class members. The government has also identified 64 “recategorized”
17 deported parents from the original class, who the Steering Committee has sought to
18 contact as part of its efforts to reach members of the expanded class.¹¹ The
19

20 ¹¹ In its portion of the December 12, 2018 Joint Status Report, the government disclosed the
21 existence of what we call the “Recategorized Original Class”, *i.e.*, members of the original class
22 who were not identified as part of the government’s initial disclosures in the summer of
23 2018. The government only provided contact information for this group in February 2019, after
24 the Steering Committee’s efforts to contact original class members had concluded – and so, as a
25 logistical matter, the Steering Committee has conducted outreach to the 64 parents in this group
26 who were deported following separation from their children, as part of the Steering Committee’s
27 efforts to contact *expanded* class members.
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1 Steering Committee’s recent efforts have been targeted at locating the parents of
2 this group of 1,198 (1,134 plus 64) children.¹²

3 Of these 1,198 children, the Steering Committee has reached the parents (or
4 their attorneys) of 570 children. This represents an increase of 41 children’s
5 parents since our last status report. We describe below the status of our continuing
6 efforts to reach the parents of the remaining 628 children.¹³

7 The 628 children fall into two groups. First, there are approximately 295
8 children whose parents are believed to have been removed from the United States
9 following separation from their children, and our efforts to locate them in their
10 country of origin are ongoing. Second, there is a group of approximately 333
11 children whose parents are believed to be in the United States, and efforts to locate
12 them in the United States are also ongoing.

13 Notably, of the 628 children whose parents we have not yet been in contact
14 with, we have, for 168 of those children, been in touch with another family
15 member.

16 Steering Committee Efforts to Locate Parents

17 For all parents with whom the Steering Committee has not yet established
18 contact, the Steering Committee continues to engage in a multi-faceted approach in
19 an attempt to locate and establish communication with the separated parent.

20 First, as previously reported, the Steering Committee attempts to reach all
21 parents, sponsors and attorneys by telephone. Where those efforts are not
22 successful, the Steering Committee has engaged in time-consuming and arduous

23 ¹² Because some of the parents of these children entered with more than one
24 child, there are 1,082 parents in this combined group.

25 ¹³ To avoid public confusion, we also explain the 666 number that has been
26 reported in the media. That figure was the number of children whose parents had
27 not been located as of November 5, 2020, which was a few weeks after the last
28 JSR. The parents (or their attorneys) of 3 children were contacted after the last JSR
but before November 5, 2020, with parents of an additional 38 children having
been contacted after November 5, 2020 (for a total of 41 since our last JSR).

1 on-the-ground searches for parents in their respective countries of origin.
2 Following a suspension due to the COVID-19 pandemic, limited physical on-the-
3 ground searches for separated parents have resumed where possible to do so while
4 protecting the health of personnel working with the Steering Committee and
5 members of vulnerable communities in separated parents' home countries. The
6 Steering Committee intends to continue physical on-the-ground searches while it
7 remains safe to do so, and will continue to update the Court on its progress,
8 particularly if such searches must be limited or suspended again due to travel
9 restrictions or health risks.

10 Also, as previously reported, the Steering Committee has established toll-
11 free telephone numbers in the United States, Guatemala, Honduras, Mexico and El
12 Salvador to receive inbound phone calls from potential members of the expanded
13 class. The Steering Committee has distributed this number both by email and U.S.
14 Mail to a number of non-governmental organizations and other community
15 organizations in the United States, who may be able to help us locate parents
16 because they work in the communities these parents are likely to have contact with.
17 In addition, the Steering Committee sent letters in Spanish and English to
18 approximately 1,600 addresses provided by the government for the potential class
19 members that the Steering Committee has not yet reached. These letters explain
20 our role in this action and invite parents to contact the Steering Committee to call
21 these toll-free numbers. The Steering Committee continues to monitor voicemail
22 boxes reachable via these toll-free numbers, and plans to renew its mailing effort
23 with the new address information received for children and their attorneys from the
24 government on November 25, 2020.

25 Additionally, as previously reported, the Steering Committee has undertaken
26 broad-based media outreach efforts to publicize the toll-free phone numbers
27 created by the Steering Committee in Spanish language media. The Steering
28

1 Committee continues to work to identify opportunities to broadly disseminate the
2 toll-free numbers through various media to maximize visibility to potential *Ms. L.*
3 class members, including most recently by seeking to collaborate on such media
4 outreach initiatives with other non-profit organizations. The Steering Committee
5 will continue to update the court on these efforts.

6 The Steering Committee has also recently received additional contact
7 information for a number of these families from Seneca Family of Agencies
8 (“Seneca”), a non-profit organization that has contracted with the Department of
9 Health and Human Services to connect certain *Ms. L.* class members in the United
10 States with mental health providers, pursuant to a preliminary injunction in *Ms.*
11 *J.P., et al. v. William P. Barr, et al.* (2:18-cv-06081-JAK-SK, C.D. Cal.). The
12 Steering Committee is re-attempting telephonic communication with all families
13 for whom new contact information is available via Seneca, in addition to the
14 efforts underway using new information provided by the government as described
15 above.

16 Finally, the Defendants recently provided the Steering Committee with
17 additional information from another government database that had not previously
18 been disclosed (the Executive Office for Immigration Review). Among other
19 things, the information includes phone numbers that had not previously been
20 disclosed. Because the information was provided on the Wednesday before
21 Thanksgiving, the Committee has not yet had time to determine the full scope or
22 usefulness of this new information.

23 **B. Information Sharing**

24 The parties met and conferred on December 1 on remaining information-
25 sharing issues, and expect continued discussions.
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1 **C. Return of Additional Deported Parents**

2 The parties are discussing avenues for relief for deported parents, and will
3 continue to meet and confer, and report back to the Court.

4
5 **III. MMM-Dora Plaintiffs' Report Regarding Settlement Implementation**

6 The parties continue to work together to implement the settlement agreement
7 approved on November 15, 2018. Class counsel are providing the Government with
8 signed waiver forms as they are received from class members, and class counsel are
9 continuing to work on outreach efforts to class members who may qualify for relief
10 under the settlement. The parties continue to meet and confer on issues related to
11 settlement implementation as they arise.
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1 DATED: December 2, 2020

Respectfully submitted,

2
3 /s/ Lee Gelernt

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