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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.
10

11
12 The Court ordered the parties to file a joint status report (JSR) by 3:00 pm on
13 October 20, 2020, in anticipation of the status conference scheduled at 1:30 pm on
14 October 22, 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

5 SETTLEMENT PROCESS	6 DESCRIPTION	7 NUMBER
8 Election Forms¹	Total number of executed election forms received by the Government	440 (258 Parents/182 Children)²
	<ul style="list-style-type: none"> • Number who elect to receive settlement procedures 	278 (155 Parents/123 Children)
	<ul style="list-style-type: none"> • Number who waive settlement procedures 	162 (103 Parents/59 Children)³
Interviews	Total number of class members who received interviews	172⁴
	<ul style="list-style-type: none"> • Parents who received interviews 	90
	<ul style="list-style-type: none"> • Children who received interviews 	82
Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	71⁵

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18 ¹ The number of election forms reported here is the number received by the Government as of August 13, 2020. No additional forms have been received since that time.

19 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.

20 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.

21 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.

22 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.

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1		• Number of parents determined to establish CF or RF upon review by USCIS	69 ⁶
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3		• Number of parents whose CF or RF finding remains negative upon review by USCIS	2
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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		Total number of affirmative asylum decisions by USCIS	21
13			
14		• Number of parents granted asylum by USCIS	2
15			
16		• Number of parents referred to immigration court	5
17			
18		• Number of children granted asylum by USCIS	3 ⁹

19 _____
20 This number excludes 12 cases where a parent already had an NTA from ICE or was already
21 ordered removed by an IJ (which are included in the interview totals).

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

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

⁹ This number includes children granted asylum as a dependent on their parent's asylum

	<ul style="list-style-type: none"> Number of children referred/returned to immigration court 	11
Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	103 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. On November 6, 2019, the Steering Committee notified Defendants that in the 11 batches there were 149 individuals who had been identified by the government as being both children of potential expanded class members and "exclusions." On December 13, 2019, Defendants provided Plaintiffs with their completed review and reconciliation of the 149 individuals with inconsistent labels.

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. Following multiple meet and confer

_____ application.

¹⁰ This number is as of September 26, 2020.

1 discussions, on July 5, 2020, Plaintiffs provided Defendants with an updated
2 spreadsheet containing information regarding members of the expanded class, and
3 identifying members of that class about whom Plaintiffs requested to meet and
4 confer. Defendants reviewed the information provided and asked Plaintiffs some
5 follow-up questions, to which Plaintiffs responded on August 6, 2020.
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7 The parties are continuing to discuss this issue to determine if it can be
8 resolved or whether it will require intervention from the Court. The parties have
9 scheduled a meet and confer to discuss these issues on Thursday, October 22, 2020.
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11 **C. Government Processes, Procedures, and Tracking, for Separations Since**
12 **June 26, 2018.**

13 Data Requested by Plaintiffs. Defendants continue to provide Plaintiffs
14 updated reports containing information regarding parents and children separated
15 since the Court's June 26, 2018 Order on a monthly basis.
16

17 Processes and Procedures.

18 In the May 27, 2020 Joint Status Report, Defendants provided the court with
19 updated reporting regarding the various steps it has taken to implement Paragraph 5
20 of the preliminary injunction, ECF No. 83 at 24, ¶ 5, and improve the processes and
21 procedures for information sharing between the agencies related to family
22 separations. Following the July 10, 2020 status conference, the Court ordered that
23 "Defendants shall provide a declaration from the Assistant Commissioner of OIT or
24 other appropriate designee setting out the status of the development of the UIP and
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1 estimated completion date. The declarant should also address the Court's concerns
2 about how the UIP will enable parents in criminal custody access to their children's
3 location information and how the UIP will assist in reunification efforts when a
4 parent is transferred from criminal custody to immigration custody." ECF No. 543
5 at 2. Defendants provided that information in the August 19, 2020, Joint Status
6 Report, including a declaration from Robert J. Costello, Executive Director, Office
7 of Information Technology, Enterprise Services, U.S. Customs and Border
8 Protection, U.S. Department of Homeland Security. ECF No. 547. Following the
9 status conference on August 21, 2020, the Court ordered the government to provide
10 in the next report "a supplemental declaration from Mr. Costello on the progress of
11 the UIP." In accordance with the Court's order, Defendants provide the attached
12 declaration.
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17 **II. MS. L. PLAINTIFFS' POSITION**

18 **A. Steering Committee Outreach to Sponsors and Parents of Children of** 19 **Expanded Class Members**

20 The government has provided eleven lists identifying 1,556 children of
21 potential expanded class members. Plaintiffs have focused on reaching children
22 whose membership in the class is not contested, and for whom the government has
23 provided at least one phone number for a sponsor or for the child's parent.¹¹
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25 ¹¹ The eleven lists identify a total of 1,556 unique children, 1,134 of which
26 have been confirmed by the government as being children of potential expanded
27 class members. For 104 of these 1,134 children of potential class members, the
28 government has not provided a phone number. Parents of the 422 children who
have not been identified by the government as potential expanded class members

1 As of October 20, the Steering Committee has attempted to reach the
2 families of all of these 1,030 children, and has successfully reached the parents (or
3 their attorneys) of 485 children, an increase of 47 children since the last status
4 report.

5 As a result, 545 children remain for whom the Steering Committee has not
6 yet reached the separated parent, approximately two-thirds (66%) of whom are
7 believed on the basis of the last information available from the government, to be
8 in their respective countries of origin. For all of these families, the Steering
9 Committee's prior telephonic outreach attempts have not been successful in
10 reaching the parent, and as further telephonic outreach attempts are not expected to
11 result in successful contact with the separated parent, the Steering Committee has
12 commenced or intends to commence additional efforts to locate the separated
13 parent, as discussed below.

14 As reported in the last Joint Status Report, the Steering Committee's
15 additional efforts to locate separated parents have been hampered since March of
16 this year due to COVID-19. However, as discussed below and as demonstrated in
17 the increase in parents successfully contacted since the last Joint Status Report,
18 limited on-the-ground efforts to find separated parents have re-commenced where
19 conditions have permitted search activities to resume safely.

20 The Steering Committee has conducted and continues to conduct further
21 outreach to families who have tentatively indicated that they are not satisfied with
22 the current separation from their child and who may want their child returned to
23 their country of origin. Following discussions with these parents, the Steering
24 Committee has yet to identify any families that definitively seek to have their child

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26 _____
27 have been categorized as "exclusions". The Steering Committee also intends to
28 reach individuals the government has categorized as excluded from the class, and
Plaintiffs reserve the right to contest those exclusions.

1 returned to their respective countries of origin. Our outreach to these families
2 continues and we will advise the government if and when any cases arisen in
3 which a parent seeks to have their child returned, prior to bringing any such cases
4 requiring further assistance to the attention of the Court. As noted above, the
5 Steering Committee has experienced delays and anticipates further delays in being
6 able to obtain and provide this information to the government as a result of the
7 outbreak of the novel coronavirus and its continued spread across the United States
8 and various Central American countries, but will continue to keep the government
9 and the Court informed of its progress.

10 **B. Steering Committee Progress Contacting “Unreachable” Parents**

11 As noted in previous Joint Status Reports, the Steering Committee has
12 commenced extensive efforts to locate the “unreachable” parents in their respective
13 countries of origin, a group now comprised of the parents of 470 children
14 (representing the subset of the parents of 545 children that the Steering Committee
15 has not yet successfully contacted and for whom the Steering Committee does not
16 expect telephonic outreach attempts to be successful). Over the last several months,
17 the Steering Committee has continued its additional outreach initiatives in an
18 attempt to reach these parents.

19 First, as previously reported, the Steering Committee has engaged in time-
20 consuming and arduous on-the-ground searches for parents in their respective
21 countries of origin. Following a suspension due to the COVID-19 pandemic,
22 limited physical on-the-ground searches for separated parents has now resumed
23 where possible to do so while protecting the health of personnel working with the
24 Steering Committee and members of vulnerable communities in separated parents’
25 home countries. As of October 20, defenders with Justice in Motion had
26 commenced efforts to locate the “unreachable” parents of 502 children, and had
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1 successfully located the parents of 187 of those children. During this time, the
2 Steering Committee has used contact information obtained by Justice in Motion’s
3 defenders to communicate with, and ascertain the reunification preferences of,
4 parents who had formerly been designated as “unreachable”. The Steering
5 Committee intends to continue physical on-the-ground searches while it remains
6 safe to do so, and will continue to update the Court on its progress, particularly if
7 such searches must be limited or suspended again due to travel restrictions or
8 health risks.

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

22 Additionally, as previously reported, the Steering Committee has
23 commenced broad-based media outreach efforts to publicize the toll-free phone
24 numbers created by the Steering Committee in Spanish language media. As noted
25 in the last several Joint Status Reports, outreach efforts to these third-party media
26 outlets have not yet resulted in broad dissemination of the Steering Committee’s
27 toll-free numbers, which the Steering Committee believes to be due in large part to
28

1 the continuing effects of the novel coronavirus. While new inbound calls to the
2 toll-free numbers have ceased, the Steering Committee is working to identify
3 opportunities to broadly disseminate the toll-free numbers through various media
4 to maximize visibility to potential *Ms. L.* class members, including most recently
5 by seeking to collaborate on such media outreach initiatives with other non-profit
6 organizations. The Steering Committee will continue to update the court on these
7 efforts.

8 Finally, also as previously reported, the Steering Committee has been in
9 communication with Seneca Family of Agencies (“Seneca”), a non-profit
10 organization that has contracted with the Department of Health and Human
11 Services to connect certain *Ms. L.* class members in the United States with mental
12 health providers, pursuant to a preliminary injunction in *Ms. J.P., et al. v. William*
13 *P. Barr, et al.* (2:18-cv-06081-JAK-SK, C.D. Cal.). The Steering Committee
14 remains hopeful that this work will enable the Steering Committee to obtain
15 contact information for currently unreachable parents in the *Ms. L.* class, and to
16 locate such parents, particularly those believed to be within the United States and
17 thus within the scope of Seneca’s work. The Steering Committee intends to use
18 this information to conduct further outreach to class members to ascertain their
19 preferences with respect to reunification.

20 **C. Meeting and Conferring Regarding Deported Expanded Class Members**

21 Plaintiffs have sought to meet with the government to further discuss relief
22 that expanded class members may seek under the Court prior rulings as to deported
23 parents who sought return. That initial meeting is set for this Thursday, prior to the
24 status conference.
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1 **D. Results of October Survey of Legal Services Providers and Information**
2 **Sharing**

3 Legal Services Providers (LSPs) are filing, in a separate docket entry, a
4 report of information sharing discussions, as well as results from a survey
5 conducted this month. The survey sought to determine what information the
6 providers, in recent months, were able to obtain from the government about a
7 separated child's parent, and what information the providers were not able to
8 obtain.

9 Of note, it appears that about half of respondents reported that they continue
10 not to be able to obtain information about the location of a child's parent if the
11 parent is in U.S. Marshals' custody. That lack of information is consistent with
12 prior inspector general reports raising concerns that ORR does not receive
13 necessary information about a parent's location from the U.S. Marshals Service.
14 *See, e.g.,* Communication and Management Challenges Impeded HHS's Response
15 to the Zero-Tolerance Policy, (filed at ECF No. 524), at 26 ("Facility staff reported
16 that U.S. Marshals Service staff told them it did not have the same obligations as
17 DHS to share information about parents with ORR. As of April 2019, ORR staff
18 reported that the UAC Program continued to experience significant difficulties
19 obtaining information about parents who were in U.S. Marshals Service custody.")

20 Plaintiffs await further updates from the government as to the
21 implementation of new information-sharing systems and any agreements requiring
22 information sharing among governmental agencies, such as between the ORR and
23 the Department of Justice. *See id.* at 41 ("[N]o current agreement requires DOJ to
24 coordinate with ORR or provide information about parents' locations, which has
25 led to ongoing difficulties locating parents in U.S. Marshals' custody.")

26 Finally, with respect to ongoing discussions of information the government
27 agrees to provide to LSPs, Plaintiffs have also sought further clarification from the
28

1 government on one issue. That issue is whether the government will agree to
2 provide a parent's Letter of Designation for their child and the parent's Notice of
3 Potential Rights form, to an LSP that requests such forms, and whether the
4 government agrees to seek any consent from a parent that it believes is needed to
5 provide those forms. Other issues are discussed and summarized in the LSPs'
6 filing.

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

8 The parties continue to work together to implement the settlement agreement
9 approved on November 15, 2018. Class counsel are providing the Government with
10 signed waiver forms as they are received from class members, and class counsel are
11 continuing to work on outreach efforts to class members who may qualify for relief
12 under the settlement. The parties continue to meet and confer on issues related to
13 settlement implementation as they arise.
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DATED: October 20, 2020

Respectfully submitted,

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