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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF CALIFORNIA

4 MS. L, et al.,

Case No. 18cv428 DMS MDD

5 Petitioners-Plaintiffs,

6 **JOINT STATUS REPORT**
7 **REGARDING REUNIFICATION**

8 vs.

9 U.S. IMMIGRATION AND
10 CUSTOMS ENFORCEMENT, et
11 al.,

12 Respondents-Defendants.

13 On July 10, 2018, this Court held a status conference, and ordered the
14 parties to file a joint report on July 11, 2018 regarding the ongoing
15 reunification process. The parties submit this joint status report in accordance
16 with the Court's instruction.

17 **I. DEFENDANTS' POSITIONS**

18 **A. Defendants are in Compliance With The Court's Order**

19 Defendants are in compliance with the Court's order. Defendants have now
20 reunified 57 children identified by Defendants and this Court as eligible for
21 reunification at the status conference on July 10, 2018. Of the 63 identified by the
22 Court, 6 were ultimately determined not to be eligible for reunification after further
23 information was obtained regarding either parentage or the criminal background of
24 the parent. Additionally, Defendants identified one additional family with a child
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1 under age 5 that was eligible for reunification, and was able to reunify that family
 2 as well.

3 For these children, cases were resolved as follows:

- 4 • 6 were determined not to be eligible for reunification following completion
 5 of parentage and background checks:
 - 6 o 3 had parents with serious criminal history
 - 7 o 1 was excluded because the accompanying adult was not the parent of
 8 that child
 - 9 o 1 was excluded on suspicion of not being the parent or of posing a risk
 10 to the child, because the accompanying adult presented a false birth
 11 certificate
 - 12 o 1 had a parent who was determined to be in the custody of the U.S.
 13 Marshals, not in ICE custody as previously believed
- 14 • 38 were reunified on or before July 10, 2018
- 15 • 19 were reunified on July 11, 2018 (this number includes one additional child
 16 who was identified by Defendants since their last submission to this Court)
- 17 • 1 was reunified by 6:00 a.m. local time on July 12, 2018.

18 For the 20 children who were reunified on July 11 and 12, 2018,
 19 transportation arrangements had been made on July 10, but could not be completed
 20 for logistical reasons specific to each case until July 11 and July 12. Defendants
 21 detail below the reasons for any delay in reunification, as well as the reasons why
 22 21 of the parents of children originally believed to be class members were
 23 ultimately determined not to be members of the class due to criminal history,
 24 danger to the child, or not being the parent.
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Criminal background of adults excluded from the class:

1. Warrant for murder in Guatemala
2. Child cruelty and narcotics convictions
3. Suspected transnational criminal organization involvement and human trafficking
4. Outstanding criminal warrant in El Salvador
5. 2 DUI convictions
6. Significant criminal history including assault conviction
7. Outstanding warrant in Florida for DUI
8. DUIs, assault, stolen vehicle
9. Robbery conviction
10. Wanted by El Salvador
11. Criminal charges including assault

Not a parent or parentage in question:

12. Adult said he is uncle, not father
13. Negative DNA match, adult indicated he is not the child's father
14. Adult said she is grandmother, not mother
15. During DNA testing, adult disclosed she is not the child's mother
16. Negative DNA match, still under investigation
17. Adult disclosed that she is grandmother, not the parent
18. Adult presented false birth certificate, still under investigation

Release presents danger to the child:

19. Before court order, adult was required to submit information and fingerprints of other adults in household where she will live with the child; background check on adult male in household shows an active warrant for aggravated criminal sexual assault of a 10-year-old female.
20. Child made allegations of abuse against adult

Communicable Disease

21. Parent is being treated for communicable disease in ICE custody

Reunifications completed on July 11 and 12:

1. Reunification in ICE custody completed at midnight Pacific time on 7/10, 3:00 a.m. Eastern on 7/11
2. Reunification was scheduled for 10:30 p.m. Pacific time on 7/10, 12:30 am Central time on 7/11

3. Reunification was scheduled for 10:30 p.m. Pacific time on 7/10, 12:30 am Central time on 7/11
4. Parental verification was not complete; adult and child were in distant locations in New York state, reunification occurred before noon on 7/11.
5. Reunification was scheduled for 10:30 p.m. Pacific time on 7/10, 12:30 am Central time on 7/11
6. Reunification was scheduled for 10:30 p.m. Pacific time on 7/10, 12:30 am Central time on 7/11
7. Reunification in ICE custody completed at midnight Pacific time on 7/10, 3:00 a.m. Eastern on 7/11
8. Reunification was scheduled for 10:30 p.m. Pacific time on 7/10, 12:30 am Central time on 7/11
9. Parental verification was not complete; child placed on flight at 9:55 p.m. Pacific time 7/10, reunification occurred at 5:35 a.m. Eastern 7/11
10. Parental verification was not complete; Texas, reunification complete 7/11
11. Parental verification was not complete; adult was in Texas and child was in Maryland, reunification completed on 7/11
12. Parental verification was not complete; Texas, reunification complete 7/11
13. Parental verification was not complete; Texas, reunification complete 7/11
14. Parental verification was not complete; parent was in Louisiana and child in New York, reunification completed 6:00 a.m. on 7/12
15. Parental verification was not complete; parent was in Texas and child in Arizona, reunification completed on 7/11
16. Parental verification was not complete; child was in New York and parent was released to the interior, reunification in Georgia complete 7/11
17. Parental verification was not complete; discharge was coordinated with discharge of sibling 5 years of age or older, reunification completed on 7/11
18. Parental verification was not complete; child was in New York and parent was released to the interior, reunification in Georgia complete 7/11
19. Parental verification was not complete; child was in New York and parent was released to the interior in Texas, reunification complete in Texas 7/11
20. Parental verification was not complete; child was in Illinois and parent was released to the interior, reunification in Texas complete 7/11

The 23 remaining children aged 0–4, who HHS originally listed as possible candidates for reunification under the Court’s order, cannot currently be reunified with their parents because: their parents are in criminal custody (11), or their

1 parents have been removed (12) and they will be considered for reunification on a
2 timetable to be determined as Plaintiffs and Defendants work together to locate
3 those parents and determined if they wish to be reunified. One child on the original
4 list has a parent who may or may not be a United States citizen (insufficient
5 information is available to make this determination, and the parent and others are
6 not available to provide that information). The child was separated from her parent
7 in 2015 when her parent was arrested on an outstanding warrant by the U.S.
8 Marshals Service. Defendants have not been aware of the parent's location since
9 then and they remain unable to locate that parent. Because the parent is not
10 available, it is not possible to reunite the child with the parent. Unless the parent is
11 located, HHS will provide care and seek placement for the child using its ordinary
12 programs and procedures.

13 **B. HHS Truncated Processes to Comply With the July 10, 2018 Order**

14 In its July 10, 2018 ruling and order, the Court instructed Defendants to
15 release children on Defendants' list who Defendants associated with adults in ICE
16 custody, and whose affirmative parental verification, including DNA testing, had
17 not yet been completed. The Court also instructed that reunification should not be
18 delayed for HHS to affirmatively verify parental status.

19 There were 16 such adults in ICE custody. Of those: 1 was found to be in
20 Marshal's custody, not in ICE custody; 1 DNA test result came back negative prior
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1 to the Court's deadline, causing good faith concern about parentage and risk to the
2 child; and 1 was found to have presented a false birth certificate, also causing good
3 faith concern about parentage and risk to the child. For the other 13 adults, HHS
4 transferred the children to ICE for reunification with those adults without further
5 parental verification process.
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7 The Court's order also required Defendants, by the Court's deadline, to
8 reunify 8 children who Defendants had associated with adults previously released
9 to the interior of the United States. At the time of the Court's order, HHS had not
10 yet completed parental verification of those purported parents, nor had HHS
11 received all biographical or fingerprint information that it requested for any other
12 adults who would be living in the same household upon release of the child.¹ HHS
13 was able to confirm parentage of 1 of the 8 adults prior to the deadline. For the
14 remaining 7 of the 8 adults, in compliance with the Court's order, HHS released
15 the children to the adults despite not having completed its affirmative verification
16 that those adults were the parents. HHS also did not complete any background
17 checks on other adults living in the same households as the children upon release.
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22 **C. Reunification With Removed Parents**

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25 ¹ In at least one instance where background investigations of cohabitants were
26 completed prior to the Court's deadline, HHS found that an adult in the household
27 had an outstanding warrant for aggravated sexual abuse of a 10-year-old child.
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1 With regard to those children whose parents are removed, Defendants are
2 working with Plaintiffs' counsel to locate those parents and to provide them notice
3 to determine if they wish to be reunified with their children. It is difficult to
4 determine how much time will be necessary for those reunification until the
5 parents are contacted and it can be determined what those reunifications would
6 entail. Defendants ask the Court to allow those reunifications to occur on a flexible
7 schedule, and propose that for each such child for whom reunification is requested,
8 once the parent is located and the request for reunification is made, Defendants
9 will work with Plaintiffs' counsel to identify the steps that need to be taken for
10 reunification and determine a reasonable amount of time to complete that process.
11 If the Court is inclined to set a definitive timeframe, Defendants request that any
12 deadline begin on the date that Defendants receive travel documents for the child.
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14 **C. Individuals in State Custody**

15 Defendants understand that Plaintiffs will reach out to class members in state
16 criminal custody to ensure that they contact ORR following their release if they
17 wish to be reunified with their child. Defendants will provide Plaintiffs with any
18 information they have about class members who are sent to state criminal custody
19 to assist in these communications.
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D. Reporting:

Defendants agree that no later than July 13, 2018, they will provide Plaintiffs' counsel with a list of identified class members in ICE custody. Defendants also agree that no later than July 13, 2018, they will provide Plaintiffs' counsel with a list of identified children of class members. Defendants agree to meet and confer with Plaintiffs about the provision of additional information. Defendants are aware that Plaintiffs are requesting to receive a chart with the level of detail that was provided regarding the minors under-age-5, however the compilation of that information took a significant amount of time on the part of operators whose time would be better spent facilitating reunification and production of the same level of detail on a much larger scale is not operationally feasible under the current timeframes. Defendants request the opportunity to continue to meet and confer with Plaintiffs to see if there is an option that would provide Plaintiffs with the information that they need while minimizing demands on the part of agency operators.

II. PLAINTIFFS' POSITIONS**A. Reunifications of Children Under Five**

1. As of today, Defendants represent that they have reunified 58 Class Members. Of the 103 Class Members Defendants initially identified, apparently 10 remain in criminal custody, 12 were deported, and 23 have apparently dropped out of the class or are not eligible for reunification at this time, either because they

1 had criminal histories, evidence of abuse, communicable diseases, or they were not
2 actually the parents.

3 2. Plaintiffs have not yet received any specific information about most of
4 the 23 individuals who Defendants claim have dropped out of the class or are
5 ineligible for reunification. Plaintiffs have therefore not been able to verify
6 whether those parents are, indeed, Class Members eligible for reunification at this
7 time. Plaintiffs have also not been able to determine whether any criminal
8 convictions those parents have render them a danger to their children—and
9 therefore not entitled to reunification at all—or merely not Class Members.

10 3. As for the 58 parents whom Defendants have apparently reunified,
11 Plaintiffs have no independent verification that these 58 parents have in fact been
12 reunited with their children. During the meet and confer process leading up to July
13 10, Defendants claimed that they would provide Plaintiffs' counsel with notice of
14 the time and place for each reunification, so that Plaintiffs' counsel could arrange
15 for private and NGO service providers to assist the families and verify
16 reunification. This did not happen. Defendants did not provide specific time and
17 place information for a single Class Member. Instead, Defendants only provided a
18 general prediction about how most Class Members would be reunified.

19 Defendants' lack of communication about reunification logistics caused
20 significant problems over the last three days. Plaintiffs are now hearing about a
21 number of troubling situations from service providers and attorneys for Class
22 Members and their children. These problems include:

- 23 • ICE left one Class Member alone at a bus stop with her children, one of
24 whom was six months old. Through a series of phone calls between the
25 Class Member, her attorney, and another advocate, the Class Member
26 finally obtained a bus ticket on Tuesday around midnight.

- 1 • One Class Member was transported through a series of ICE facilities in
2 New Jersey and Michigan in a matter of days, with no prior notice to his
3 counsel. ICE refused access to his counsel while he was detained in
4 Michigan. Despite repeated requests by both the Class Member and his
5 lawyer, ICE did not allow his counsel to be present at the point of
6 reunification.
- 7 • A Class Member was kept in an ICE office for most of the day of her
8 originally-scheduled reunification. ORR had processed her children for
9 release that day. ICE officers attempted to process her for release on an
10 ankle monitor. Due to an apparent computer malfunction, the officers
11 were unable to complete the process. At the end of the business day, the
12 ICE officers ceased their attempts and told the mother that she would be
13 sent back to detention without her children.

14 **B. Parents Deported Without Their Children**

15 1. Twelve Class Members with children under 5 remain separated, because
16 they have already been deported. Plaintiffs and their NGO partners are in the
17 process of trying to contact these parents. For those deported Class Members who
18 choose to be reunited with their children, Plaintiffs propose that the Court order
19 Defendants to reunify them within 7 days after the parent obtains travel documents
20 for the child. This deadline will ensure that these Class Members are promptly
21 reunified, and that any delay in obtaining travel documents does not affect
22 Defendants' obligations.

23 2. Defendants have represented that case-specific complications might
24 necessitate further delay. In that situation, Plaintiffs propose that the parties meet
25 and confer about any individual case where the government presents specific,
26 concrete reasons why 7 days is not sufficient. If any disputes remain, the parties
27 can submit the dispute to the Court for a ruling. But the Court should reject any
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1 request from Defendants to extend or avoid setting a deadline, which may lead to
2 indefinite delay. Indeed, to date, Plaintiffs are not aware of any specific steps
3 Defendants have taken even to locate these 12 Class Members.

4 **C. Costs of Reunification**

5 Plaintiffs' counsel have heard reports that some Class Members have been
6 asked to pay for the costs of reunification, such as transportation costs (and
7 possibly DNA testing). For example, Plaintiffs' counsel was informed that one
8 Class Member was initially told to wire around \$1,900 to Western Union to pay for
9 reunification; another Class member arranged to pay for a plane ticket before being
10 told to cancel the ticket because someone else was purchasing a flight for the child.

11 It is not acceptable for Defendants to make compliance with this Court's
12 injunction contingent on Class Members paying thousands of dollars to reunify
13 with their children. Plaintiffs therefore ask the Court to order Defendants not to
14 charge Class Members for any of the costs of reunification, including DNA testing
15 and air travel, and to reimburse any individuals who were in fact charged.

16 **D. Remedies for Non-Compliance**

17 Defendants claim that only 58 parents were eligible for reunification as of
18 the July 10 deadline. As noted above, Plaintiffs have not been given sufficient
19 information to verify the accuracy of that eligibility number.

20 In any event, Defendants concede that they did not meet the July 10 deadline
21 even for these 58 Class Members. This morning, Defendants informed Plaintiffs'
22 counsel that only 38 Class Members were reunified by the Court's deadline. The
23 other 20 children were not returned to their parents until after July 10. In light of
24 this non-compliance, Plaintiffs propose specific remedies in order to ensure that
25 Defendants do not miss future deadlines. *See infra* Section E.

26 **E. Class Members with Children 5 and Older**

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1 As noted above, Plaintiffs believe that open communication and planning in
2 advance are critical to ensure that Defendants do not miss the future deadlines
3 ordered by the Court.

4 The past week has highlighted these concerns. Plaintiffs wrote to
5 government counsel on July 2 to ask for a list of class members and reunification
6 plans. The government did not provide any of this information before the July 6
7 status conference, when the Court ordered Defendants to produce the list the next
8 day. That list, however, did not contain the parents' names or A numbers.
9 Defendants did not provide that critical information necessary to locate and track
10 Class Members until the next day—two days before the deadline.

11 When the deadline arrived, Defendants had not completed parentage
12 verification or background checks for many of the class members with children
13 under 5. The failure to complete these steps in advance delayed reunification for
14 more than a dozen class members until after the deadline. And despite promising
15 to provide advance notice of the time and place for each reunification, Defendants
16 provided no specific information to Plaintiffs' counsel. As a result, Class
17 Members' individual lawyers and service providers were left frantically scrambling
18 to find their clients and provide support.

19 The following seven (7) steps are designed to address each of these failures:

20 1. Defendants must provide Plaintiffs with a Class List for the remaining
21 Class Members by Monday, July 16, with all of the information that Defendants
22 provided for the children under 5. To ensure that reunification plans are not
23 formulated haphazardly at the last minute, this Class List should also contain
24 complete information regarding Defendants' plans for reunifying each Class
25 Member, which was not provided for the children under 5.

26 2. Defendants must complete all parentage verifications and background
27 checks by Thursday, July 19. These steps, which must be completed prior to
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1 reunification, should already be in progress or completed. One week from today
2 should be more than enough time to complete them.

3 3. Starting Tuesday, July 17—the day after Defendants must provide the
4 Class List (see above, item 1)—Defendants should file with the Court a daily
5 report regarding the number of reunifications that have occurred that day.

6 4. Defendants must provide Plaintiffs' counsel, as well as Class Members'
7 immigration lawyers (if any), with at least 24 hours advance notice of the time,
8 place, and location of reunification. Defendants should also allow Class Members'
9 immigration counsel access to the site of reunification.

10 5. For separated parents whom Defendants determine are not Class
11 Members, Defendants must provide Plaintiffs' counsel with detailed reasons why a
12 putative Class Member was excluded from the Class List, including, at a
13 minimum: any criminal convictions or charges; any allegations of abuse or
14 unfitness; or the specific reasons why parentage could not be verified.

15 6. If Defendants choose to reunite Class Members in family detention
16 facilities, they should provide immediate access to immigration lawyers who can
17 advise the Class Members of their rights. DHS facilities frequently place
18 unwarranted restrictions on counsel access, such as limiting the rooms available to
19 meet with lawyers, or adopting restrictive phone policies. Any lawyer seeking to
20 meet with a Ms. L. Class Member should be provided immediate access to a
21 private facility where the Class Member can be counseled on his or her rights.
22 This is particularly important if that Class Member has received a removal order.

23 7. Defendants must establish a fund to pay for professional mental health
24 counseling, which will be used to treat children who are suffering from severe
25 trauma as a result of their forcible separation from their parents. The amount can
26 be set at a later time, subject to further negotiations between the parties and rulings
27 from the Court. Although many medical professionals have graciously offered pro
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1 bono services for the children, who plainly are in desperate need of counseling,
2 these medical professionals should not have to assume the costs associated with the
3 government's policy, especially not their out-of-pocket expenses.

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1 DATED: July 13, 2018

Respectfully submitted,

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