

1 BRIAN BOYNTON
2 Acting Assistant Attorney General
3 CHRISTOPHER P. TENORIO
4 Deputy Assistant Attorney General
5 WILLIAM C. PEACHEY
6 Director
7 Office of Immigration Litigation
8 WILLIAM C. SILVIS
9 Assistant Director
10 Office of Immigration Litigation
11 SARAH B. FABIAN
12 Senior Litigation Counsel
13 NICOLE N. MURLEY
14 Senior Litigation Counsel
15 Office of Immigration Litigation
16 U.S. Department of Justice
17 Box 868, Ben Franklin Station
18 Washington, D.C. 20044
19 Telephone: (202) 532-4824
20 Fax: (202) 616-8962
21 RANDY S. GROSSMAN
22 Acting United States Attorney
23 SAMUEL W. BETTWY
24 Assistant U.S. Attorney
25 California Bar No. 94918
26 Office of the U.S. Attorney
27 880 Front Street, Room 6293
28 San Diego, CA 92101-8893
619-546-7125
619-546-7751 (fax)
*Attorneys for Federal Respondents-
Defendants*

Lee Gelernt*
Judy Rabinovitz*
Anand Balakrishnan*
Daniel A. Galindo (SBN 292854)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
T: (212) 549-2660
F: (212) 549-2654
lgelernt@aclu.org
jrabinovitz@aclu.org
abalakrishnan@aclu.org
dgalindo@aclu.org

Bardis Vakili (SBN 247783)
ACLU FOUNDATION OF
SAN DIEGO & IMPERIAL
COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
T: (619) 398-4485
F: (619) 232-0036
bvakili@aclusandiego.org

Stephen B. Kang (SBN 292280)
Spencer E. Amdur (SBN 320069)
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
39 Drumm Street
San Francisco, CA 94111
T: (415) 343-1198
F: (415) 395-0950
skang@aclu.org
samdur@aclu.org

*Attorneys for Petitioners-
Plaintiffs*
**Admitted Pro Hac Vice*

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 On July 6, 2021, the Court ordered the parties to file a Joint Status Report (JSR)
13 by 3:00 pm on August 11, 2021, in anticipation of the status conference scheduled
14 at 1:30 pm on August 13, 2021. ECF No. 603. In accordance with this order of the
15 Court, the parties provide the below JSR.
16

17
18 ///

19
20
21 ///

22
23
24 ///

25

26

27

28

1 **I. DEFENDANTS' POSITIONS**

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

4

5 SETTLEMENT	6 DESCRIPTION	7 NUMBER
8 Election Forms¹	Total number of executed election forms received by the Government	455 (266 Parents/189 Children)²
	• Number who elect to receive settlement procedures	293 (163 Parents/130 Children)
	• Number who waive settlement procedures	162 (103 Parents/59 Children)³
Interviews	Total number of class members who received interviews	180⁴
	• Parents who received interviews	94
	• Children who received interviews	86

10

11

12

13

14

15

16

17

18

19

20

21 ¹ The number of election forms reported here is the number received by the Government as of August 2, 2021.

22 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.

23 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.

24 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.

25

26

27

28

1	Decisions	Total number of CFI/RFI decisions issued for parents by USCIS	73 ⁵
2		• Number of parents determined to establish CF or RF upon review by USCIS	71 ⁶
3		• Number of parents whose CF or RF finding remains negative upon review by USCIS	2
4			
5		Total number of CFI decisions issued for children by USCIS	73 ⁷
6		• Number of children determined to establish CF by USCIS	73 ⁸
7		• Number of children determined not to establish CF by USCIS	0
8		Total number of affirmative asylum decisions by USCIS	27
9		• Number of parents granted asylum by USCIS	3
10			
11			
12			
13			
14			
15			
16			
17			
18			

19 ⁵ This number is the aggregate of the number of parents whose negative CFI/RFI determinations
20 were reconsidered, number of parents whose negative CFI/RFI determination was unchanged, and
21 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).

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
parents who were placed in Section 240 proceedings due to a rare language.

24 ⁷ This number is the aggregate of the number of children who received a positive CF determination,
25 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.

26 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.

1		• Number of parents referred to immigration court	6
2		• Number of children granted asylum by USCIS	5 ⁹
3		• Number of children referred/returned to immigration court	13
4			
5			
6			
7	Removals	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	103 Parents¹⁰
8			
9			
10			

11 **B. The President’s February 2, 2021 “Executive Order on the Establishment**
 12 **of Interagency Task Force on the Reunification of Families”**

13 As noted in the parties’ March 10 filing, the parties have entered into
 14 settlement negotiations which remain ongoing, and the Family Reunification Task
 15 Force (FRTF) is continuing its work both in parallel and in conjunction with these
 16 settlement discussions. ECF No. 578. Since the creation of the FRTF, a total of 45
 17 total separated children have been reunified with parents in the U.S and 59 people
 18 have been paroled as of August 10, 2021. The FRTF continues to focus on
 19
 20
 21
 22
 23
 24

25
 26 ⁹ This number includes children granted asylum as a dependent on their parent’s asylum application.

27 ¹⁰ This number is as of August 7, 2021.

1 establishing contact with all families and working to increase the rate of
2 reunifications.

3 The parties also are discussing settlement issues among themselves on a
4 regular basis, and the next formal Settlement Conference with Judge Dembin is
5 scheduled on August 18, 2021. Issues previously reported on by Defendants in joint
6 status reports are now being addressed by the parties as part of the ongoing
7 settlement negotiations.
8
9

10 **II. MS. L. PLAINTIFFS' POSITIONS**

11 **A. Steering Committee Outreach to Sponsors and Parents of Children of** 12 **Expanded Class Members**

13 The government has provided eleven lists identifying 1,134 children of
14 expanded class members. The government has also identified 64 “recategorized”
15 deported parents from the original class, who the Steering Committee has sought to
16 contact as part of its efforts to reach members of the expanded class.¹¹ The Steering
17 Committee’s recent efforts have been targeted at locating the parents of this group
18 of 1,198 (1,134 plus 64) children.¹²
19
20

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

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

1 Of these 1,198 children, for 861 the Steering Committee has reached the
2 parents (or their attorneys), or otherwise resolved the cases. This represents an
3 increase of 31 children's parents since our last status report. We describe below the
4 status of our continuing efforts to reach the parents of the remaining 337 children,
5 down from 368 in the last status report.

6 The parents of 337 children fall into three groups; in all three, searches are
7 ongoing. First, there are approximately 250 children whose parents are believed to
8 have been removed from the United States following separation from their children.
9 Second, there is a group of approximately 75 children whose parents are believed to
10 be in the United States. Third, there is a group of 12 children for whom the
11 government has not provided a phone number for the parent, child, sponsor or
12 attorney. There is one fewer child in this group since our last status report.

13 Steering Committee Efforts to Locate Parents

14 First, as previously reported, the Steering Committee attempts to reach all
15 parents, sponsors and attorneys by telephone. The Steering Committee has renewed
16 these efforts and had been engaged in an effort to reach parents, where possible, by
17 using the additional contact information provided by the government in late 2020
18 from databases of the Executive Office for Immigration Review and U.S. Customs
19 and Immigration Enforcement. This information includes phone numbers that had
20 not previously been disclosed for children and parents, as well as contact information
21 for a number of attorneys.

22 Where those efforts are not successful, the Steering Committee has engaged
23 in time-consuming and arduous on-the-ground searches for parents. These on-the-
24 ground searches have been focused abroad in the countries of origin of parents who
25 were removed from the United States following separation from their children.
26 These searches are ongoing by members of the Steering Committee, and we have
27 recently devoted additional resources to these efforts. As previously reported, on-
28

1 the-ground searches for separated parents are ongoing when it is safe to do so, but
2 are limited and in some cases cannot take place due to risks associated with the
3 COVID-19 pandemic.

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

19 Additionally, as previously reported, the Steering Committee has undertaken
20 broad-based media outreach efforts to publicize the toll-free phone numbers created
21 by the Steering Committee in Spanish language media. The Steering Committee has
22 also arranged for advertisements on Spanish language radio in Central America.
23 Those advertisements have begun airing. The Steering Committee continues to work
24 to identify opportunities to broadly disseminate the toll-free numbers through
25 various media to maximize visibility to potential *Ms. L.* class members, including
26 seeking to collaborate on such media outreach initiatives with other non-profit
27 organizations.

28

1 The Steering Committee also receives additional contact information for a
2 limited number of families from third parties, including a number of non-
3 governmental organizations. The Steering Committee uses that information to re-
4 attempt telephonic communication with all families for whom new contact
5 information has become available, in addition to the efforts underway using new
6 information provided by the government as described above.

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.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: August 11, 2021

Respectfully submitted,

2
3 /s/ Lee Gelernt

Lee Gelernt*

Judy Rabinovitz*

Anand Balakrishnan*

Daniel A. Galindo (SBN 292854)

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

125 Broad St., 18th Floor

New York, NY 10004

T: (212) 549-2660

F: (212) 549-2654

lgelernt@aclu.org

jrabinovitz@aclu.org

abalakrishnan@aclu.org

dgalindo@aclu.org

13 Bardis Vakili (SBN 247783)

14 ACLU FOUNDATION OF SAN DIEGO
& IMPERIAL COUNTIES

P.O. Box 87131

San Diego, CA 92138-7131

T: (619) 398-4485

F: (619) 232-0036

bvakili@aclusandiego.org

19 Stephen B. Kang (SBN 292280)

20 Spencer E. Amdur (SBN 320069)

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

39 Drumm Street

San Francisco, CA 94111

T: (415) 343-1198

F: (415) 395-0950

skang@aclu.org

samdur@aclu.org

27 *Attorneys for Petitioners-Plaintiffs*

**Admitted Pro Hac Vice*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BRIAN BOYNTON
Acting Assistant Attorney General
CHRISTOPHER P. TENORIO
Deputy Assistant Attorney General
WILLIAM C. PEACHEY
Director
WILLIAM C. SILVIS
Assistant Director

/s/ Sarah B. Fabian
SARAH B. FABIAN
Senior Litigation Counsel
FIZZA BATOOL
Trial Attorney
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 532-4824
(202) 616-8962 (facsimile)
Sarah.B.Fabian@usdoj.gov

Attorneys for Respondents-Defendants