

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

CHAD A. READLER  
Acting Assistant Attorney  
General  
SCOTT G. STEWART  
Deputy Assistant Attorney  
General  
WILLIAM C. PEACHEY  
Director  
Office of Immigration Litigation  
U.S. Department of Justice  
WILLIAM C. SILVIS  
Assistant Director  
Office of Immigration Litigation  
SARAH B. FABIAN  
Senior Litigation Counsel  
NICOLE MURLEY  
Trial Attorney  
Office of Immigration Litigation  
U.S. Department of Justice  
Box 868, Ben Franklin Station  
Washington, DC 20442  
Telephone: (202) 532-4824  
Fax: (202) 616-8962

ADAM L. BRAVERMAN  
United States Attorney  
SAMUEL W. BETTWY  
Assistant U.S. Attorney  
California Bar No. 94918  
Office of the U.S. Attorney  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
619-546-7125  
619-546-7751 (fax)

*Attorneys for Federal  
Respondents-Defendants*

Lee Gelernt\*  
Judy Rabinovitz\*  
Anand Balakrishnan\*  
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*

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*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MS. L, et al.,

Petitioners-Plaintiffs,

vs.

U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT, et  
al.,

Respondents-Defendants.

Case No. 18cv428 DMS MDD

**JOINT STATUS REPORT**

The Court ordered the parties to file a joint report on July 19, 2018, in anticipation of the status conference scheduled for July 20, 2018 at 1:30pm PST. The parties submit this joint status report in accordance with the Court’s instruction.

**I. DEFENDANTS’ POSITIONS**

**A. Update on Reunification Process**

The reunification plan outlined to the Court in Defendants’ filing on July 15, 2018, ECF No. 109, and discussed at the July 16, 2018 status conference, is proceeding. Defendants report the following with regard to the reunification of families with children ages 5-17:<sup>1</sup>

---

<sup>1</sup> The numbers provided are based on unofficial, daily reports that have not been analyzed in the same manner as official statistics. Official statistics require at least 48 hours of analysis and verification. As such, providing official statistics today would reflect data as of July 16, 2018. The daily reports are based on data

- 1 • Total number of possible children of potential class members  
2 identified: 2551
- 3 • Potential class members possibly eligible for reunification: 1606
  - 4 ○ Class members interviewed and cleared for reunification: 848
  - 5 ○ Potential class members pending interview: 272
  - 6 ○ Potential class members released to the interior by ICE: 222
  - 7 ○ Potential class members in ICE custody pending ORR review  
8 of adult and child files: 264
- 9 • Potential class members, or non-members of the class, either not  
10 eligible, or not yet known to be eligible, for reunification: 908
  - 11 ○ Adults known to be in U.S. Marshal, State or local custody: 2
  - 12 ○ At interview, parent waived reunification: 136
  - 13 ○ Adults with prohibitive criminal record or deemed ineligible by  
14 ICE: 91
  - 15 ○ Further evaluation: 679
- 16 • Class members with a final order of removal: 719
- 17 • Total number of reunifications: 364

16 **B. Notice**

17 The Government is providing the “cleared” list to Plaintiffs on a daily basis  
18 when it is updated. This provides normally provides 12-hours’ notice or more  
19 that a class member may be reunified.  
20

21 Moreover, at the time of reunification, families are released to the office of a  
22 local NGO, who assists the family with post-release services as needed. These  
23

24  
25 as of 11:59 PM the night before reporting. In the interest of providing  
26 information that is as up-to-date as possible, although not verified, the unofficial  
27 numbers are provided. As such, the numbers provided in Section A reflect the  
28 unofficial numbers as of 11:59 PM on July 18, 2018.

1 NGOs are available to assist released families 24-hours a day. ICE provides notice  
2 to the NGOs of the families being released at least 1 hour in advance of any release.

3 **C. Class Member Lists and Other Information For Plaintiffs**  
4

5 On July 13, 2016, Defendants provided Plaintiffs' counsel with a list of  
6 identified class members in ICE custody, as well as a list of identified children of  
7 class members. Those lists contained names, A#s, and locations for all individuals,  
8 as well as the ages of the children.  
9

10 On or before July 20, 2018, Defendants plan to provide Plaintiffs with a list  
11 of class members who have been removed, including the date of removal, country  
12 of removal, and last detention location. On or before July 23, 2018, Defendants  
13 plan to provide Plaintiffs with a list of class members who have been released from  
14 ICE custody. Defendants are still attempting to determine whether they can  
15 provide Plaintiffs with a list of class members who are in criminal custody. The  
16 information requested is not in ICE's or HHS's control, and is not maintained in  
17 such a way that it can be pulled automatically from the respective systems.  
18  
19  
20

21 On July 18, 2018, Plaintiffs sent to Defendants an email requesting  
22 additional information, including clarifications regarding the information that  
23 Defendants have already provided to Plaintiffs. Defendants have asked Plaintiffs to  
24 prioritize their requests to that Defendants can best get them the information that  
25 they need. In the meantime, Defendants are in the process of determining if they  
26  
27  
28

1 are able to provide the requested information and will do so, or will meet and  
2 confer with Plaintiffs regarding their requests for additional information.

3 **II. PLAINTIFFS' POSITIONS**

4  
5 **A. Children Age 5-17**

6 Despite multiple requests, Plaintiffs' counsel still has not received critical  
7 information from Defendants. Plaintiffs need this information to locate Class  
8 Members who have been deported or released from ICE custody, to ensure  
9 compliance with the Court's deadlines, and to arrange for appropriate legal and  
10 other services for Class Members and their children. As of this filing, for the Class  
11 Members with children age 5-17, Defendants have not provided the following  
12 information:  
13  
14

- 15
- 16 • A list of Class Members who have been released from ICE custody.
  - 17 • A list of Class Members who have been deported.
  - 18 • A list of parents with final removal orders, who need to be counseled on  
19 their options and their children's options immediately.

20 This information is especially critical for parents with removal orders. These  
21 parents may only have a matter of days to make the momentous decision whether  
22 to leave their child behind in the United States. Plaintiffs have accordingly made  
23 urgent requests to Defendants for these parents' information.  
24  
25  
26  
27  
28

1 Defendants have also not provided any plan for reuniting the parents who  
2 have been released from ICE custody. The July 14 list of children stated that  
3 hundreds of parents have been released from custody. But Plaintiffs do not know  
4 where and when any of these families will be reunited.  
5

6 **B. Children Under 5**

7 For Class Members with children younger than 5, Defendants have not  
8 provided any of the clarifications necessary for Plaintiffs to ensure that parents  
9 were not improperly excluded from the class. Defendants have so far not provided  
10 the following:  
11

- 12 • Details about the nature of the charge, conviction, or warrant for each  
13 parent who was excluded from the class based on criminal history or  
14 alleged abuse or neglect.
- 15 • Details about the reasons why each putative Class Member was excluded  
16 for not being a parent.  
17

18 **C. Deadlines**

19 To ensure that reunification occurs on time for all Class Members, Plaintiffs  
20 respectfully request that the Court order the following deadlines:  
21

- 22 1. By July 20 at 5:00pm PST, Defendants must provide a list of Class  
23 Members in ICE custody who have final removal orders. The list must indicate  
24 whether the parent signed any election form to be removed with or without the  
25 child. For parents who elected to be removed with the child, the list must state the  
26 location where the family will be reunited.  
27  
28

1           2.     By July 20, Defendants must provide an updated list of parents who  
2 have been “precleared” for reunification.

3           3.     By July 21, Defendants must provide a list of Class Members who  
4 have been deported or released from DHS custody into the interior.  
5

6           4.     Defendants must immediately file a plan for reuniting children with  
7 the Class Members who have been released from ICE custody. This plan should  
8 provide the same level of detail as Defendants’ July 15 plan for reuniting parents  
9 who are in ICE custody.  
10

11           5.     By July 23, Defendants must provide a list of families with children  
12 age 5-17 who have already been reunified. The list must indicate whether the  
13 family was deported after being reunified.  
14

15           6.     By July 23, Defendants must provide detailed and specific  
16 information as to why each putative Class Member with children under 5 was  
17 excluded based on criminal history, allegations of abuse or neglect, or parentage,  
18 given the age of these children. This information must be sufficiently detailed to  
19 allow Plaintiffs to dispute or challenge the reasons for excluding the parent from  
20 the class.  
21  
22  
23  
24  
25  
26  
27  
28

1 DATED: July 19, 2018

Respectfully submitted,

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

/s/ Lee Gelernt  
Lee Gelernt\*  
Judy Rabinovitz\*  
Anand Balakrishnan\*  
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*

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 CHAD A. READLER  
Acting Assistant Attorney General  
2 SCOTT G. STEWART  
Deputy Assistant Attorney General  
3 WILLIAM C. PEACHEY  
Director  
4 WILLIAM C. SILVIS  
Assistant Director  
5

6  
7 /s/ Sarah B. Fabian  
SARAH B. FABIAN  
8 Senior Litigation Counsel  
NICOLE MURLEY  
9 Trial Attorney  
10 Office of Immigration Litigation  
Civil Division  
11 U.S. Department of Justice  
12 P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
13 (202) 532-4824  
14 (202) 616-8962 (facsimile)  
sarah.b.fabian@usdoj.gov  
15

16 ADAM L. BRAVERMAN  
United States Attorney  
17 SAMUEL W. BETTWY  
Assistant U.S. Attorney  
18

19 *Attorneys for Respondents-Defendants*  
20  
21  
22  
23  
24  
25  
26  
27  
28