

Monthly Report to Congress on Separated Children | May 2023



ADMINISTRATION FOR
CHILDREN & FAMILIES

The Administration for Children and Families (ACF) submits this report to Congress as described by the following Congressional authorities: section 234 of Public Law 117-328 (Consolidated Appropriations Act, 2023), which is a continuation of section 234 of Public Law 117-103 (Consolidated Appropriations Act, 2022) and section 235 of Public Law 116-260 (Consolidated Appropriations Act, 2021). Please find the language for this authority below:

P.L. 117-328 states:

SEC. 234. Not later than 14 days after the date of enactment of this Act, and monthly thereafter, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and make publicly available online, a report with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security (DHS) (regardless of whether or not such separation was pursuant to an option selected by the children, parents, or guardians), subsequently classified as unaccompanied alien children, and transferred to the care and custody of ORR during the previous month. Each report shall contain the following information:

- (1) the number and ages of children so separated subsequent to apprehension at or between ports of entry, to be reported by sector where separation occurred; and*
- (2) the documented cause of separation, as reported by DHS when each child was referred.*

For reports on all unaccompanied children (UC), see reports published on the Department of Health and Human Services' (HHS) Unaccompanied Children website:

<https://www.hhs.gov/programs/social-services/unaccompanied-children/index.html>).

The Department of Homeland Security (DHS) provides a weekly list of new separations to the ACF Office of Refugee Resettlement (ORR). ORR also creates its own list of new separations, based on its data, and appends it with the DHS list to form a combined list of new separations. ORR and DHS then conduct concurrent reviews of the combined list and create a reconciled new separations master list that shows those separations confirmed by both DHS and ORR. In cases where there is no concurrence between ORR and DHS, or more information is needed to confirm a separation, the agencies work with their field staff to reconcile discrepancies until a final determination of separation/not separation is reached. The purpose of this reconciliation is to make sure that ORR has an accurate list of all children that DHS has separated and referred to ORR for care. As a result of the process, however, the data usually lags by three weeks.

The tables below reflect data for minors, categorized by years of age, referred to ORR during the month of May 2023.¹

Table 1 Children Separated by DHS by Cause of Separation and Age²

UC Separations: Month of May 2023						
Reason for Separation	0-5	6-12	13-14	15-16	17	Grand Total
Parent criminal history	0	3	1	0	1	5
Health issue/hospitalization	3	2	3	0	0	8
Adult spouse separated to maintain family unity of minor spouse and minor child(ren) *	3	0	0	0	0	3
Referred for prosecution	1	0	0	0	1	2
Other-Warrant	0	0	0	2	0	2
Total	7	5	4	2	2	20³

Table 2 Referring Sectors of Separated UC by Age Group

UC Separations:⁴ Month of May 2023						
Referring Sector	0-5	6-12	13-14	15-16	17	Grand Total
El Paso (ELP)	0	1	0	0	0	1
Harlingen (SNA)	4	1	0	0	0	5
San Diego (SND)	2	3	2	2	1	10
Phoenix, AZ (PHO)	1	0	2	0	0	3
San Antonio (SNA)	0	0	0	0	1	1
Total	7	5	4	2	2	20⁵

¹ ORR does not consistently receive apprehension date information from Customs Border and Protection (CBP) and Immigration and Customs Enforcement (ICE) when referring UC to ORR care. As a result, because it is a more reliable source of data, ORR used referral dates to generate the information provided in this report.

² Table 1 lists the categories of permissible reasons for separation used in the government’s reporting to plaintiffs in the *Ms. L.* litigation. See *Ms. L., et al., v. US Immigration and Customs Enforcement, et al.*, No. 3:18-cv-00428 (S.D. Cal. 2018).

³ 20 is the confirmed number of separations for the entire month of May 2023. Previous reporting only reflected partial list of separations for April 2023 because some separations may have not been confirmed at the time of reporting. See also FN4.

⁴ In some cases, final determinations on separation status reported during weekly data reconciliation require further review. As a result, data on separations is subject to change.

⁵ See FN3.

* / DHS provided the following explanation for this category: “The code “adult spouse separated to maintain family unity of minor child and spouse” reflects a DHS data update as of July 2021. These cases include a unique population of individuals: family groups consisting of an adult parent (e.g., a noncitizen over the age of 18) (generally, an adult male), a minor parent (e.g., a noncitizen under the age of 18) (generally, a minor female), and their minor noncitizen child(ren) (generally, infants or toddlers). An adult spouse/partner is not a parent or legal guardian of the minor parent,

The information provided in this report on separated children is primarily based on HHS' regular reporting to the court and to the plaintiffs in *Ms. L v. U.S. Immigration & Customs Enf't* ("ICE"), 3:18-cv-00428 (S.D. Cal. 2018) ("*Ms. L.*"), as well as DHS and ORR reconciled list of all children DHS separated and referred to ORR for care.

On June 26, 2018, the *Ms. L.* court granted a preliminary injunction and certified a class of all adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in HHS custody, HHS foster care, or DHS custody, absent a determination that the parent is unfit or presents a danger to the child. As of this writing, the preliminary injunction remains in effect.

After the court issued the preliminary injunction, as part of an interagency effort, HHS identified 2,815 minors in its custody on June 26, 2018, who were possible children of potential class member parents.⁶ The *Ms. L.* class was expanded to include separations that took place for minors referred to ORR since July 1, 2017, and discharged on or before June 26, 2018. These separations were not part of the original 2,815 minors HHS identified; however, they were later reported to the courts (see FN 7). This report includes those minors in the expanded class that were separated in the months of April 2018, May 2018, and June 2018. HHS has also subsequently tracked and reported referrals of children separated from their parents and in HHS custody on or after June 26, 2018. These reports, and the underlying data used to generate them, inform the reporting below.⁷

Monthly Reporting from April 2018 through May 31, 2023

1. The number and ages in years of children separated at or between ports of entry, as described in the Consolidated Appropriations Act, 2021

and thus, by law, the minor parent is an unaccompanied child, as defined in 6 U.S.C. § 279(g)(2), and, under the Trafficking Victims Protection Reauthorization Act (TVPRA), DHS must therefore transfer the minor parent to the custody of HHS ORR. See 8 U.S.C. § 1232(b)(3). In these cases, DHS must also make a determination as to whether it is appropriate to keep the minor child(ren) with the adult parent or the minor parent. Given the age of the children encountered in the majority of these cases, DHS has generally determined that it is in the best interests of those children to be transferred to HHS custody with their minor mother. This results in a separation of the adult parent from his/her child. DHS makes every effort to notify HHS of the facts of the case so that HHS can determine whether reunification is appropriate. In all instances, the minor child(ren) remain(s) in unity with the minor parent.

Because of the TVPRA requirements, DHS has consistently treated such family groups in the manner described above, but, because of unique nature of these cases, the TVPRA requirements, and the structure of DHS' systems of records, DHS has not always tracked these cases as family separations in the systems of records. As part of DHS' ongoing efforts to improve the tracking of family separations, CBP undertook efforts over the course of 2021 to consistently track these cases as separations, based on the TVPRA. The reason code utilized here provides further clarity and consistency to both DHS and HHS operators as to the fact of the separation and the reason for the separation."

⁶ The government has periodically updated its count of the possible children of potential class members who were in ORR custody on June 26, 2018, based on newly available information. In January 2020, the government updated its count from 2,814 children to 2,815. See Joint Status Report, *Ms. L.* (S.D. Cal. Jan. 20, 2020), ECF No. 511.

⁷ Separately, on March 8, 2019, the *Ms. L.* court expanded the class to include parents who entered the United States on or after July 1, 2017. See Order Granting Plaintiffs' Motion to Modify Class Definition, *Ms. L.* (S.D. Cal. Mar. 8, 2019), ECF No. 386. The government completed a Court-approved plan to identify all possible children of potential expanded class members on October 24, 2019, and provided the information to Plaintiffs. See Joint Status Report, *Ms. L.* (S.D. Cal. Nov. 6, 2019), ECF No. 495.

The following table describes the number of referrals to ORR of children DHS separated from their parents or legal guardians, from April 1, 2018, through May 31, 2023.

Count and Ages of Minors Separated from April 2018 Through May 2023			
	4 Years and Under	5 Years and Above	Grand Total
2018			
Apr	17	92	109
May	26	1,484	1,510
Jun	38	953	991
Jul	1	10	11
Aug	6	17	23
Sep	4	25	29
Oct	8	29	37
Nov	12	40	52
Dec	11	55	66
2019			
Jan	7	39	46
Feb	13	57	70
Mar	31	94	125
Apr	36	115	151
May	28	102	130
Jun	34	158	192
Jul	14	82	96
Aug	14	35	49
Sep	4	24	28
Oct	3	18	21
Nov	5	9	14

Count and Ages of Minors Separated from April 2018 Through May 2023			
Dec	2	8	10
2020			
Jan	0	9	9
Feb	6	12	18
Mar	0	1	1
Apr	0	2	2
May	0	2	2
Jun	0	0	0
Jul	0	0	0
Aug	0	0	0
Sep	0	2	2
Oct	0	0	0
Nov	3	3	6
Dec	3	0	3
2021			
Jan	1	9	10
Feb	4	4	8
Mar	6	3	9
Apr	12	11	23
May	11	12	23
Jun	18	7	25
Jul	23	24	47
Aug	46	17	63
Sep	25	9	34
Oct	8	8	16
Nov	9	5	14

Count and Ages of Minors Separated from April 2018 Through May 2023			
Dec	7	6	13
2022			
Jan	4	1	5
Feb	5	13	18
Mar	4	2	6
Apr	6	6	12
May	4	11	15
Jun	3	13	16
Jul	5	12	17
Aug	5	5	10
Sep	1	3	4
Oct	5	5	10
Nov	2	8	10
Dec	7	11	18
2023			
Jan	4	13	17
Feb	1	5	6
Mar	1	5	6
Apr	4	4	8
May	7	13	20
Grand Total	564	3,722	4,286⁸

The following table details the number of Expanded *Ms. L.* Class referrals to ORR of children DHS separated from their parents or legal guardians from April 1, 2018, through June 26, 2018.

⁸ The total number of separations reported is greater than the count of 2,815 children identified in *Ms. L.* because this count reflects a longer timeframe relative to the original *Ms. L.* class certification. 4,286 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 5/31/2023.

Count and ages of Expanded Ms. L. Class Minors separated from April 2018 through June 2018			
	4 Years and Under	5 Years and Above	Grand Total
2018			
Apr	13	69	82
May	5	200	205
Jun	0	14	14
Grand Total	18	283	301

Note: Because information on cases of separation may not be immediately available at the time of a child's referral to ORR but instead uncovered during the duration of a child's stay in ORR care, monthly tabulations of separations may vary between updates to this report. For example, if a child was referred to ORR in February but was not confirmed to have been separated until May, the February total would increase by one between this and the previous version of the report.

2. The documented cause of separation, as reported by DHS when each child was referred

Please see Table 1.

3. The length in days of any such separation

The following table shows: (1) the average amount of time separated children have spent in ORR care before being released to a sponsor; and (2) the average amount of time in care for all separated children, including children that have not yet been released. Both figures are as of May 31, 2023.

Length of Care for Separated Minors Referred from April 2018 through May 2023	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – May 2023 (for both discharged minors and those currently in ORR custody)	79 days
Average Length of Care for Minors Referred from April 2018 – May 2023, subsequently discharged	79 days

The following table shows the average amount of time Expanded Ms. L. Class separated children spent in ORR care before being released to a sponsor.

Length of Care for Expanded <i>Ms. L.</i> Class Separated Minors Referred from April 2018 through June 2018	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – June 2018, subsequently discharged	33 days

4. The status of any efforts undertaken by the Secretary to reunify such children with a parent or guardian

HHS regularly reports on the status of reunifications of separated children to the *Ms. L.* court. Reunifications occur in accordance with interagency plans approved by Judge Dana Sabraw.⁹ To date, HHS has released 4,270 of the 4,286 separated children referred to ORR between April 1, 2018, and May 31, 2023.

5. The number of any such reunifications, and whether the reunified families were placed in family detention

Through May 31, 2023, ORR discharged 4,270 children separated from their parents at the border and referred to it from April 2018 through May 2023. ORR discharged 2,348 children to their separated parent and 1,922 children under other appropriate circumstances, including discharges to sponsors where the parent was ineligible for reunification.

Separated Minors' Discharge Circumstances from April 1, 2018, through May 31, 2023	
Reunited with Separated Parent	2,348 ¹⁰
Discharged (Other Appropriate Circumstances)	1,922
Grand Total	4,270

Through June 26, 2018, ORR discharged 301 children separated from their parents at the border identified as Expanded *Ms. L.* Class and referred to it from April 2018 through June 2018. The number of minors reunified with their separated parents was not collected during the expanded class review, so discharge information is limited to sponsor category.

⁹ See HHS/DHS Unified Plan of Operations, *Ms. L.* (S.D. Cal. Jul. 15, 2018), ECF No. 109-1; see also Interagency Plan for Reunification of Separated Minors with Removed Parents, *Ms. L.* (S.D. Cal. Aug. 16, 2018), ECF No. 189.

¹⁰ The discharge type of some minors was re-categorized, which affected discharges to separated parents in May 2023 compared to April 2023.

Expanded Ms. L. Class Separated Minors' Discharge Circumstances from April 1, 2018, through June 26, 2018	
Sponsor Category	Number of UC
Category 1	147
Category 2	130
Category 3	24
Grand Total	301

HHS is able to identify the parties to whom it released separated children. However, HHS respectfully defers to ICE with respect to providing the number of reunified families ultimately placed in family detention.

The tables below reflect age in years and gender distribution data for minors referred to ORR during the month of May 2023.¹¹

Total Number of Separations 04/01/2018 through 5/31/2023	4,286
Separations for the month of May 2023	20

Gender	Number of UC¹²	% of UC
Male	8	40.0%
Female	12	60.0%
Total	20	100.0%

Age Category	Number of UC¹³	% of UC
0-5	7	35.0%
6-12	5	25.0%
13-14	4	20.0%
15-16	2	10.0%
17	2	10.0%
Total	20	100.0%

¹¹ ORR does not consistently receive apprehension date information from CBP and ICE when referring UC to its ORR care. As a result, because it is a more reliable source of data, ORR used referral dates to generate the information provided in this report.

¹² The labels in this table have been modified to say “Number of UC” instead of “Number of UC In Care” as has been reported in the past for clarity.

¹³ The labels in this table have been modified to say “Number of UC” instead of “Number of UC In Care” as has been reported in the past for clarity.

Demographic data for children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023.

Number of Children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023	
Number of Children in Care as of May 31, 2023	16
Number of Discharged Children as of May 31, 2023	4,270
Total	4,286

Discharge Type of Separated Children as of May 31, 2023	
Reunited with Separated Parent (Discharged)	2,348
Discharged under Other Appropriate Circumstances ¹⁴	1,922
Total	4,270

Average Length of Care¹⁵ for children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023

Average Length of Care (days for all Separated Children), as of April 30, 2023	79
Average Length of Care for Separated Children (days for those still in care)¹⁶	125
Average Length of Care for Separated Children (days for all those Discharged)	79

Age and gender distribution of children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023

Gender	Number of UC	% of UC
Male	2,686	62.7%
Female	1,600	37.3%
Total	4,286	100.0%

Age Category	Number of UC	% of UC
4 Years and Below	564	13.2%
5 Years and Above	3,722	86.8%
Total	4,286	100.0%

¹⁴ “Other Appropriate Circumstances” include discharges to sponsors, which can occur in situations where a child’s separated parent is ineligible for or elects against reunification, and age outs.

¹⁵ Length of care reflects the total amount of time in ORR care, regardless of shelter placement. Length of stay is specific to the amount of time a child in ORR care is in a specific shelter.

¹⁶ As of May 31, 2023, there were 16 UC still in ORR care with lengths of care ranging from 1 day to 1374 days. This includes children who were part of the original *Ms. L* class. For these specific cases, reunification was determined not to be in the best interest of the child, and while there is currently no sponsor identified, they are all placed in the least restrictive settings based on their individual needs. ORR continues to seek appropriate discharge options for these children.

Age and gender distribution of children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023, and who remain in care as of May 31, 2023

Gender	Number of UC In-Care	% of UC In-Care
Male	7	43.7%
Female	9	56.3%
Total	16	100.0%

Age Category	Number of UC In-Care	% of UC In-Care
4 Years and Under	4	25.0%
5 Years and Above	12	75.0%
Total	16	100.0%

For children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023, and who remain in care as of May 31, 2023. This is the number of preteen children in both shelter beds and ORR-run foster care programs

Tender Age (0-12) Separated UC in Care as of April 30, 2023, by Shelter Type	Number of UC In-Care	% of UC In-Care
Shelter	2	25.0%
Transitional Foster Care	4	50.0%
Long Term Foster Care	2	25.0%
Total	8	100.0%

For children DHS separated from their parents or legal guardians and referred to ORR care from April 1, 2018, through May 31, 2023, and discharged to a sponsor as of May 31, 2023. This is the number of children released to sponsors and the category of sponsor.

Total Number of Children reunified with Individual Sponsor	
Sponsor Category¹⁷	Number of UC
Category 1	2,745
Category 2	979
Category 3	249
Total	3,973

To track children who may be in connection with the Migrant Protection Protocols (MPP), ORR creates a potential MPP list from information that may be received either from the referring agency

¹⁷ A sponsor is an individual (in the majority of cases a parent or other relative) or entity to which ORR releases an unaccompanied child out of federal custody. Category 1 sponsors are parents or legal guardians; Category 2 sponsors are immediate relatives (adult siblings, grandparents, aunts, uncles, first cousins); Category 3 sponsors are distant relatives or unrelated adults.

during the minor’s initial referral or from the care provider after placement in ORR care. To confirm these cases, ORR sends the potential MPP list to DHS to create a reconciled MPP master list that confirms the total number of minors previously being subject to the MPP policy with their families and are now in ORR care. ORR compares this list with the reconciled new separations master list (Section 235 of P.L. 116-94 of this report) to determine the total number of minors confirmed separated from parents, legal guardians, or other family members in connection with the MPP program.

The table below reflect the number of children separated from parents, legal guardians, or other family members in connection with the MPP program and the number of children who were previously subject to the MPP policy with their families and subsequently re-entered the United States alone and were transferred to ORR as unaccompanied children through April 30, 2023.

Total number of minors confirmed previously being subject to the MPP policy with their families and subsequently re-entered the United States alone as of April 30, 2023.¹⁸	756
Total number of minors confirmed separated from parents, legal guardians, or other family members in connection with the MPP program as of April 30, 2023.¹⁹	21

¹⁸ Minors included in the total here who were not separated from their parents while in the custody of CBP are not counted in the data above.

¹⁹ These minors were separated while in CBP custody, per permissible reasons for separation used in the government’s reporting to plaintiffs in the *Ms. L.* litigation. See *Ms. L., et al., v. US Immigration and Customs Enforcement, et al.*, No. 3:18-cv-00428 (S.D. Cal. 2018).