

Monthly Report to Congress on Separated Children | November 2020



ADMINISTRATION FOR
CHILDREN & FAMILIES

The Department of Health and Human Services (“HHS”) submits this report to Congress as described by three Congressional authorities: section 235 of Public Law 116-94 (Further Consolidated Appropriations Act, 2020); section 236 of H.R. 6470 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019), which was incorporated into the 2019 appropriations statute by Conference Report 115-952, to the extent ORR continues to obligate fiscal year 2019 appropriations during fiscal year 2020; and Senate Report 115-289, as incorporated into the reporting requirements for fiscal year 2020 by the Explanatory Statement to P.L. 116-94. Please find the language for each authority below:

P.L. 116-94 states:

Sec. 235. 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.*

H.R. 6470 states:

Sec. 236. Beginning with April 2018, the Secretary shall submit to Congress a monthly report on, with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security and subsequently classified as unaccompanied alien children and transferred to the custody of the HHS’ Office of Refugee Resettlement—

- (1) the number and ages of children so separated at or between ports of entry;*
- (2) the length of any such separation;*
- (3) the status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and*
- (4) the number of any such reunifications, and whether the reunified families were placed in family detention.*

Senate Report 115-289 states:

In addition, the Committee directs HHS to include in its existing weekly updates additional information, including, for both all UACs and the children who were apprehended as part of a family unit, the number of children referred to HHS, the number currently in their care, the age and gender distribution of children, the average length of stay, the number of

preteen children in both shelter beds and ORR-run foster care programs, the number of children released to sponsors, and the category of sponsor. The weekly updates should also include historical monthly totals for all information provided, updated as it becomes available. The Committee directs HHS to make this monthly information available publicly on its website, and to provide weekly updates on its website of the number of children who have been reunited with separated family members.

This report includes the demographics of separated children as outlined in Senate Report 115-289. For reports on all UAC, see reports published on HHS' Unaccompanied Alien Children website (<https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/index.html>).

Response to Section 235 of P.L. 116-94

DHS provides a weekly list of new separations to ORR. ORR also creates its own list of new separations, based on its data, and appends it to 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 referred¹ to ORR during the month of November 2020.

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

UAC Separations: Month of November 2020						
Reason for Separation	0-5	6-12	13-14	15-16	17	Grand Total
Health issue/hospitalization	0	2	0	0	0	2
Other-Warrant	1	0	1	0	0	2
Referred for prosecution	2	0	0	0	0	2
Total	3	2	1	0	0	6³

¹ ORR does not consistently receive apprehension date information from CBP and ICE when referring UACs 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.

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 6 is the confirmed number of separations for the entire month of November. Previous reporting only reflected partial list of separations for October because some separations may have not been confirmed at the time of reporting. See also FN4.

Table 2 Referring Sectors of Separated UACs by Age Group

UAC Separations: ⁴ Month of November 2020						
Referring Sector	0-5	6-12	13-14	15-16	17	Grand Total
El Paso (ELP)	0	1	0	0	0	1
Harlingen (SNA)	1	1	1	0	0	3
San Antonio (SNA)	2	0	0	0	0	2
Total	3	2	1	0	0	6⁵

Response to Section 236 of H.R. 6470

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 the Department of Homeland Security (“DHS”) and the Office of Refugee Resettlement (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 2,815⁶ minors in its custody on June 26, 2018, who were possible children of potential class member parents. 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, served as the bases for the reporting below.⁷

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.

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,

Monthly Reporting from April 2018 through November 30, 2020

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

The following table describes the number of referrals to the HHS Office of Refugee Resettlement (ORR) of children DHS separated from their parents or legal guardians, from April 1, 2018, through November 30, 2020.

Count and ages of Minors separated from April 2018 through November 2020			
	4 and Under	5 and Above	Grand Total
2018			
Apr	17	92	109
May	26	1484	1510
Jun	38	953	991
Jul	1	10	11
Aug	5	17	22
Sep	4	25	29
Oct	8	29	37
Nov	12	39	51
Dec	11	55	66
2019			
Jan	7	39	46
Feb	13	57	70
Mar	29	94	123
Apr	36	115	151
May	28	102	130
Jun	34	158	192
Jul	13	83	96

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.

Count and ages of Minors separated from April 2018 through November 2020			
Aug	14	35	49
Sep	2	24	26
Oct	3	18	21
Nov	4	9	13
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
Grand Total	316	3477	3793⁸

The following table describes the number of the Expanded *Ms. L.* Class referrals to the HHS Office of Refugee Resettlement (ORR) of children DHS separated from their parents or legal guardians, from April 1, 2018, through June, 26, 2018.

Count and ages of Expanded <i>Ms. L.</i> Class Minors separated from April 2018 through June 2018			
	4 and Under	5 and Above	Grand Total

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. 3,793 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 11/30/2020

Count and ages of Expanded Ms. L. Class Minors separated from April 2018 through June 2018			
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 length 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 November 30, 2020.

Length of Care for Separated Minors Referred from April 2018 through November 2020	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – November 2020 (for both discharged minors and those currently in ORR custody)	81
Average Length of Care for Minors Referred from April 2018 – November 2020, subsequently discharged	79

The following table shows: (1) 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 Ms. L. Class Separated Minors Referred from April 2018 through June 2018	Average Length of Care
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Average Length of Care for Minors Referred from April 2018 – June 2018, subsequently discharged	33
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3. The status of any efforts undertaken by the Secretary to reunify such children with apparent 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 The relevant plans accompany this report. In addition, the government outlined procedures regarding release of separated children in the Joint Status Report filed on March 6, 2019,¹⁰ which also accompanies this report. To date, HHS has released 3,772 of the 3,793 separated children referred to ORR between April 1, 2018 and November 30, 2020.

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

As stated below, through November 30, 2020, ORR discharged 3,772 children separated from their parents at the border, and referred to it from April 2018 through November 2020. ORR discharged 2,264 to their separated parent, and 1508 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 November 30, 2020	
Reunited with separated Parent	2264 ¹¹
Reunited (Other Appropriate Circumstances)	1508
Grand Total	3772

As stated below, 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 a data point collected during the expanded class review, therefore discharge information provided only includes sponsor category.

Expanded <i>Ms. L</i> Class Separated Minors' Discharge Circumstances from April 1, 2018, through June 26, 2018	
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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 Joint Status Report, *Ms. L* (S.D. Cal. March 6, 2019), ECF No. 382.

¹¹ The discharge type of some minors were re-categorized, which affected discharges to separated parents in October compared to November.

Sponsor Category	Number of UAC
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.

Response to Senate Report 115-289

The tables below reflect age and gender distribution data for minors referred¹² to ORR during the month of November 2020.

Total Number of Separations 04/01/2018 through 11/30/2020	3,793
Separations for the month of November 2020	6

Gender	Number of UAC In-Care	% of UAC In-Care
Male	4	66.7%
Female	2	33.3%
Total	6	100%

Age Category	Number of UAC In-Care	% of UAC In-Care
0-5	3	50.0%
6-12	2	33.3%
13-14	1	16.7%
15-16	0	0.0%
17	0	0.0%
Total	6	100.0%

Demographic data for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020:

Total Number of Children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020:	3,793
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¹² ORR does not consistently receive apprehension date information from CBP and ICE when referring UACs 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.

• Number of Children in Care as of November 30, 2020:	21
• Number of Discharged Children as of November 30, 2020:	3,772

Discharge Type of Separated Children as of November 30, 2020	
Reunited with Separated Parent (Discharged):	2,264
Discharged under Other Appropriate Circumstances ¹³ :	1,508
Total	3,772

Average Length of Care¹⁴ for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020

Average Length of Care (days for all Separated Children), as of November 30, 2020:	81
Average Length of Care for Separated Children (days for those still in care):	445
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 November 30, 2020

Age Category	Number of UAC	% of UAC
4 and Below	316	8.3%
5 and Above	3477	91.7%
Total	3793	100%

Gender	Number of UAC	% of UAC
Male	2404	63.4%
Female	1389	36.6%
Total	3793	100%

Age and gender distribution of children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020, and who remain in care as of November 30, 2020

Age Category	Number of UAC In-Care	% of UAC In-Care
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¹³ “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.

¹⁴ 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.

4 and Under	5	23.8%
5 and Above	16	76.2%
Total	21	100%

Gender	Number of UAC In-Care	% of UAC In-Care
Male	13	61.9%
Female	8	38.1%
Total	21	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020, and who remain in care as of November 30, 2020, the number of preteen children in both shelter beds and ORR-run foster care programs

Tender Age (0-12) Separated UAC in Care as of November 30, 2020 by Shelter Type	Number of UAC In-Care	% of UAC In-Care
Standard Shelter	6	75%
Transitional Foster Care	2	25%
Total	8	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through November 30, 2020, and discharged to a sponsor as of November 30, 2020, the number of children released to sponsors, and the category of sponsor

Total Number of Children reunified with Individual Sponsor	
Sponsor Category ¹⁵	Number of UAC
Category 1	2576
Category 2	711
Category 3	227
Total	3514

¹⁵ A sponsor is an individual (in the majority of cases a parent or other relative) or entity to which ORR releases an unaccompanied alien 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.