

Monthly Report to Congress on Separated Children | November 2019



ADMINISTRATION FOR
CHILDREN & FAMILIES

The Department of Health and Human Services (“HHS”) submits this report to Congress as required by two Congressional mandates: the joint explanatory statement accompanying Conference Report 115-952, which states Congress expects HHS to adhere to the directive at section 236 of H.R. 6470, and the Department of Health and Human Services Emergency Supplemental Appropriations Act, 2019. Please find the language for each mandate below:

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.

The Department of Health and Human Services Emergency Supplemental Appropriations Act, 2019 states:

Sec. 408. 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.

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 Enforcement* (“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 the Department of Homeland Security (“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 2,814 minors in its custody on June 26, 2018, who were possible children of potential class member parents. 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.¹

Monthly Reporting from April 2018 through November 30, 2019

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, 2019.

Count and ages of Minor separated from April 2018 through November 2019			
	4 and Under	5 and Above	Grand Total
2018			
Apr	13	96	109
May	22	1487	1509
Jun	29	962	991
Jul	1	10	11
Aug	4	18	22
Sep	4	25	29
Oct	7	30	37
Nov	10	41	51
Dec	11	55	66

¹ 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.

2019			
Jan	5	41	46
Feb	11	61	72
Mar	20	104	124
Apr	31	125	156
May	21	110	131
Jun	28	165	193
Jul	12	83	95
Aug	9	38	47
Sep	2	23	25
Oct	2	18	20
Nov	2	8	10
Grand Total	244	3500	3744²

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, 2019.

Length of Care for Separated Minors Referred from April 2018 through November 2019	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – November 2019 (for both discharged minors and those currently in ORR custody)	78

² The total number of separations reported is greater than the count of 2,814 children identified in Ms. L. because this count reflects a longer timeframe relative to the original Ms. L. class certification. 3,744 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 11/30/2019

Average Length of Care for Minors Referred from April 2018 – November 2019, subsequently discharged	75
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3. 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.³ 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, 2019,⁴ which also accompanies this report. To date, HHS has released 3,656, of the 3,744 separated children referred to ORR between April 1, 2018 and November 30, 2019.

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

As stated below, through November 30, 2019, ORR discharged 3,656 children separated from their parents at the border, and referred to it from April 2018 through November 2019. ORR discharged 2,237 to their separated parent, and 1419 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, 2019	
Reunited with separated Parent	2237 ⁵
Reunited (Other Appropriate Circumstances)	1419
Grand Total	3656

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 Section 408 of Conference Report 115-952

³ 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.

⁴ Joint Status Report, *Ms. L*. (S.D. Cal. March 6, 2019), ECF No. 382.

⁵ The discharge type of some minors were re-categorized, which affected discharges to separated parents in October compared to November

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 referred⁶ to ORR during the month of November 2019.

Table 1 Children Separated by DHS by Cause of Separation and Age⁷

UAC Separations*: Month of November 2019					
Reason for Separation	0-5	6-12	13-14	15-16	Grand Total
Other-Warrant ⁸	0	4	0	0	4
Parent criminal history	1	0	1	0	2
Health issue/hospitalization	1	0	0	0	1
Parent criminal history and immigration history	0	1	0	0	1
Parent cartel/gang affiliation	1	0	0	0	1
Referred for prosecution	0	0	0	1	1
Total	3	5	1	1	10⁹

⁶ 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.

⁷ Table 1 lists the categories of permissible reasons for separation used in the government’s reporting to plaintiffs in the *Ms. L.* litigation.

⁸ “Other-Warrant is defined as the parent having an active warrant for his/her arrest in either home country or the United States

⁹ 10 is the confirmed number of separations for the entire month of November. Previous reporting only reflected partial list of separations for November because some separations may have not been confirmed at the time of reporting.

Table 2 Referring Sectors of Separated UACs by Age Group

UAC Separations:¹⁰ Month of November 2019					
Referring Sector	0-5	6-12	13-14	15-16	Grand Total
Harlingen (SNA)	3	1	1	1	6
San Antonio (SNA)	0	2	0	0	2
Del Rio (DRO)	0	1	0	0	1
Houston (HOU)	0	1	0	0	1
Total	3	5	1	1	10¹¹

¹⁰ 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.

¹¹ See FN 10.