

Monthly Report to Congress on Separated Children | October 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 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 October 2020.

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

UAC Separations: Month of October 2020						
Reason for Separation	0-5	6-12	13-14	15-16	17	Grand Total
Total	0	0	0	0	0	0³

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 0 is the confirmed number of separations for the entire month of October. Previous reporting only reflected partial list of separations for September 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 October 2020						
Referring Sector	0-5	6-12	13-14	15-16	17	Grand Total
Total	0	0	0	0	0	0⁵

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 2815 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, 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.

Monthly Reporting from April 2018 through October 31, 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 October 31, 2020.

Count and ages of Minors separated from April 2018 through October 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	35	158	193
Jul	13	83	96
Aug	14	35	49
Sep	2	24	26

Count and ages of Minors separated from April 2018 through October 2020			
Oct	3	18	21
Nov	4	8	12
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
Grand Total	314	3473	3787⁸

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
2018			
Apr	13	69	82
May	5	200	205

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. 3,787 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 10/31/2020

Count and ages of Expanded Ms. L. Class Minors separated from April 2018 through June 2018			
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 October 31, 2020.

Length of Care for Separated Minors Referred from April 2018 through October 2020	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – October 2020 (for both discharged minors and those currently in ORR custody)	81
Average Length of Care for Minors Referred from April 2018 – October 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
Average Length of Care for Minors Referred from April 2018 – June 2018, subsequently discharged	33

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 3,768 of the 3,787 separated children referred to ORR between April 1, 2018, and October 31, 2020.

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

As stated below, through October 31, 2020, ORR discharged 3,768 children separated from their parents at the border, and referred to it from April 2018 through October 2020. ORR discharged 2,262 to their separated parent, and 1506 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 October 31, 2020	
Reunited with separated Parent	2262 ¹¹
Reunited (Other Appropriate Circumstances)	1506
Grand Total	3768

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	
Sponsor Category	Number of UAC
Category 1	147
Category 2	130

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 September compared to October.

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 October 2020.

Total Number of Separations 04/01/2018 through 10/31/2020	3,787
Separations for the month of October 2020	0

Gender	Number of UAC In-Care	% of UAC In-Care
Male	0	0%
Female	0	0%
Total	0	0%

Age Category	Number of UAC In-Care	% of UAC In-Care
0-5	0	0%
6-12	0	0%
13-14	0	0%
15-16	0	0%
17	0	0%
Total	0	0%

Demographic data for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through October 31, 2020:

Total Number of Children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through October 31, 2020:	3,787
• Number of Children in Care as of October 31, 2020:	19
• Number of Discharged Children as of October 31, 2020:	3,768

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.

Male	13	68.4%
Female	6	31.6%
Total	19	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through October 31, 2020, and who remain in care as of October 31, 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 October 31, 2020 by Shelter Type	Number of UAC In-Care	% of UAC In-Care
Standard Shelter	3	50%
Transitional Foster Care	3	50%
Total	6	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through October 31, 2020, and discharged to a sponsor as of October 31, 2020, the number of children released to sponsors, and the category of sponsor

Total Number of Children reunified with Individual Sponsor	
Sponsor Category¹⁵	Number of UAC
Category 1	2574
Category 2	711
Category 3	225
Total	3510

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.