

# Monthly Report to Congress on Separated Children | February 2021



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

The Department of Health and Human Services (“HHS”) submits this report to Congress as described by four 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; Senate Report 115-289, as incorporated into the reporting requirements for fiscal year 2020 by the Explanatory Statement to P.L. 116-94, and House Report 116-450, which accompanied Public Law 116-260 (Consolidated Appropriations Act, 2021). 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.*

House Report 116-450:

*Within 30 days of enacting of this Act, and monthly thereafter, the Committee directs ORR to include in its monthly separation report to the Committee, and make publicly available in such report online, the number of children separated from parents, legal guardians, or other family members in connection with the [Migrant Protection Protocols] MPP program, and the number of children who were previously subject to the MPP policy with their families and subsequently re-entered the U.S. alone and were transferred to ORR as unaccompanied children.*

This report includes the demographics of separated children as outlined in Senate Report 115-289. For reports on all unaccompanied children (UC), see reports published on HHS' Unaccompanied Children website (<https://www.hhs.gov/programs/social-services/unaccompanied-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 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 referred<sup>1</sup> to ORR during the month of February 2021.

*Table 1 Children Separated by DHS by Cause of Separation and Age<sup>2</sup>*

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<sup>1</sup> 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.

<sup>2</sup> 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).

| UC Separations: Month of February 2021 |          |          |          |          |          |                      |
|--|----------|----------|----------|----------|----------|----------------------|
| Reason for Separation                  | 0-5      | 6-12     | 13-14    | 15-16    | 17       | Grand Total          |
| Parent criminal history                | 0        | 0        | 0        | 1        | 0        | 1                    |
| Health issue/hospitalization           | 1        | 1        | 0        | 1        | 0        | 3                    |
| Referred for prosecution               | 0        | 0        | 1        | 0        | 0        | 1                    |
| Other-Warrant                          | 1        | 0        | 0        | 0        | 0        | 1                    |
| Other                                  | 1        | 0        | 0        | 0        | 0        | 1                    |
| <b>Total</b>                           | <b>3</b> | <b>1</b> | <b>1</b> | <b>2</b> | <b>0</b> | <b>7<sup>3</sup></b> |

Table 2 Referring Sectors of Separated UC by Age Group

| UC Separations: <sup>4</sup> Month of February 2021 |          |          |          |          |          |                      |
|---|----------|----------|----------|----------|----------|----------------------|
| Referring Sector                                    | 0-5      | 6-12     | 13-14    | 15-16    | 17       | Grand Total          |
| Harlingen (SNA)                                     | 2        | 0        | 0        | 1        | 0        | 3                    |
| El Paso (ELP)                                       | 1        | 1        | 0        | 0        | 0        | 2                    |
| San Diego (SND)                                     | 0        | 0        | 1        | 0        | 0        | 1                    |
| Laredo (LRD)  | 0        | 0        | 0        | 1        | 0        | 1                    |
| <b>Total</b>  | <b>3</b> | <b>1</b> | <b>1</b> | <b>2</b> | <b>0</b> | <b>7<sup>5</sup></b> |

### **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.

<sup>3</sup> 7 is the confirmed number of separations for the entire month of February. Previous reporting only reflected partial list of separations for February because some separations may have not been confirmed at the time of reporting. See also FN4.

<sup>4</sup> 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.

<sup>5</sup> See FN3.

After the court issued the preliminary injunction, as part of an interagency effort, HHS identified 2,815<sup>6</sup> 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.<sup>7</sup>

Monthly Reporting from April 2018 through February 28, 2021

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 ORR of children DHS separated from their parents or legal guardians, from April 1, 2018, through February 28, 2021.

| <b>Count and ages of Minors separated from April 2018 through February 2021</b> |                    |                    |                    |
|---|--------------------|--------------------|--------------------|
|   | <b>4 and Under</b> | <b>5 and Above</b> | <b>Grand Total</b> |
| <b>2018</b>   |                    |                    |                    |
| 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                 |

<sup>6</sup> 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.

<sup>7</sup> 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.

| <b>Count and ages of Minors separated from April 2018 through February 2021</b> |    |     |     |
|---|----|-----|-----|
| Dec   | 11 | 55  | 66  |
| <b>2019</b>   |    |     |     |
| 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  |
| Aug   | 14 | 35  | 49  |
| Sep   | 2  | 24  | 26  |
| Oct   | 3  | 18  | 21  |
| Nov   | 4  | 9   | 13  |
| Dec   | 2  | 8   | 10  |
| <b>2020</b>   |    |     |     |
| 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   |

| <b>Count and ages of Minors separated from April 2018 through February 2021</b> |            |             |                         |
|---|------------|-------------|-------------------------|
| Dec   | 1          | 0           | 1                       |
| <b>2021</b>   |            |             |                         |
| Jan   | 1          | 9           | 10                      |
| Feb   | 3          | 4           | 7                       |
| <b>Grand Total</b>  | <b>321</b> | <b>3490</b> | <b>3811<sup>8</sup></b> |

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.

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

*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 February 28, 2021.

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<sup>8</sup> 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. 3,811 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 2/28/2021.

| <b>Length of Care for Separated Minors Referred from April 2018 through February 2021</b>  | <b>Average Length of Care</b> |
|--|-------------------------------|
| Average Length of Care for Minors Referred from April 2018 – February 2021 (for both discharged minors and those currently in ORR custody) | 82                            |
| Average Length of Care for Minors Referred from April 2018 – February 2021, subsequently discharged  | 80                            |

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.

| <b>Length of Care for Expanded <i>Ms. L.</i> Class Separated Minors Referred from April 2018 through June 2018</b> | <b>Average Length of Care</b> |
|--|-------------------------------|
| 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 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.<sup>9</sup> 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,<sup>10</sup> which also accompanies this report. To date, HHS has released 3,787 of the 3,811 separated children referred to ORR between April 1, 2018 and February 28, 2021.

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

As stated below, through February 28, 2021, ORR discharged 3,787 children separated from their parents at the border, and referred to it from April 2018 through February 2021. ORR discharged 2,269 to their separated parent, and 1,518 children under other appropriate

<sup>9</sup> 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.

<sup>10</sup> Joint Status Report, *Ms. L.* (S.D. Cal. March 6, 2019), ECF No. 382.



circumstances, including discharges to sponsors where the parent was ineligible for reunification.

|  |                    |
|--|--------------------|
| Separated Minors' Discharge Circumstances from April 1, 2018 through February 28, 2021 |                    |
| Reunited with separated Parent   | 2269 <sup>11</sup> |
| Discharged (Other Appropriate Circumstances)   | 1518               |
| Grand Total  | 3787               |

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 |                     |
| <b>Sponsor Category</b>  | <b>Number of UC</b> |
| Category 1   | 147                 |
| Category 2   | 130                 |
| Category 3   | 24                  |
| <b>Grand Total</b>   | 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 referred<sup>12</sup> to ORR during the month of February 2021.

|  |       |
|--|-------|
| <b>Total Number of Separations 04/01/2018 through 02/28/2021</b> | 3,811 |
| <b>Separations for the month of February 2021</b>                | 7     |

<sup>11</sup> The discharge type of some minors were re-categorized, which affected discharges to separated parents in January compared to February .

<sup>12</sup> 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.

| <b>Gender</b> | <b>Number of UC In-Care</b> | <b>% of UC In-Care</b> |
|---------------|-----------------------------|------------------------|
| Male          | 6                           | 85.7%                  |
| Female        | 1                           | 14.3%                  |
| Total         | 7                           | 100%                   |

| <b>Age Category</b> | <b>Number of UC In-Care</b> | <b>% of UC In-Care</b> |
|---------------------|-----------------------------|------------------------|
| 0-5                 | 3                           | 42.9%                  |
| 6-12                | 1                           | 14.3%                  |
| 13-14               | 1                           | 14.3%                  |
| 15-16               | 2                           | 28.6%                  |
| 17                  | 0                           | 0.0%                   |
| Total               | 7                           | 100.0%                 |

Demographic data for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021:

|  |              |
|--|--------------|
| <b>Total Number of Children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021:</b> | <b>3,811</b> |
| • Number of Children in Care as of February 28, 2021:  | 24           |
| • Number of Discharged Children as of February 28, 2021:   | 3,787        |

|  |       |
|--|-------|
| Discharge Type of Separated Children as of February 28, 2021     |       |
| Reunited with Separated Parent (Discharged):                     | 2,269 |
| Discharged under Other Appropriate Circumstances <sup>13</sup> : | 1,518 |
| Total  | 3,787 |

***Average Length of Care<sup>14</sup> for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021***

|   |     |
|---|-----|
| Average Length of Care (days for all Separated Children), as of February 28, 2021:          | 82  |
| Average Length of Care for Separated Children (days for those still in care): <sup>15</sup> | 387 |

<sup>13</sup> “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.

<sup>14</sup> 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.

<sup>15</sup> As of February 28, 2021, there were 24 UC still in ORR care with Lengths-of-Care ranging from 37 days to 920 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

|  |    |
|--|----|
| Average Length of Care for Separated Children (days for all those Discharged): | 80 |
|--|----|

***Age and gender distribution of children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021***

| Age Category | Number of UC | % of UC |
|--------------|--------------|---------|
| 4 and Below  | 321          | 8.4%    |
| 5 and Above  | 3490         | 91.6%   |
| Total        | 3811         | 100%    |

| Gender | Number of UC | % of UC |
|--------|--------------|---------|
| Male   | 2417         | 63.4%   |
| Female | 1394         | 36.6%   |
| Total  | 3811         | 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 February 28, 2021, and who remain in care as of February 28, 2021***

| Age Category | Number of UC In-Care | % of UC In-Care |
|--------------|----------------------|-----------------|
| 4 and Under  | 6                    | 25%             |
| 5 and Above  | 18                   | 75%             |
| Total        | 24                   | 100%            |

| Gender | Number of UC In-Care | % of UC In-Care |
|--------|----------------------|-----------------|
| Male   | 14                   | 58.3%           |
| Female | 10                   | 41.7%           |
| Total  | 24                   | 100%            |

***For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021, and who remain in care as of February 28, 2021, 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 February 28, 2021, by Shelter Type | Number of UC In-Care | % of UC In-Care |
|---|----------------------|-----------------|
| Standard Shelter  | 8                    | 66.7%           |
| Transitional Foster Care  | 4                    | 33.3%           |
| Total   | 12                   | 100%            |

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least restrictive settings based on their individual needs. ORR continues to seek appropriate discharge options for these children.

***For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through February 28, 2021, and discharged to a sponsor as of February 28, 2021, the number of children released to sponsors, and the category of sponsor***

| <b>Total Number of Children reunified with Individual Sponsor</b> |                     |
|---|---------------------|
| <b>Sponsor Category<sup>16</sup></b>                              | <b>Number of UC</b> |
| Category 1  | 2584                |
| Category 2  | 715                 |
| Category 3  | 228                 |
| <b>Total</b>  | <b>3527</b>         |

**Response to House Report 116-450**

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 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 tables 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 U.S. alone and were transferred to ORR as unaccompanied children through February 28, 2021.

|   |            |
|---|------------|
| <b>Total number of minors confirmed previously being subject to the MPP policy with their families and subsequently re-entered the U.S. alone as of February 28, 2021.<sup>17</sup></b> | <b>721</b> |
| <b>Total number of minors confirmed separated from parents, legal guardians, or other family members in connection with the MPP program as of February 28, 2021.<sup>18</sup></b>       | <b>20</b>  |

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> 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).