

Monthly Report to Congress on Separated Children | September 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 116-260 (Consolidated Appropriations Act, 2021); section 233 of H.R. 7614 (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2021); and the Explanatory Statement and House Report that accompanied Public Law 116-260. Please find the language for each authority below:

P.L. 116-260 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. 7614 states:

Sec. 233. 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;*
- (2) the documented cause of separation, as reported by DHS when each child was referred;*
- (3) the length of any such separation;*
- (4) the status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and*
- (5) 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.

Explanatory Statement to P.L. 116-260

The agreement expects ORR to routinely report on the status of efforts undertaken by the Secretary to reunify children with parents from whom they were separated at the border, including the number of such reunifications and the length of any outstanding separations.

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. 116-260

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 referred¹ to ORR during the month of September 2021.

¹ 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.

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

UC Separations: Month of September 2021						
Reason for Separation	0-5	6-12	13-14	15-16	17	Grand Total
Adult spouse separated to maintain family unity of minor spouse and minor child(ren)/1	12	0	0	0	0	12
Parent criminal history	5	5	0	0	0	10
Parent fitness (other than for hospitalization)/child danger concerns	5	1	0	0	0	6
Parent cartel/gang affiliation	2	1	0	0	0	3
Parent criminal history and immigration history	1	0	0	0	0	1
Parent cartel/gang affiliation and criminal history	1	0	0	0	0	1
Health issue/hospitalization	1	0	0	0	0	1
Total	27	7	0	0	0	34³

1/ DHS provided the following explanation for this new 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, and thus, by law, the minor parent is an unaccompanied child, as defined in 6 U.S.C. § 279(g)(2), and, under the 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.”

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

Table 2 Referring Sectors of Separated UC by Age Group

UC Separations: ⁴ Month of September 2021						
Referring Sector	0-5	6-12	13-14	15-16	17	Grand Total
Harlingen (SNA)	27	7	0	0	0	34
Total	27	7	0	0	0	34⁵

Response to Section 233 of H.R. 7614

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, 2019), ECF No. 386. The government completed a Court-approved plan to identify all possible children of potential

Monthly Reporting from April 2018 through September 30, 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 September 30, 2021.

Count and Ages of Minors Separated from April 2018 Through September 2021			
	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	6	17	23
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	31	94	125
Apr	36	115	151
May	28	102	130
Jun	34	158	192
Jul	14	83	97
Aug	14	35	49

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 September 2021			
Sep	4	24	28
Oct	3	18	21
Nov	5	9	14
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

Count and Ages of Minors Separated from April 2018 Through September 2021			
Sep	25	9	34
Grand Total	472	3573	4045⁸

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
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 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 September 30, 2021.

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. 4,045 children is the count of all possible children of potential class members referred to ORR from 4/1/2018 through 9/30/2021.

Length of Care for Separated Minors Referred from April 2018 through September 2021	Average Length of Care
Average Length of Care for Minors Referred from April 2018 – September 2021 (for both discharged minors and those currently in ORR custody)	80
Average Length of Care for Minors Referred from April 2018 – September 2021, 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 <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

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 3,973 of the 4,045 separated children referred to ORR between April 1, 2018 and September 30, 2021.

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

As stated below, through September 30, 2021, ORR discharged 3,973 children separated from their parents at the border, and referred to it from April 2018 through September 2021. ORR discharged 2,285 to their separated parent, and 1,688 children under other appropriate circumstances, including discharges to sponsors where the parent was ineligible for reunification.

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.

Separated Minors' Discharge Circumstances from April 1, 2018 through September 30, 2021	
Reunited with separated Parent	2285 ¹⁰
Discharged (Other Appropriate Circumstances)	1688
Grand Total	3973

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 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.

Response to Senate Report 115-289

The tables below reflect age and gender distribution data for minors referred¹¹ to ORR during the month of September 2021.

Total Number of Separations 04/01/2018 through 09/30/2021	4,045
Separations for the month of September 2021	34

Gender	Number of UC In-Care	% of UC In-Care
Male	21	61.8%
Female	13	38.2%

¹⁰ The discharge type of some minors were re-categorized, which affected discharges to separated parents in August compared to September.

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.

Gender	Number of UC In-Care	% of UC In-Care
Total	34	100%

Age Category	Number of UC In-Care	% of UC In-Care
0-5	27	79.4%
6-12	7	20.6%
13-14	0	0.0%
15-16	0	0.0%
17	0	0.0%
Total	34	100.0%

Demographic data for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021:

Total Number of Children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021:	4,045
• Number of Children in Care as of September 30, 2021:	72
• Number of Discharged Children as of September 30, 2021:	3,973

Discharge Type of Separated Children as of September 30, 2021	
Reunited with Separated Parent (Discharged):	2,285
Discharged under Other Appropriate Circumstances ¹² :	1,688
Total	3,973

Average Length of Care¹³ for children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021

Average Length of Care (days for all Separated Children), as of September 30, 2021:	80
Average Length of Care for Separated Children (days for those still in care): ¹⁴	117

¹² “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.

¹³ 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.

¹⁴ As of September 30, 2021, there were 72 UC still in ORR care with Lengths-of-Care ranging from 1 days to 1193 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.

Average Length of Care for Separated Children (days for all those Discharged):	79
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Age and gender distribution of children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021

Age Category	Number of UC	% of UC
4 and Below	472	11.7%
5 and Above	3573	88.3%
Total	4045	100%

Gender	Number of UC	% of UC
Male	2551	63.1%
Female	1494	36.9%
Total	4045	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 September 30, 2021, and who remain in care as of September 30, 2021

Age Category	Number of UC In-Care	% of UC In-Care
4 and Under	48	66.7%
5 and Above	24	33.3%
Total	72	100%

Gender	Number of UC In-Care	% of UC In-Care
Male	39	54.2%
Female	33	45.8%
Total	72	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021, and who remain in care as of September 30, 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 September 30, 2021, by Shelter Type	Number of UC In-Care	% of UC In-Care
Standard Shelter	52	76.5%
Transitional Foster Care	14	20.6%
Influx Care Facility	2	2.9%
Total	68	100%

For children DHS separated from their parents or legal guardians, and referred to ORR care from April 1, 2018, through September 30, 2021, and discharged to a sponsor as of September 30, 2021, the number of children released to sponsors, and the category of sponsor

Total Number of Children reunified with Individual Sponsor	
Sponsor Category¹⁵	Number of UC
Category 1	2643
Category 2	812
Category 3	248
Total	3703

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 September 30, 2021.

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 September 30, 2021.¹⁶	742
Total number of minors confirmed separated from parents, legal guardians, or other family members in connection with the MPP program as of September 30, 2021.¹⁷	21

¹⁵ 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.

¹⁶ 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.

¹⁷ 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).