



Child Separations by the Trump Administration

Prepared for Chairman Elijah E. Cummings

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Committee on Oversight and Reform
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EXECUTIVE SUMMARY

On February 26, 2019, the Committee on Oversight and Reform voted on a bipartisan basis to authorize subpoenas to compel the Trump Administration to produce documents relating to its policy of separating immigrant children from their families. These subpoenas were served to the Department of Justice (DOJ), the Department of Homeland Security (DHS), and the Department of Health and Human Services (HHS) after they refused to provide this information voluntarily in response to bipartisan requests made six months earlier.

This staff report has been prepared at the request of Chairman Elijah E. Cummings to summarize the data obtained by the Committee. This information is not complete. In many respects, it is woefully inadequate in terms of the volume of information produced and the number of separated children who remain unaccounted for, and the Committee will continue to press for additional information.

Nevertheless, pursuant to the subpoenas, the Committee has now obtained new information about at least 2,648 children who were separated from their parents by the Trump Administration. Many of these children were brought by their parents to the United States to seek refuge from violence in Central America and elsewhere and to seek asylum under U.S. law.

This list largely covers children who were separated after the Administration initiated its “zero tolerance policy” in April 2018 and were still in custody as of June 26, 2018. This information was provided by the Office of Refugee Resettlement (ORR) within HHS, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) within DHS, and other federal agencies.

This data does not include information about thousands of additional children who may have been separated prior to April 2018, information about children who were reunited with their parents prior to June 2018, or information about more than 700 additional children who have been separated by the Administration since June 2018.

Based on the new information obtained by the Committee, this staff report includes the following preliminary findings, which may be updated as more information is obtained:

- **The Trump Administration’s child separations were more harmful, traumatic, and chaotic than previously known.**
 - At least 18 infants and toddlers under two years old were taken away from their parents at the border and kept apart for 20 days to half a year.
 - At least 241 separated children were kept in Border Patrol facilities longer than the 72 hours permitted by law.
 - Many separated children were kept in government custody far longer than previously known—at least 679 were held for 46 to 75 days, more than 50 were held for six months to a year, and more than 25 were held for more than a year.

- Even after being reunited with their parents, hundreds of separated children continued to be detained for months in family detention facilities—far longer than the 20-day limit under the *Flores* case.
- More than 400 children were moved to multiple CBP facilities, more than 80 children were moved to multiple ORR facilities, and at least five children were moved to multiple ICE facilities—including to one, Port Isabel, after the Administration claimed that “no children will be housed at the facility ... even for short periods.”
- At least ten separated children were sent to the “tent city” in Tornillo, Texas, the notorious emergency influx facility near El Paso, before the CEO of the facility’s parent company refused to continue operations as a result of the Administration’s pressure to expand capacity despite delays in releasing children.
- **The Trump Administration has not been candid with the American people about its purpose in separating children.** The records obtained by the Committee indicate that the Trump Administration separated children unnecessarily—even under its own rationale—causing lengthy delays to reunifications and separations that continue to this day. The Administration claimed that separating children was necessary to criminally prosecute parents. But the documents describe parents who were never sent to federal criminal custody, as well as others who were briefly taken into custody and then returned within a day or two likely because prosecutors declined to prosecute their cases or because they were sentenced to time served for the misdemeanor of illegal entry. *In some cases, parents were readmitted to the same facilities they left just hours before, but their children had already been removed.* These parents were then sent to separate detention facilities and in some cases deported without their children.
- **The nightmare of child separations continues.** Hundreds of additional children have been separated from their parents since the end of the Administration’s zero tolerance policy in June 2018. These continued unnecessary separations have contributed to the current crisis of children suffering in overcrowded, poorly-run government detention facilities at the border. In addition, at least 30 children separated from their parents under the zero tolerance policy remain separated, despite a federal court order more than a year ago to reunite these children with their families or an appropriate sponsor.

The information obtained by the Committee indicates that the Trump Administration’s decision to separate thousands of babies, toddlers, and children from their parents and put them in government custody for months or years is causing immense suffering. This staff report provides numerous case studies that illustrate their trauma in stark terms. These child separations were not required by law and were not in the best interest of the children. Instead, the policy of separating children from their parents appears to be a deliberate, unnecessary, and cruel choice by President Trump and his Administration.

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I. THE COMMITTEE'S INVESTIGATION

In early 2018, reports began surfacing that hundreds of children, including babies and toddlers, were being separated from their parents at the southern border. Many of these children had been brought by their parents to the United States to seek refuge from violence in Central America and elsewhere and to seek asylum under U.S. law.¹

In response to these reports, Ranking Member Cummings, who was in the minority, repeatedly asked Republicans to investigate. Rep. Cummings and other Committee Democrats wrote to Rep. Trey Gowdy, who was then serving as Chairman, on May 22, 2018, and June 17, 2018, requesting an investigation, but he did not respond.²

Rep. Cummings then began pleading with his Republican colleagues, including at hearings on unrelated topics. For example, on July 19, 2018, Rep. Cummings asked his Republican colleagues to “stand up to President Trump” and join Democrats in rejecting the child separation policy.³ Again, Republicans refused.

On June 22, 2018, all Committee Democrats joined together in sending a letter asking the Trump Administration to produce information relating to each child who had been separated from his or her family under the Administration’s child separation policy.⁴ The Administration did not comply.

¹ See, e.g., ‘Where’s Mommy?’: *A Family Fled Death Threats, Only to Face Separation at the Border*, Washington Post (Mar. 18, 2018) (online at www.washingtonpost.com/local/wheres-mommy-a-family-fled-death-threats-only-to-face-separation-at-the-border/2018/03/18/94e227ea-2675-11e8-874b-d517e912f125_story.html?utm_term=.6958eb11fc57); *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, New York Times (Apr. 20, 2018) (online at www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html?login=email&auth=login-email).

² Letter from Ranking Member Elijah E. Cummings and Rep. Carolyn B. Maloney to Chairman Trey Gowdy, Committee on Oversight and Government Reform (May 22, 2018) (online at <https://maloney.house.gov/sites/maloney.house.gov/files/MaloneyCummings%20ICE%20Child%20Separation%20OGR%20Hearing%20Request.pdf>); Letter from Ranking Member Elijah E. Cummings et al. to Chairman Trey Gowdy, Committee on Oversight and Government Reform (June 17, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-06-17.OGR%20Dems%20to%20Gowdy%20re%20Request%20for%20Child%20Separation%20Hearing.pdf>).

³ Committee on Oversight and Government Reform Democrats, *MUST SEE VIDEO: Elijah Cummings Issues Blistering Condemnation Of President Trump’s “Child Internment Camps” Calls on House Republicans to Stand Up to President Trump and Stand Up for the Children* (June 19, 2018) (online at <https://oversight.house.gov/news/press-releases/elijah-cummings-issues-blistering-condemnation-of-president-trump-s-child>).

⁴ Letter from Democratic Members, Committee on Oversight and Government Reform, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Attorney General Jeff Sessions, Department of Justice (June 22, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-06-22.OGR%20Dems%20to%20Nielsen-DHS%20Azar-HHS%20Sessions-DOJ%20re%20Family%20Separations.pdf>).

At another unrelated hearing, Rep. Cummings pleaded with his Republican colleagues again, warning that the “harm and the trauma our own government is inflicting on these children is continuing and compounding every single day.”⁵

Finally, on July 5, 2018, Ranking Member Cummings obtained the agreement of one Republican Committee Member, Rep. Mark Meadows, to send requests to the Department of Justice (DOJ), Department of Homeland Security (DHS), and Department of Health and Human Services (HHS). Their requests sought information on each child and parent separated under the Administration’s zero tolerance policy. As they wrote, “we want to ensure that we can reunite children who have been separated from their families as expeditiously as possible.”⁶

All three agencies refused to produce the requested information. Instead, they briefed Committee Members and staff on July 18, 2018, but they did not produce the specific information requested.⁷

Over the next several months, Rep. Cummings made repeated efforts to obtain the information that had been requested on a bipartisan basis. He sent a follow-up letter to the agencies on August 2, 2018, seeking “full and immediate compliance” with the request, but the agencies refused to produce the requested information.⁸

In September 2018, Rep. Cummings and Committee Democrats repeatedly asked Chairman Gowdy to allow the Committee to debate and vote on a motion to issue subpoenas to HHS, DHS, and DOJ for the information. Rep. Gowdy did not respond.⁹

⁵ Committee on Oversight and Government Reform, *Hearing on Examining the Administration’s Government-Wide Reorganization Plan*, 115th Cong. (June 27, 2018) (online at <https://docs.house.gov/meetings/GO/GO00/20180627/108490/HHRG-115-GO00-Transcript-20180627.pdf>).

⁶ Letter from Chairman Mark Meadows, Subcommittee on Government Operations, and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Attorney General Jeff Sessions, Department of Justice (July 5, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Meadows-Cummings%20Letter%20Requesting%20Info%20on%20Separated%20Children.pdf>).

⁷ Briefing by Commander Jonathan D. White, Ph.D., Federal Health Coordinating Official for the 2018 UAC Reunification Effort, Department of Health and Human Services, Joseph Edlow, Deputy Assistant Attorney General, Department of Justice, Matthew T. Albence, Executive Associate Director for Enforcement and Removal Operations, Immigration and Customs Enforcement, and Matthew Rogow, Acting Law Enforcement Operations Directorate Deputy Chief, Customs and Border Protection, to Committee on Oversight and Government Reform (July 18, 2018).

⁸ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Attorney General Jeff Sessions, Department of Justice (Aug. 2, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-08-02.EEC%20to%20Sessions-DOJ%20Nielsen-DHS%20Azar-HHS%20re%20Child%20Separation%20Follow%20Up%20Request.pdf>).

⁹ Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Sept. 17, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-09-17.EEC%20to%20Gowdy-OGR%20re%20Child%20Separation.pdf>); Letter from Ranking Member Elijah E.

At a Committee meeting on September 27, 2018, Democrats moved to issue these subpoenas, but Republicans blocked their consideration.¹⁰

On December 19, 2018, after Democrats were voted into the majority in the House of Representatives and Rep. Cummings was chosen as the incoming Chairman of the Committee, he sent letters to all three agencies requesting that they “fully comply” with the July 2018 request by January 11, 2019.¹¹ Despite the fact that the agencies had more than six months to comply, they failed to produce the requested information by this deadline.

In order to investigate further, on February 5, 2019, Chairman Cummings invited the top legislative affairs officials at each agency to testify about why they did not produce the requested information. On February 8, 2019, the Chairman postponed the hearing to accommodate the agencies’ request for additional time, but none of the agencies fully complied with the Committee’s requests.¹²

On February 26, 2019, following further unsuccessful attempts to secure voluntary compliance, the Committee voted to authorize Chairman Cummings to issue subpoenas requiring DOJ, DHS, and HHS to produce the same information originally requested in the bipartisan letter on July 5, 2018. These were the first subpoenas authorized by the Committee in the 116th Congress, and they were approved on a bipartisan basis, with Republican Committee Members Chip Roy and Justin Amash voting in favor of authorizing them.¹³

A month later, on March 27, 2019, Chairman Cummings and Subcommittee on Civil Rights and Civil Liberties Chairman Jamie Raskin sent a letter to the three agencies expressing concern with their failure to comply with the subpoenas and inviting each agency’s top

Cummings and Vice Ranking Member Gerald E. Connolly, to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Sept. 25, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-09-25.EEC%20Connolly%20to%20Gowdy-OGR%20re%20Subpoena%20Requests.pdf>).

¹⁰ Committee on Oversight and Government Reform Democrats, *Oversight Republicans Block 11 More Subpoenas for a Total of 64 Motions Denied* (Sept. 27, 2018) (online at <https://oversight.house.gov/news/press-releases/oversight-republicans-block-11-more-subpoenas-for-a-total-of-64-motions-denied>).

¹¹ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Acting Attorney General Matthew G. Whitaker, Department of Justice (Dec. 19, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-12-19.EEC%20to%20Nielsen-DHS%20Whitaker-DOJ%20and%20Azar-HHS%20re%20Immigrant%20Child%20Separation.Updated.pdf>).

¹² See Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Assistant Secretary Christine Ciccone, Department of Homeland Security, Assistant Attorney General Stephen E. Boyd, Department of Justice, and Assistant Secretary Matthew Bassett, Department of Health and Human Services (Feb. 5, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2019-02-05.EEC%20to%20DHS%20DOJ%20HHS%20on%20Child%20Separation.pdf>).

¹³ Committee on Oversight and Reform, *Oversight Committee Approves First Subpoenas of the 116th Congress—And They Are Bipartisan* (Feb. 26, 2019) (online at <https://oversight.house.gov/news/press-releases/oversight-committee-approves-first-subpoenas-of-the-116th-congress-and-they-are>).

legislative affairs official to testify at a hearing on their noncompliance.¹⁴ Committee staff engaged in extensive discussions with agency staff to negotiate faster production of responsive data, and the Chairmen agreed as a further accommodation to have staff meet with agency officials on April 9, 2019, in lieu of the hearing.

As of today, the Committee has received some—but not all—of the information required by the subpoenas. Specifically, the Committee has received data relating to 2,648 children who were separated from their parents at the border. The Committee also received data relating to a few individuals who were already 18 years old or older at the time of their arrival or were determined to have arrived alone or with an adult who was not their parent.¹⁵

The Administration has stated that this list of 2,648 separated children was derived from a list compiled by the Trump Administration in response to a class action lawsuit, *Ms. L vs. Immigration and Customs Enforcement (ICE)*, which was brought by the American Civil Liberties Union on behalf of families of separated children.¹⁶

This list includes separated children who were in custody as of June 26, 2018. It does not cover children who were reunited with their parents before that date or more than 700 additional children separated since June 2018. In addition, the data provided to the Committee does not include 149 children who were added to the *Ms. L* litigation last December.¹⁷

The Committee has not received complete data for all 2,648 children, and data from the Office of Refugee Resettlement (ORR) and Customs and Border Protection (CBP) still has not been provided for many children. The limited information includes the following:

- Some data for each of the 2,648 separated children and their parents, including date of birth, date of book-in to U.S. government custody, age at book-in, country of citizenship or birth, and gender, as well as the date of birth, age, country of citizenship, and gender of the parent accompanying each child, and time and location of ICE detention and deportation data for parents where applicable.

¹⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Secretary Kirstjen M. Nielsen, Department of Homeland Security, Secretary Alex M. Azar II, Department of Health and Human Services, and Attorney General William P. Barr, Department of Justice (Mar. 27, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-27.EEC%20Raskin%20to%20DHS%20DOJ%20HHS.pdf>).

¹⁵ In addition to the 2,648 separated children, the data included six individuals who were 18 or over when they arrived in the United States and 13 who were determined to have arrived alone or with an adult who was not their parent, for a total of 2,667 individuals.

¹⁶ Letter from Matthew D. Bassett, Assistant Secretary for Legislation, Department of Health and Human Services, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-12%20HHS%20Response%20to%20EEC%20re%20Child%20Separation.pdf>).

¹⁷ Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Dec. 12, 2018).

- ORR data for 1,063 of these children, including the locations of each ORR facility that children were admitted to, the dates they were there, and the reason for their release.
- CBP data for 1,000 of these children and their parents (only 862 of whom overlap with the limited set of ORR records described above), including the date and location of arrest at the border, and the book-in dates and names of each CBP facility where the separated child and parent were kept.

The analysis of data in this report includes data provided by CBP to the Committee on or before July 3, 2019, data provided by ORR to the Committee on or before June 4, 2019, and data provided by ICE on or before April 19, 2019. The agencies have and are continuing to produce additional data, which may result in updates to this report.

II. CHRONOLOGY OF ADMINISTRATION’S CHILD SEPARATIONS

This section provides a chronology of the Trump Administration’s child separation policy. For a more detailed timeline, see Appendix A.

The height of child separations at the southern border occurred between April and June 2018. During this period, DOJ instituted a “zero tolerance policy” to prosecute all cases of unauthorized entry at the southern border, and DHS referred all instances of unauthorized entry for prosecution.

Under this policy, CBP separated families that crossed the border without authorization. CBP referred parents for prosecution and designated children as Unaccompanied Alien Children (UAC), sending them to the custody of ORR, a component of HHS, in facilities across the United States.

The Trump Administration has admitted to separating hundreds of additional children since the zero tolerance policy was halted by a federal court, and government watchdogs have indicated that the Administration may have separated thousands of additional children before the zero tolerance policy was announced.

Reports by the DHS Office of Inspector General and the Government Accountability Office (GAO) found that the Trump Administration conducted these separations with no plans to track separated children, made false statements about the ability to track these children and reunite families, and failed to plan for an influx of children into ORR custody despite warnings from agency officials.¹⁸

The Trump Administration’s failure to care for separated children adequately and reunite them with their families in a timely way may also violate binding standards in the 1997 *Flores v. Reno* settlement agreement and the Trafficking Victims Protection Reauthorization Act (TVPRA), which was signed into law by President George W. Bush in 2008.

The *Flores* agreement “sets out nationwide policy for the detention, release, and treatment of minors” in federal immigration custody. Among other requirements, *Flores* compels the government to “expeditiously process” detained children, to place children in the “least restrictive setting appropriate,” to maintain “safe and sanitary” conditions in detention, and to release children “without unnecessary delay” to a parent or other sponsor.¹⁹ The *Flores* settlement applies to minors whether or not they are accompanied by adults, and courts

¹⁸ Department of Homeland Security, Office of Inspector General, *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sept. 27, 2018) (online at www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf); Government Accountability Office, *Unaccompanied Children, Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 24, 2018) (online at www.gao.gov/assets/700/694918.pdf).

¹⁹ Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (N.D. Cal. Jan. 17, 1997) (online at www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf).

interpreting this agreement have held that detaining children in family detention for more than 20 days violates the agreement.²⁰

The TVPRA requires that, except in “exceptional circumstances,” any “unaccompanied alien child” in government custody—which includes separated children—must be sent to an ORR facility “not later than 72 hours after determining that such child is an unaccompanied alien child.”²¹

A. Administration’s Initial Child Separations (2017 to Early 2018)

The Trump Administration began publicly discussing the possibility of separating children just weeks after President Trump’s inauguration in 2017. In an interview on March 7, 2017, Secretary of Homeland Security John F. Kelly was asked whether DHS personnel were going to “separate the children from their moms and dads.” He responded:

Yes, I am considering, in order to deter more movement along this terribly dangerous network, I am considering exactly that. They will be well cared for as we deal with their parents.²²

In July 2017, the Administration began a secret pilot program to separate children and their parents arriving at the border in the El Paso sector.²³ An October 2018 GAO report found that 281 individuals were separated under this program.²⁴

A January 2019 report by the HHS Office of Inspector General found that child separations rose sharply in 2017. The report also found that “thousands” of separations may have occurred before the zero tolerance policy, but that the “total number and current status of all children separated from their parents or guardians by DHS and referred to ORR’s care is unknown.”²⁵ This report, along with media reports and lawsuits filed by separated parents,

²⁰ *Flores v. Sessions*, No. 2:85-CV-04544 (C.D. Cal. June 27, 2017) (finding “substantial noncompliance” with the *Flores* settlement where, among other concerns, “a significant number of detainees still remained in detention for over 20 days”) (online at www.americanimmigrationcouncil.org/sites/default/files/jenny_1_flores_v_jefferson_b_sessions_motion_to_enforce.pdf).

²¹ 8 U.S.C. § 1232(b)(3).

²² *Kelly: DHS Is Considering Separating Undocumented Children from Their Parents at the Border*, CNN (Mar. 7, 2017) (online at www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html) (emphasis added).

²³ *Trump Admin Ran ‘Pilot Program’ for Separating Migrant Families in 2017*, NBC News (June 29, 2018) (online at www.nbcnews.com/storyline/immigration-border-crisis/trump-admin-ran-pilot-program-separating-migrant-families-2017-n887616).

²⁴ Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 24, 2018) (online at www.gao.gov/assets/700/694918.pdf).

²⁵ Department of Health and Human Services, Office of Inspector General, *Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 17, 2019) (“Officials estimated that ORR received and released thousands of separated children prior to a June 26, 2018, court order in *Ms. L v. ICE* that required ORR to identify and reunify

contradicted statements by Administration officials that they were not separating families prior to the April 2018 zero tolerance policy.²⁶

Earlier this year, a federal court ordered the government to identify all children separated during this period and gave the Administration until October 2019 to do so.²⁷ As of July 11, 2019, the Administration had identified 791 additional children separated before the original court order.²⁸

B. Mass Separations Under “Zero Tolerance Policy” (April to June 2018)

Family separations increased dramatically in April 2018 as a result of two Trump Administration policy changes:

- On April 6, 2018, Attorney General Sessions announced that he was directing federal prosecutors along the southern border “to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.”²⁹ 8 U.S.C. § 1325(a) addresses unauthorized entry into the United States.
- In late April or early May 2018, Secretary of Homeland Security Kirstjen Nielsen approved a policy of referring all adults for prosecution who make unauthorized border crossings, regardless of whether they arrive with a child.³⁰

Although the Trump Administration separated thousands of children from their parents during the months following these policy changes, Secretary Nielsen stated on multiple occasions that there was no policy to separate children from their parents. On May 15, 2018, she stated in testimony before the Senate Homeland Security and Governmental Affairs Committee:

certain separated children in its care as of that date.”) (online at www.oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf).

²⁶ *ACLU Sues ICE for Allegedly Separating 'Hundreds' Of Migrant Families*, National Public Radio (Mar. 9, 2018) (online at www.npr.org/sections/thetwo-way/2018/03/09/592374637/aclu-sues-ice-for-allegedly-separating-hundreds-of-migrant-families).

²⁷ *Judge Gives U.S. 6 Months to Account for Thousands More Separated Migrant Families*, New York Times (Apr. 25, 2019) (online at www.nytimes.com/2019/04/25/us/migrant-family-separation-judge.html).

²⁸ Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. July 11, 2019).

²⁹ Department of Justice, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* (Apr. 6, 2018) (online at www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry).

³⁰ *The Secretary of Homeland Security Said There Was “No Policy of Separating Families.” A Memo Proves There Was.*, BuzzFeed (Sept. 27, 2018) (online at www.buzzfeednews.com/article/adolfoflores/immigration-homeland-security-family-separation-foia-dhs); *Top Homeland Security Officials Urge Criminal Prosecution of Parents Crossing Border with Children*, Washington Post (Apr. 26, 2018) (online at www.washingtonpost.com/local/immigration/top-homeland-security-officials-urge-criminal-prosecution-of-parents-who-cross-border-with-children/2018/04/26/a0bdcee0-4964-11e8-8b5a-3b1697adcc2a_story.html).

“We do not have a policy to separate children from their parents.”³¹ On June 17, 2018, Secretary Nielsen tweeted: “We do not have a policy of separating families at the border. Period.”³²

Secretary Nielsen claimed that the only thing that had changed under the zero tolerance policy was that “everyone is subject to prosecution” and that separating children was necessary when the parent was placed in custody of the U.S. Marshals Service. She said this was “not a controversial idea.” She asserted: “If an American were to commit a crime anywhere in the United States, they would go to jail and they would be separated from their family.”³³

Asked whether she was “intending for parents to be separated from their children” and “intending to send a message,” Secretary Nielsen responded, “I find that offensive. No. Because why would I ever create a policy that purposely does that?” She then denied that the policy was intended as a deterrent.³⁴

However, other Administration officials said repeatedly that the separations would act as a deterrent. For example, Attorney General Sessions, when asked if the child separations policy was intended as a deterrent, said, “yes, hopefully people will get the message and come through the border at the port of entry and not break across the border unlawfully.” In response to a similar question, White House Chief of Staff John Kelly agreed, saying, “It could be a tough deterrent—would be a tough deterrent.”³⁵

The President repeatedly and inaccurately blamed Democrats and legal requirements—instead of the Administration’s own policy decisions—for the child separation policy. He also claimed to be powerless to stop it, saying: “We can’t do it through executive order.”³⁶ Despite his claims, on June 20, 2018, amid massive public outcry and international condemnation, President Trump issued an executive order backing away from the zero tolerance policy and blanket child separations in all cases of unauthorized entry.³⁷

³¹ Senate Homeland Security and Governmental Affairs Committee, *Hearing on Authorities and Resources Needed to Protect and Secure the United States*, 115th Cong. (May 15, 2018) (online at www.hsgac.senate.gov/hearings/authorities-and-resources-needed-to-protect-and-secure-the-united-states).

³² Secretary Kirstjen Nielsen, Department of Homeland Security, @SecNielsen, Twitter (June 17, 2018) (online at twitter.com/SecNielsen/status/1008467414235992069).

³³ The White House, *Press Briefing by Press Secretary Sarah Sanders and Department of Homeland Security Secretary Kirstjen Nielsen* (June 18, 2018) (online at www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-department-homeland-security-secretary-kirstjen-nielsen-061818/).

³⁴ *Id.*

³⁵ *Here Are the Administration Officials Who Have Said That Family Separation is Meant as a Deterrent*, Washington Post (June 19, 2018) (online at www.washingtonpost.com/news/politics/wp/2018/06/19/here-are-the-administration-officials-who-have-said-that-family-separation-is-meant-as-a-deterrent/?utm_term=.06b2c4a71390).

³⁶ *Trump Stops Separating Immigrant Families After Claiming He Couldn’t*, Daily Beast (June 20, 2018) (online at www.thedailybeast.com/trump-stops-separating-immigrant-families-after-claiming-he-couldnt).

³⁷ 83 Fed. Reg. 29435.

C. Court-Ordered Reunifications (June to July 2018)

On June 26, 2018, the federal court overseeing the *Ms. L* lawsuit issued a preliminary injunction halting family separations, except in narrow circumstances for the safety of the child, and ordered the reunification of all separated children still in government custody on that date. The court gave the Administration approximately two weeks to reunify all children under the age of five and one month to reunify all other children with their parents.³⁸

The Administration has identified 2,816 children covered by the court's preliminary injunction, including more than 100 children under five and over 2,500 children between 5 to 17.³⁹

The court ordered the reunification of children under five by July 11, 2018, and of children between 5 to 17 by July 26, 2018. However, following these deadlines, 711 children remained separated, including several hundred children whose parents had been deported before the court issued its preliminary injunction.⁴⁰

As of July 11, 2019—more than a year after the court's reunification order—30 of these separated children remain in ORR custody.⁴¹

D. Child Separations After Zero Tolerance (June 2018 to Present)

The Administration has continued to separate children from their parents at the border since June 2018. In February 2019, the Administration identified 245 children separated since the court order.⁴² That number increased to more than 700 by May 2019.⁴³

The Administration has asserted that these separations fall under exceptions in the *Ms. L* ruling for separations due to a parent's criminal history or child safety concerns. Although separation of a parent and child may be necessary in rare situations when the parent poses a genuine risk to the child's safety, advocates report that the Administration has no written

³⁸ Order Granting Plaintiffs' Mot. For Classwide Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. June 26, 2018). Relevant court documents are online at www.aclu.org/cases/ms-l-v-ice.

³⁹ These figures changed slightly over time as the Administration identified additional separated children. See Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Aug. 16, 2018); Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. Feb. 20, 2019).

⁴⁰ *After Deadline to Reunite Them, Hundreds of Children Remain Separated*, PBS (July 27, 2018) (online at www.pbs.org/wgbh/frontline/article/after-deadline-to-reunite-them-hundreds-of-children-remain-separated/).

⁴¹ Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. July 11, 2019).

⁴² *At Least 245 Children Separated from Families Since Trump Admin Said It Would Stop Doing So*, CNN (Feb. 22, 2019) (online at www.cnn.com/2019/02/21/politics/separations-status-report/index.html).

⁴³ *Trump Administration Still Separating Hundreds of Migrant Children at the Border Through Often Questionable Claims of Danger*, Houston Chronicle (June 22, 2019) (online at www.houstonchronicle.com/news/houston-texas/houston/article/Trump-administration-still-separating-hundreds-of-14029494.php).

guidelines to determine when such separations should occur and justifies the hundreds of ongoing separations by “relying on minor crimes, questionable accusations of gang membership, and unverified safety concerns.”⁴⁴

In response to a Freedom of Information Act request, HHS recently released additional information on children separated from January 2018 to March 2019.⁴⁵ This data covered 380 of the more than 700 children separated since the end of the zero tolerance policy. The newly released data shows:

- Only 55 children, or about 15%, were reunited with the parent from whom they were separated. The reunification occurred after an average of 64 days in ORR custody. The longest separation lasted more than six months.
- 172 children, or 45%, were released under “other appropriate circumstances”—which appears to refer to releases to relatives or other sponsors who are not the separated parents.
- 153 children, or 40%, were still in ORR custody when the data was reported.⁴⁶

Some of the hundreds of children who have been detained for days or weeks in unhealthy and overcrowded conditions at Border Patrol facilities were also separated from their parents, according to attorneys who interviewed these children.⁴⁷

⁴⁴ *Id.*

⁴⁵ *Family Separation FOIA Response from HHS Key Documents: Instances of Family Separation*, American Immigration Council (online at www.americanimmigrationcouncil.org/sites/default/files/foia_documents/family_separation_foia_request_hhs_production_instances_of_family_separation.pdf).

⁴⁶ This HHS information is undated, but appears to be from March 30, 2019, or later.

⁴⁷ *Inside a Texas Building Where the Government is Holding Immigrant Children*, New Yorker (June 22, 2019) (online at www.newyorker.com/news/q-and-a/inside-a-texas-building-where-the-government-is-holding-immigrant-children).

III. FINDINGS

Set forth below are preliminary findings based on a review of the records described above in Section I, including data on 2,648 children separated as of June 26, 2018, and included in the *Ms. L* lawsuit and additional ORR and CBP data on subsets of that group of children.⁴⁸ Appendix B provides additional detail about this data.

A. The Trump Administration’s Child Separations Were More Harmful, Traumatic, and Chaotic Than Previously Known

Child separations impacted children of all ages, including babies, and these children spent substantial amounts of time in CBP custody, in ORR custody, and in ICE family detention facilities even after they were reunified with their parents.

1. Infants and Toddlers Taken Away From Parents Held for Months

Data produced to the Committee shows that at least 18 infants and toddlers under the age of two were taken away from their parents, including nine infants under the age of one. The chart below provides the age, gender, and country of origin of each of these 18 infants and toddlers. This data is drawn from the *Ms. L* class and includes only infants and toddlers separated as of June 2018. This information has not been previously released publicly.

| Separated Infants and Toddlers (from <i>Ms. L</i> Class) | | | | | |
|--|--------|-------------------|-------------------|--------|-------------------|
| Country of Origin | Gender | Age at Separation | Country of Origin | Gender | Age at Separation |
| Romania | Boy | 4 months old | Honduras | Girl | 13 months old |
| Guatemala | Boy | 5 months old | Honduras | Girl | 14 months old |
| Honduras | Boy | 8 months old | Guatemala | Boy | 14 months old |
| Mexico | Boy | 8 months old | Honduras | Boy | 15 months old |
| Mexico | Boy | 8 months old | Honduras | Boy | 17 months old |
| Honduras | Girl | 9 months old | Honduras | Girl | 17 months old |
| Mexico | Boy | 10 months old | Honduras | Girl | 18 months old |
| Romania | Girl | 10 months old | Honduras | Boy | 19 months old |
| Honduras | Boy | 10 months old | Hungary | Boy | 23 months old |

The limited set of ORR records includes data for seven of these infants and toddlers. The records show that these children remained in government custody—and separated from their parents—for periods ranging from 20 days to half a year. For example:

⁴⁸ As noted above, this data includes all separated children who are members of the *Ms. L* class except 149 children who were added in December 2018 for whom the Administration has not yet produced data to the Committee.

- **Child 1:** Records confirm that the youngest child separated from his parents was a four-month-old baby boy from Romania who was separated from his 35-year-old father upon arrival in February 2018. The father was deported in early June 2018 from an ICE detention facility in south Texas.
- **Child 2:** This baby from Honduras was eight months old when he arrived with his father in May 2018 at the border in Texas. He was taken away from his father and sent to an ORR facility in Arizona, where he remained for nearly six months, before being released for departure from the United States in November. During this time, his father was transported to an ICE detention facility near the border, transferred days later to another ICE detention facility in Texas, transferred to a third ICE detention facility nearly a month later, and then deported in July. At the time of his release, the baby had spent nearly half of his life without his parents, in the custody of the Trump Administration. It is unclear whether the child and father have been reunited.
- **Child 3:** This toddler from Honduras was 19 months old when he arrived with his father in April 2018 at the border in Texas. He was taken away from his father and transported to foster care in New York, where he remained for five and a half months before being released to a sponsor in October 2018. During this time, the child’s father was sent to various ICE detention facilities in Texas, New Jersey, and New York, before being released in October. It is unclear whether the child and father have been reunited.

In some instances, agency records produced to the Committee do not provide sufficient detail to determine whether the sponsor to whom a child was released was a parent, other relative, or non-relative sponsor. References in this staff report to “ORR custody” or an “ORR facility” indicate that a child was housed in an ORR contractor-run facility or foster care through an ORR grantee where specified.

2. CBP Detained Separated Children Beyond Legal Limit

Records obtained by the Committee show that some children spent up to a week in CBP detention facilities at the border before being sent to an ORR facility designed to house children. This may violate the *Flores* settlement as well as a federal statute, the TVPRA, which generally requires the government to transfer children in CBP custody to ORR within 72 hours.⁴⁹

CBP and ORR data for a limited subset of separated children indicate when each child entered CBP custody and when he or she entered ORR custody. The data shows that 241 children—more than 25%—remained in CBP custody (or in transit from CBP to ORR) longer than 72 hours.

⁴⁹ 8 U.S.C. § 1232(b)(3) (“Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.”).

| Time Between Border Arrest and ORR Admission (for Subset of 862 Children in <i>Ms. L</i> Class) | |
|--|--------------------|
| Same day: | 5 children (<1%) |
| Next day: | 93 children (11%) |
| Two days: | 247 children (29%) |
| Three days: | 276 children (32%) |
| Four days: | 158 children (18%) |
| Five days: | 54 children (6%) |
| Six days: | 20 children (2%) |
| Seven days: | 3 children (<1%) |
| Eight days: | 4 children (<1%) |
| Nine days: | 1 child (<1%) |
| Ten days: | 1 child (<1%) |

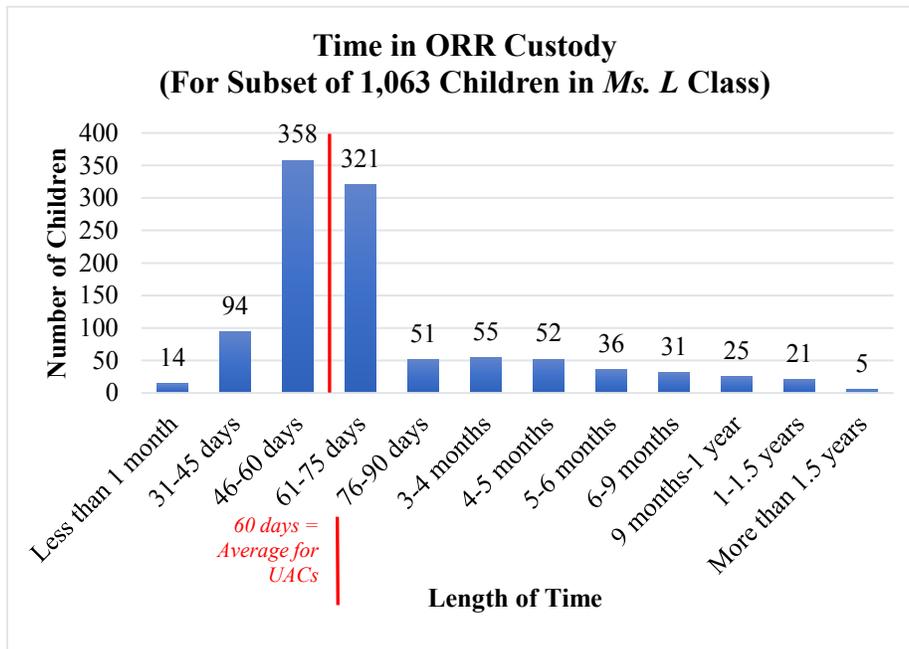
3. ORR Detained Separated Children Longer Than Previously Known

Records show that children of all ages were held in ORR custody for extensive periods of time. Separated children were in ORR custody for an average of approximately 90 days, compared to an average of 60 days for all unaccompanied children in ORR care in Fiscal Year 2018.⁵⁰ Some children, however, were held for far longer—some for more than a year and a half.

More than half of these children were in ORR custody between 46 and 75 days, more than 50 children were in ORR custody for six months to a year, 21 were held between one year and a year and a half, and 5 were in custody for more than a year and a half. For children whose ORR records show them still in custody, Committee staff used the date of production of those records to the Committee to determine the duration of detention.

The chart below shows a breakdown of time spent in custody, with the red line marking the FY18 average time of 60 days for all unaccompanied children in ORR custody.

⁵⁰ Office of Refugee Resettlement, *Facts and Data* (accessed June 27, 2019) (online at www.acf.hhs.gov/orr/about/ucs/facts-and-data).



4. ICE Detained Separated Children for Months After Reunifications

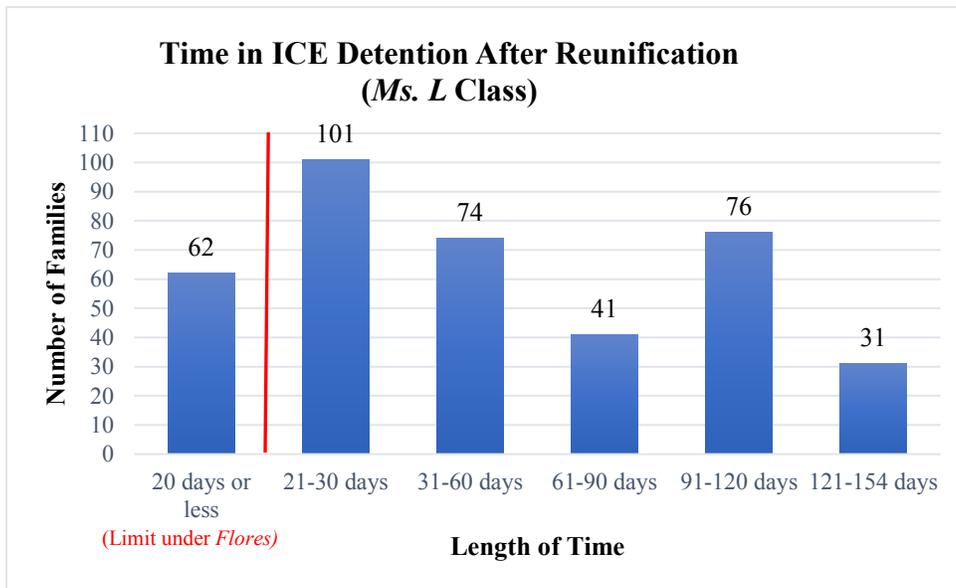
Even after they were reunited with their parents, hundreds of children continued to be detained for weeks or months in ICE family detention at the Dilley and Karnes facilities in Texas. Approximately 385 of the 2,648 separated children included in the data were reunited with their families in ICE family detention. Most of them were held longer than 20 days—which courts have held is the legal limit under the *Flores* settlement.⁵¹

The average length of time that these families spent in ICE detention was approximately 58 days. Many families remained in detention for several months, with approximately 75 families in detention for 3-4 months and approximately 30 families in detention for 4-5 months.

Approximately 300 of the families that were reunified in ICE detention, or roughly 80%, ultimately were released from custody rather than deported, raising the question of what purpose was served by their initial detention and whether it was appropriate.

The chart below shows the amount of time each family spent in ICE detention. The red line marks the 20-day limit for family detention under the *Flores* settlement.

⁵¹ Of these children, 62 were held for 20 days or less, the limit under the terms of the *Flores* settlement. See *Flores v. Sessions*, No. 2:85-CV-04544, 2017 WL 6060252 (C.D. Cal. June 27, 2017) (finding “substantial noncompliance” with the *Flores* settlement where, among other concerns, “a significant number of detainees still remained in detention for over 20 days”); see also Congressional Research Service, *The “Flores Settlement” and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions* (Sept. 17, 2018) (online at fas.org/sgp/crs/homsec/R45297.pdf).



5. Administration Repeatedly Moved Separated Children

Many separated children were moved multiple times while in custody, adding to the trauma they experienced. For example, many children were moved to multiple CBP facilities before they were sent to ORR custody. Records show that more than 400 children were moved to multiple CBP locations, sometimes with a parent and sometimes after separation. Similarly, after being sent to ORR, many children were moved around to different ORR facilities. Records show that more than 80 children were transferred to different ORR facilities while in ORR custody. Nine children were transferred twice, four were transferred three times, and one was transferred four times. For example:

- Child 4:** One child cycled through five different ORR facilities over the course of more than eight months. This child was 16 years old when he arrived from Honduras in June 2018 and was separated from his father at the border near Phoenix, Arizona. The child was sent to three different facilities near the south Texas border, spending a few weeks or months at each location. In November, he was sent to a facility in Virginia, where he stayed for more than two months, and was then moved to a facility in California in February 2019. He was released to a sponsor in March 2019. During this time, the child’s father was sent to an ICE detention facility in Florence, Arizona, moved to an ICE contractor detention facility, moved to an ICE detention facility in Eloy, Arizona in June 2018, and deported in July 2018.

At least five children were transferred to multiple ICE family detention facilities—including to one facility, Port Isabel, which is not a family detention facility and was not built to house children. When the Administration began reuniting separated families in June 2018, ICE

claimed that “no children will be housed at the facility” and would not be housed “even for short periods.”⁵² For example:

- **Child 5:** This child was nine years old when he arrived from Honduras in June 2018 with his father. ICE records show the child was sent to Karnes family detention and possibly was reunited with his father there. The child spent two days at Karnes before being moved to Port Isabel, where he spent nearly three weeks before removal with his father in mid-August.

This child was housed at Port Isabel after 37 children traveled by van to Port Isabel from ORR facilities on July 15, 2018, to be reunited with their families. These children waited up to 39 hours in these vans in the parking lot because the facility was not equipped to house them, and DHS failed to process them promptly for reunification.⁵³

6. Administration Detained Separated Children in Notorious “Tent City”

Records show that at least ten children spent time at Tornillo, the notorious emergency influx facility near El Paso that has since closed. ORR moved these children to Tornillo in June 2018, soon after the facility opened. Five of these children were released to a parent or sponsor in July 2018, and the remaining five were transferred to other ORR facilities in July or August.

Tornillo gained notoriety as a “tent city” set up to handle the influx of children in ORR custody caused by the child separation policy. In an audit issued in November 2018, the HHS Inspector General found “significant vulnerabilities” at the Tornillo facility, including its failure to conduct required background checks and an insufficient number of “staff clinicians to provide adequate mental health care for UAC.” The Inspector General warned that these problems “warrant ORR’s immediate attention because they could significantly compromise the safety and well-being of UAC.”⁵⁴

In January 2019, Kevin Dinnin, the President and CEO of BCFS, the contractor that ran the facility, refused to continue operating Tornillo because the Trump Administration kept pushing him to expand capacity at the same time that he observed longer and longer delays releasing children to sponsors. Mr. Dinnin stated: “The children want to get to their families.

⁵² *Port Isabel Detention Center, Where Immigrants Will Be Sent Before Reuniting with Children, Has Long History of Problems*, Texas Tribune (June 27, 2018) (online at www.texastribune.org/2018/06/27/port-isabel-detention-center-long-history-problems-immigrants-reunific/).

⁵³ *Botched Family Reunifications Left Migrant Children Waiting in Vans Overnight*, NBC News (June 3, 2019) (online at www.nbcnews.com/politics/immigration/botched-family-reunifications-left-migrant-children-waiting-vans-overnight-n1013336).

⁵⁴ Memorandum from Inspector General Daniel R. Levinson, Department of Health and Human Services, to Lynn Johnson, Assistant Secretary for Administration for Children and Families, Department of Health and Human Services, *The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff* (Nov. 27, 2018) (online at <https://oig.hhs.gov/oas/reports/region12/121920000.pdf>).

Under any circumstance, I don't think it's right that a child be held in care longer than necessary to ensure their safe placement."⁵⁵

B. Administration Has Not Been Candid About Its Purpose in Separating Children

The records obtained by the Committee indicate that the Trump Administration separated children unnecessarily—even under the Administration's own rationale—and then failed to track separated families. These actions caused lengthy delays to reunification and, in some cases, separations that are still ongoing today.

The Trump Administration claimed that child separations under the zero tolerance policy were necessary in order to criminally prosecute the parents and that such separations were no different than what occurs in the context of any criminal prosecution.⁵⁶ For example, in June 2018, Attorney General Sessions said:

If you cross the Southwest border unlawfully, then the Department of Homeland Security will arrest you and the Department of Justice will prosecute you. ... However, we are not sending children to jail with their parents. The law requires that children who cannot be with their parents be placed in custody of the Department of Health and Human Services within 72 hours.⁵⁷

However, the data shows that many child separations were unnecessary even under this claimed rationale. Some parents who were separated from their children were never sent to U.S. Marshals or other federal criminal custody, but instead went straight from CBP custody to ICE detention. Other parents were briefly taken into U.S. Marshals' custody and then returned to CBP custody within a day or two. These parents were readmitted to the same facilities where they had been separated from their children days before, but the children had already been sent to ORR custody. These parents were then sent to ICE detention and in some cases were deported without their children.

These parents may have been in federal criminal custody for only a brief period—or not at all—because prosecutors declined to prosecute the cases, or because the parents' only criminal offense was the misdemeanor of illegal entry and they were sentenced to time served when they immediately pleaded guilty. Yet their children were nevertheless taken from them and kept apart for weeks or months. For example:

⁵⁵ *Head of Controversial Tent City Says the Trump Administration Pressured Him to Detain More Young Migrants*, VICE News (Jan. 11, 2019) (online at news.vice.com/en_us/article/kzvmg3/head-of-controversial-tent-city-says-the-trump-administration-pressured-him-to-detain-more-young-migrants).

⁵⁶ *Sessions: Parents, Children Entering U.S. Illegally Will be Separated*, NBC News (May 7, 2018) (online at www.nbcnews.com/politics/justice-department/sessions-parents-children-entering-us-illegally-will-be-separated-n872081).

⁵⁷ Department of Justice, *Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance by Church Leaders* (June 14, 2018) (www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders).

- **Child 6:** This boy from Guatemala was 15 years old when he arrived with his father in May 2018 at the Arizona border. He was sent to an ORR facility in Phoenix, Arizona on May 16, while his father went to a hospital that same day. On May 17, the father was sent briefly to U.S. Marshals custody and then returned to CBP custody on the same day to the same facility, but his son had already been transferred to ORR custody. A week later, the father was moved to the first of several ICE detention facilities in Arizona. On July 3, he was deported without his son. The boy remained in ORR custody for three months before being released to a sponsor in August.
- **Child 7:** This boy from Guatemala was 13 years old when he arrived with his father on June 11, 2018, at the Arizona border, and they both were brought to a Border Patrol facility. The next day, June 12, the father was sent briefly to U.S. Marshals custody before being returned to the same Border Patrol facility. The child, however, had already been transferred to ORR custody that day, and on June 15, he was admitted to the ORR Homestead facility in Florida, run by a for-profit contractor. The father was moved to three different ICE detention facilities before being reunited with his son more than a month after they were separated.
- **Child 8:** This girl from Guatemala was 12 years old when she arrived with her father in May 2018 at the Arizona border. The following day, May 19, the child was transferred from the Border Patrol facility to an ORR facility in Corpus Christi, Texas. Her father was sent to U.S. Marshals custody on May 21 and returned to CBP custody the same day at the same facility where he and his daughter had been detained a few days earlier. The father was moved to five different ICE detention facilities in Arizona, Georgia, and Texas. He was not reunited with his daughter until July, two months after they were separated.

In September 2018, the DHS Office of Inspector General issued a report finding that CBP officials sometimes avoided taking back custody of parents after court appearances—even though their children were still in CBP’s custody—because CBP wanted to “avoid doing the additional paperwork.” The report stated:

In McAllen, Texas, many adults prosecuted under the Zero Tolerance Policy were sentenced to time served and promptly returned to CBP custody. Several officers at CBP’s Central Processing Center in McAllen stated that if these individuals’ children were still at the facility when they returned from court, CBP would cancel the child’s transfer to HHS and reunite the family. However, CBP officials later arranged to have adults transferred directly from court to ICE custody, rather than readmitting them where they might be reunited with their children. According to a senior official who was involved with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults.⁵⁸

⁵⁸ Department of Homeland Security, Office of Inspector General, *Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sept. 27, 2018) (online at www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf).

C. Children Separated Years Ago Are Still Not Reunited, Despite Court Order

More than a year ago, on June 26, 2018, the federal court handling the *Ms. L* litigation ordered the Trump Administration to terminate its zero tolerance policy and reunite children separated pursuant to that policy.⁵⁹ The court ordered the reunification of children under five by July 11, 2018, and of children ages 5 to 17 by July 26, 2018. However, as of July 2019, approximately 30 children separated from their parents more than a year ago under the zero tolerance policy still have not been reunited with a parent or released to a sponsor.⁶⁰

The limited set of ORR records includes information about 17 children who had not been reunited when the records were produced to the Committee. Most were admitted to ORR facilities between March and June 2018. The parents of at least ten of these children have been deported. Committee staff cannot determine based on the data what happened to the parents of the other seven. For example:

- **Child 9:** This eight-year-old boy from Guatemala arrived with his father in May 2018 at the Arizona border. The boy was taken away from his father, held in CBP custody, and then transported to an ORR facility near Houston, Texas, where he remained for nearly eight months. He was transferred to the nearby Shiloh Treatment Center in January 2019, and as of May 2019, he was still there—one year after arriving at the border and being separated from his father. His father was deported in July 2018, two months after they arrived. Records do not indicate what steps the Administration has taken to reunify the father and the child, who is now nine years old.
- **Child 10:** This boy from Guatemala was 13 years old when he arrived with his father in May 2018 at the Arizona border. The child was taken away from his father and admitted to ORR custody at a facility near Manassas, Virginia. He remained there for six and a half months and was then transferred to a facility back in Texas meant for longer term care of children. As of May 2019, he was still there, even though his father was deported months ago, in August 2018. Again, the records produced to the Committee do not indicate what steps the Administration has taken to reunify this family, and this boy is now 14 years old.

⁵⁹ Order Granting Plaintiffs’ Motion for Classwide Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. June 26, 2018).

⁶⁰ Joint Status Report, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. July 11, 2019). These 30 children include: 1 child whose parent is “present outside the U.S.” and for whom “resolution will be delayed”; 13 children “where a final determination has been made they cannot be reunified because the parent is unfit or presents a danger to the child,” 14 children “with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU”; 1 child “with parent in the United States who has indicated an intent not to reunify” and 1 child for whom a steering committee assisting with reunifications “could not obtain parental preference.”

The court in the *Ms. L* litigation is considering what will happen with parents deported without their children, particularly after a settlement last year allowing many to reapply for asylum.⁶¹

IV. CONCLUSION

Despite the failure by DHS, HHS, and DOJ to produce a complete set of records, the Committee's investigation of the Trump Administration's child separations has revealed harm inflicted on children beyond what was previously known, has refuted the Administration's justification for this cruel policy, and has confirmed the ongoing trauma inflicted by these separations. The separation of these children from their parents was not required by law, but instead was the result of a long-considered series of policy decisions by the Trump Administration.

The Administration executed a deliberate policy to take thousands of babies, infants, toddlers, and children away from their parents and transfer them to government custody, in some cases in deplorable conditions. The Committee will continue to analyze additional information produced from DHS, HHS, and DOJ and will consider additional investigative steps to fully evaluate the damage caused by this policy.

⁶¹ *Settlement Reached in Family Separation Cases: More than 1,000 Rejected Asylum Seekers to Get Second Chance if Court Approves*, Washington Post (Sept. 13, 2018) (online at www.washingtonpost.com/news/morning-mix/wp/2018/09/13/settlement-reached-in-family-separation-cases-more-than-1000-rejected-asylum-seekers-to-get-second-chance-if-court-approves/?utm_term=.87b88c5959f6); *29 Parents Separated from their Children and Deported Last Year Cross U.S. Border to Request Asylum*, Washington Post (Mar. 2, 2019) (online at www.washingtonpost.com/world/the_americas/29-parents-separated-from-their-children-and-deported-last-year-arrive-at-us-border-to-request-asylum/2019/03/02/38eaba7a-2e48-11e9-8781-763619f12cb4_story.html).

APPENDIX A

Timeline of Trump Administration Child Separations

Below is a timeline of key events relating to the planning and implementation of mass separations of children from their parents at the southern border under President Trump.

- March 6, 2017:** Secretary of Homeland Security John F. Kelly stated in a televised interview that the Trump Administration may separate children from parents at the border as a deterrent measure.⁶²
- April 11, 2017:** Attorney General Jeff Sessions announced new priorities for federal prosecutions of immigration-related offenses and issued a policy memorandum to federal prosecutors entitled, “Renewed Commitment to Criminal Immigration Enforcement.”⁶³ This policy included prioritizing felony prosecutions for unauthorized entry and unauthorized reentry, the same legal offenses that later formed the basis of the “zero-tolerance” prosecutions and mass child separations.
- July-Nov. 2017:** The Administration ran a pilot initiative to separate children from their parents arriving at the border in the El Paso sector, reaching an agreement with nearby federal prosecutors to substantially increase the number of referrals of adults for unauthorized entry or re-entry.⁶⁴ An October 2018 GAO report confirmed the pilot program’s existence and described a Border Patrol report indicating that “the El Paso sector processed approximately 1,800 individuals in families and 281 individuals in families were separated under this initiative.”⁶⁵
- December 2017:** In a memorandum entitled, “Policy Options to Respond to Border Surge of Illegal Immigration,” that has since become public in draft form, DOJ and DHS officials discussed increasing prosecutions of parents who arrive with children and separating those families on arrival. The memo states that “the increase in prosecutions would be reported by the media and it would have a substantial deterrent effect” and that “CBP is currently executing this policy on a limited basis in the El Paso Sector.”⁶⁶ In an interview with Committee

⁶² Kelly: *DHS is Considering Separating Undocumented Children from their Parents at the Border*, CNN (Mar. 7, 2017) (online at www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html).

⁶³ Department of Justice, *Attorney General Jeff Sessions Announces the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement* (Apr. 11, 2017) (online at www.justice.gov/opa/pr/attorney-general-jeff-sessions-announces-department-justice-s-renewed-commitment-criminal).

⁶⁴ *Trump Admin Ran ‘Pilot Program’ for Separating Migrant Families in 2017*, NBC News (June 29, 2018) (online at www.nbcnews.com/storyline/immigration-border-crisis/trump-admin-ran-pilot-program-separating-migrant-families-2017-n887616).

⁶⁵ Government Accountability Office, *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border* (Oct. 24, 2018) (online at www.gao.gov/assets/700/694918.pdf).

⁶⁶ *Trump Admin Weighed Targeting Migrant Families, Speeding Up Deportation of Children*, NBC News

staff, the top immigration advisor to the Attorney General, Gene Hamilton, recalled receiving this memo from DHS in late 2017 or early 2018.⁶⁷

- Feb. 26, 2018:** The American Civil Liberties Union filed a lawsuit against the Administration, *Ms. L v. ICE*, on behalf of a mother from the Democratic Republic of Congo who was separated from her seven-year-old daughter at a port of entry. This case later expanded to a class action on behalf of separated children.⁶⁸
- April 6, 2018:** Attorney General Sessions announced the Trump Administration’s “zero-tolerance policy,” directing federal prosecutors along the southern border “to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.”⁶⁹ 8 U.S.C. § 1325(a) refers to unauthorized entry into the United States.
- April 22, 2018:** CBP Commissioner Kevin McAleenan, ICE Acting Director Thomas Homan, and U.S. Citizenship and Immigration Services Director L. Francis Cissna sent a memorandum to Secretary of Homeland Security Kirstjen Nielsen asking for her decision “on increasing immigration violation prosecution referrals.”
- Late April / Early May 2018:** Secretary Nielsen approved a policy recommendation in the memo to refer all adults for prosecution who make unauthorized border crossings, regardless of whether they arrive with a child.⁷⁰
- May 7, 2018:** In two speeches, Attorney General Sessions announced the new DHS policy of referring all cases of unauthorized entry to DOJ for prosecution and acknowledged that the policy will separate children from their parents, saying:

(Jan. 17, 2019) (online at www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811).

⁶⁷ Committee on Oversight and Reform, Transcribed Interview with Gene Hamilton (May 30, 2019).

⁶⁸ *ACLU Sues ICE for Allegedly Separating ‘Hundreds’ of Migrant Families*, National Public Radio (Mar. 9, 2018) (online at www.npr.org/sections/thetwo-way/2018/03/09/592374637/aclu-sues-ice-for-allegedly-separating-hundreds-of-migrant-families).

⁶⁹ Department of Justice, *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* (Apr. 6, 2018) (online at www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry).

⁷⁰ *The Secretary of Homeland Security Said There Was “No Policy of Separating Families.” A Memo Proves There Was.*, BuzzFeed (Sept. 27, 2018) (online at www.buzzfeednews.com/article/adolfoflores/immigration-homeland-security-family-separation-foia-dhs); *Top Homeland Security Officials Urge Criminal Prosecution of Parents Crossing Border with Children*, Washington Post (Apr. 26, 2018) (online at www.washingtonpost.com/local/immigration/top-homeland-security-officials-urge-criminal-prosecution-of-parents-who-cross-border-with-children/2018/04/26/a0bdcee0-4964-11e8-8b5a-3b1697adcc2a_story.html?utm_term=.3a7078387875).

“If you don’t want your child separated, then don’t bring them across the border illegally.”⁷¹

May-June 2018: The Trump Administration separated thousands of children from their parents under the zero tolerance policy.

June 20, 2018: Amid massive public outcry and international condemnation, President Trump issued Executive Order 13841, “Affording Congress an Opportunity to Address Family Separation,” reversing course on the zero tolerance policy and blanket child separations in all cases of unauthorized entry by families.⁷²

June 26, 2018: The federal judge overseeing the *Ms. L v. ICE* case issued a preliminary injunction halting family separations, except in narrow circumstances for the safety of the child, and ordering reunifications of all separated children still in government custody on this date—giving the government approximately two weeks to reunify all children under the age of five and one month to reunify all other children with their parents.⁷³

July 2018: The Court in *Ms. L* ordered the reunification of children under five by July 11 and of children ages 5 to 17 by July 26. However, following these deadlines, 711 children remained separated for a variety of reasons asserted by the Administration, including several hundred children whose parents had been deported before the court issued its preliminary injunction.⁷⁴

⁷¹ *Sessions Vows to Prosecute All Illegal Border Crossers and Separate Children from their Parents*, Washington Post (May 7, 2018) (online at www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html).

⁷² 83 Fed. Reg. 29435.

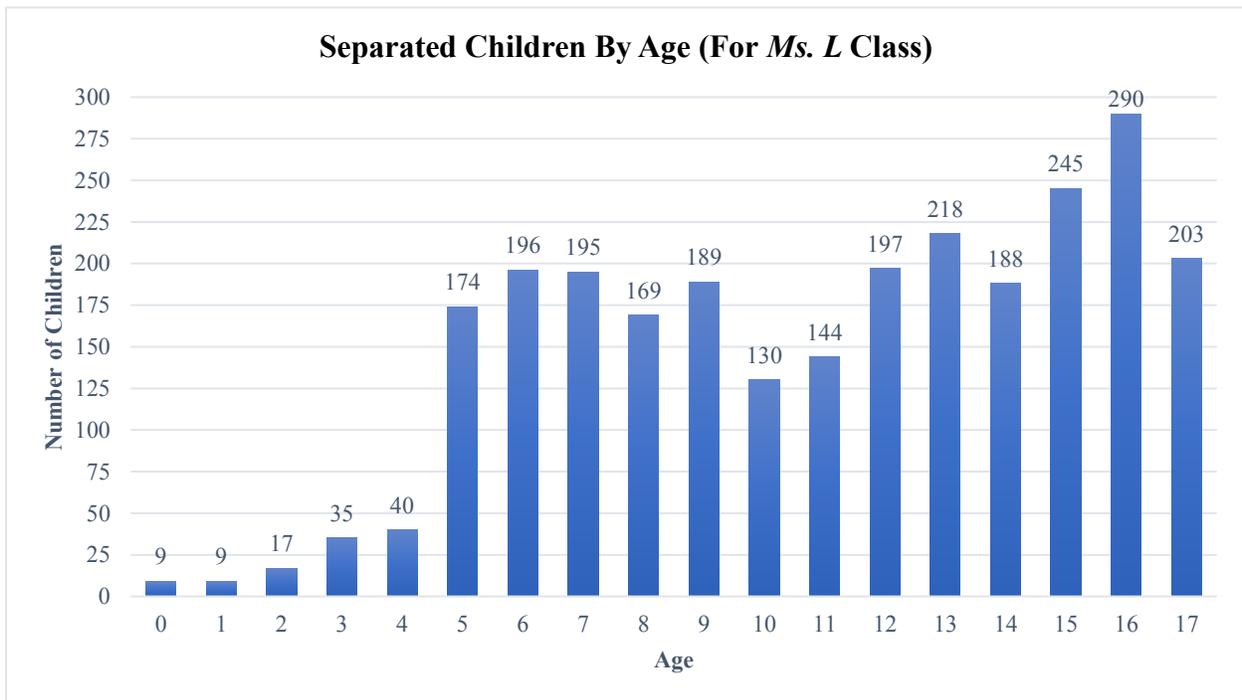
⁷³ Order Granting Plaintiffs’ Mot. For Classwide Preliminary Injunction, *Ms. L v. ICE*, 3:18-cv-00428-DMS-MDD (S.D. Cal. June 26, 2018).

⁷⁴ *After Deadline to Reunite Them, Hundreds of Children Remain Separated*, PBS (Jul. 27, 2018) (online at www.pbs.org/wgbh/frontline/article/after-deadline-to-reunite-them-hundreds-of-children-remain-separated/).

APPENDIX B
Additional Data on Trump Administration Child Separations

Age of Separated Children

The Administration divided the *Ms. L* class into children 0-4 years old and 5-17 years old. The chart below shows the full age breakdown of 2,648 separated children from the *Ms. L* class based on records produced to the Committee.



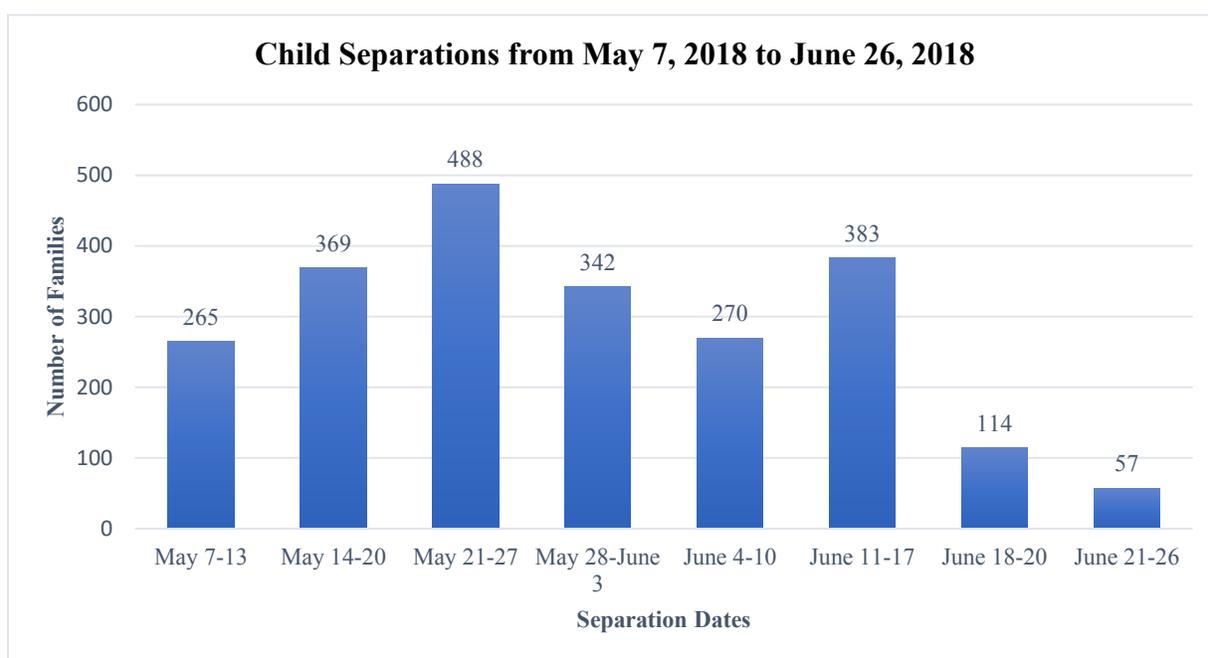
When Separations Occurred

The figures below show when children in the *Ms. L* class were separated. These dates are drawn from the “initial book-in” date for 2,648 separated children and their parents, which, per agency staff, is used as an approximation for the date of separation.

In records for some children, the data show book-in dates after June 26, 2018. Because the *Ms. L* class was only supposed to include children in custody as of June 26, 2018, it is unclear whether these later book-in dates are accurate. In some instances, Committee staff were able to confirm earlier book-in dates from other data. However, for 38 children with book-in dates after June 26, Committee staff could not determine whether the book-in dates were accurate.

| Date of Separation (for <i>Ms. L</i> Class) | |
|--|----------------|
| 2017 or earlier | 76 children |
| January 1, 2018, to April 5, 2018 (prior to zero tolerance policy) | 116 children |
| April 6, 2018, to May 6, 2018 (prior to DHS referring all adults for prosecution) | 130 children |
| May 7, 2018, to June 20, 2018 (prior to executive order ending zero tolerance) | 2,231 children |
| June 21, 2018, to June 26, 2018 (prior to order in <i>Ms. L</i> case) | 57 children |
| After June 27, 2018 or unknown (after order in <i>Ms. L</i> case or data errors) | 38 children |

The overwhelming majority of children in the *Ms. L* class were separated between May 7, 2018, and June 20, 2018—a 45-day period. The chart below shows a breakdown of those separations by week, along with the separations in the six days after the June 20, 2018, Executive Order.



Parent Deportations

Based on ICE data, 545 parents of the 2,648 separated children reviewed by the Committee were deported, with or without their children. From the limited set of ORR records, Committee staff have identified at least 158 parents who were deported without their children

and at least 89 who were deported with their children. The chart below shows when parents were deported, broken down by key dates:

| Date of Deportation of Separated Parents (for Ms. L Class) | |
|---|-------------|
| June 26, 2018, or Earlier (date of Ms. L order) | 269 parents |
| June 26, 2018, to July 11, 2018 (deadline to reunite children under five) | 85 parents |
| July 11, 2018, to July 26, 2018 (deadline to reunite children five and over) | 32 parents |
| July 27, 2018, or Later | 159 parents |

Reason for Release from ORR Custody

ORR records show the reasons children were discharged from ORR custody. Below is a breakdown of separated children by these different reasons. When the child was released to a sponsor following an ORR vetting process, rather than being released immediately to a parent, records do not specify whether a sponsor was a parent, other relative, or other individual.

| Reasons for Release of Separated Children from ORR Custody (for Subset of 1,063 Children from Ms. L Class) | |
|---|--------------------|
| Released to parents per Ms. L court order | 713 children (67%) |
| Released to a sponsor through ORR process | 294 children (28%) |
| Released to rejoin parents in home country | 19 children (2%) |
| Child turned 18 and aged out of ORR custody | 10 children (1%) |
| Reason unclear from data | 9 children (1%) |
| Ran away from ORR facility | 1 child (<1%) |

Locations of ORR Custody

ORR records identify each facility in which children were housed while in ORR custody. The table below shows the locations of ORR facilities where separated children were sent after arrival at the southern border:

| Initial Location of Separated Children in ORR Custody (for Subset of 1,063 Children from <i>Ms. L</i> Class) | | | |
|---|--------------|---------------|--------------|
| Texas: | 459 children | Arizona: | 244 children |
| New York: | 178 children | Florida: | 86 children |
| Illinois: | 25 children | California: | 20 children |
| Maryland: | 11 children | Pennsylvania: | 11 children |
| Michigan: | 11 children | Virginia: | 6 children |
| Kansas: | 4 children | Oregon: | 3 children |
| New Jersey: | 1 child | Connecticut: | 1 child |
| Location Unclear: | 3 children | | |

Below are additional facts about ORR facilities that these children were sent to:

- Cayuga Centers in New York housed the largest number of children, closely followed by Southwest Key Casa Padre in Brownsville, Texas.
- Taken together, Southwest Key facilities housed 525 of these separated children.
- 55 children were sent to the Homestead emergency influx shelter in Florida.
- Ten children were sent to the Tornillo emergency influx shelter near El Paso, Texas, after being transferred from other facilities.
- At least seven children were in long-term foster care, and at least three remained as of the date of records produced to the Committee.