

## MEMORANDUM

To: Michelle Brané, Executive Director, DHS Family Reunification Task Force

From: Young Center for Immigrant Children's Rights; Comunidad Maya Pixan Ixim; Al Otro Lado; American Immigration Council; Americans for Immigrant Justice; Asylum Seeker Advocacy Project (ASAP); Bethany Christian Services; Bilbao Law LLC; Catholic Legal Immigration Network, Inc. (CLINIC); Catholic Migration Services; Center for Law and Social Policy (CLASP); Centro Cultural Techantit; Charlotte Center for Legal Advocacy; Children's Legal Center; Children's Rights; Church World Service; De Anda Law Firm; First Focus on Children; Immigrant Legal Center; Indigenous Languages Office of the Alitas Immigrant Shelter; Justice in Motion; Kakalec Law PLLC; Kids in Need of Defense (KIND); Law Office of Helen Lawrence; Legal Aid Justice Center; McCrummen Immigration Law Group; Michigan Immigrant Rights Center; National Center for Youth Law; National Immigrant Justice Center; National Immigration Project of the National Lawyers Guild; Physicians for Human Rights; Public Counsel; Safe Passage Project; Save the Children; Seneca Family of Agencies; Terra Firma: Healthcare and Justice for Immigrant Children; Together & Free; Vera Institute of Justice; Water Protector Legal Collective (WPLC) of the National Lawyers Guild (NLG); Women's Refugee Commission; Additional Advocates and Attorneys Serving Separated Parents and Children<sup>1</sup>

Re: Necessary Resources and Supportive Services for *Ms. L* Class Members and Families

Date: June 8, 2022

The following memorandum sets forth recommendations for comprehensive resources and supportive services that the government should provide—through both the Family Reunification Task Force and the *Ms. L* settlement—to *Ms. L* class members and their families so that reunifications after such a significant period of separation or disruption have an opportunity to be successful. The recommendations are submitted by organizations and practitioners who have worked with or on behalf of separated families. They were informed by conversations with six parents separated from their children who are in various stages of return and/or reunification.<sup>2</sup> The memorandum was also reviewed by Comunidad Maya Pixan Ixim and its Indigenous collaborators, whose cultural knowledge and perspective informed and strengthened the recommendations.

To ensure separated families are best positioned to meaningfully engage in service provision, at the outset, the government should establish whether a family belongs to an Indigenous community. If they do, the government should further identify the specific nation to which the

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<sup>1</sup> A list of individual attorneys and advocates working on behalf of separated immigrant families who have also endorsed the recommendations in this memorandum can be found in the Appendix.

<sup>2</sup> At the time the Young Center spoke with these six parents, two had been reunited with their children in the United States several years ago and remained here since, three were recently returned with their children and additional family members, and one was awaiting return.

family belongs and what Indigenous language they speak. Furthermore, the government should involve Indigenous peoples' governments and Indigenous community-based organizations in family reunification planning efforts, consistent with the U.N. Declaration on the Rights of Indigenous People.<sup>3</sup>

**The highest priority should be (1) to fast-track work authorizations for all separated family members and related beneficiaries and (2) to provide housing for at least six months for returning and recently returned families who lack work authorization immediately upon arrival and therefore cannot work to pay rent. Moreover, because each family's needs will be unique, we further recommend the government prioritize the initiation of intensive and holistic, or Indigenous holistic, case management services to ensure the basic needs of families—especially those returning to the United States—are met so that reunification can occur in a safe and stable setting.** Without immediate work authorization and support for basic needs, many families cannot and will not be successfully reunited. Parents who have already returned are *currently* struggling with lack of support, and some are at real risk of homelessness and further crisis. Failure to provide for reunifying families basic needs significantly exacerbates what is already a challenging reunification process for many families who have been separated for over four years. For example, a child who has been living with a guardian in a stable home and attending school in a community where they have developed friendships is less likely to want to reunify with a returning parent who cannot rent an apartment, work, or put food on a table; and urging that child to relocate to a significantly less stable environment raises a host of concerns. Bringing families back without an individualized assessment and service plan for relocation and reunification, without resource support, is setting them up to fail and further endangering the parent-child relationships that were violated by the prior Administration.

As a threshold matter, we note that, given the varying circumstances among *Ms. L* class members, it can be difficult to discuss them as a singular entity. First, we understand that the settlement class will likely include both separated parents and legal guardians, and that separated children of *Ms. L* class members will also receive relief under the settlement. Second, the circumstances of both class members' separation and their current living situations vary greatly. For example, some class member parents that were deported years ago, and separated from children who remained in the United States, are now seeking to return to the United States and reunify with their child(ren). Other separated parents were reunified with their child(ren) before they were deported together, and now parent and child(ren) may be seeking to return, either separately or together. Still other parents who were never deported and remain in the United States today, yet endured months of separation from their child(ren), are also class members entitled to settlement relief.

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<sup>3</sup> U.N. General Assembly, U.N. Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly, October 2, 2007, A/RES/61/295, <https://www.refworld.org/docid/471355a82.html>; *see also* U.N. Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, Indigenous peoples' rights in the context of borders, migration and displacement: Study of the Expert Mechanism on the Rights of Indigenous Peoples, May 3, 2019, <https://digitallibrary.un.org/record/3899170#record-files-collapse-header>; International Labour Organization, Indigenous and Tribal Peoples Convention, C169, June 27, 1989, <https://www.refworld.org/docid/3ddb6d514.html>.

As a result of these complex and highly variable dynamics, class members may face a variety of economic, legal, psychosocial, and mental health challenges. Accordingly, to effectuate reunification the government should provide supports and services that are both comprehensive and flexible enough to meet current and future needs.<sup>4</sup> Because the inherent complexities in individual family dynamics will complicate any effort to identify a set of supportive services every class member will need; instead, we endeavor here to describe the supportive services every class member should be able to access.

### **Foundational Principles**

**Individualized and Client-Led Services.** In light of the wide range of experiences and circumstances each individual class member or their child(ren) may confront, it is critical that supportive services be tailored to the unique needs of each person. Some parents or children may require more supports in order to foster an environment in which reunification efforts can thrive. Any plan or process for service provision must also respect and prioritize the agency and autonomy of each family member. Therefore, all class members and their child(ren) should be offered an array of services and allowed to decide which services they would like to engage.

**Holistic, Intensive, and Early Case Management Services.** Reunified and reunifying families must be offered meaningful case management services to support them in adapting to life in the United States, navigating the many complex systems with which they must engage, and connecting them with supports designed to help them begin to recover from the harm they experienced. Case managers will assess and monitor needs, identify resources, connect families to those resources, and troubleshoot any challenges in accessing services.

It is critical that case management services be offered and if accepted commence (1) as soon as possible for class members present in the United States and (2) prior to travel for class members returning to the United States. Where a returning parent is planning to reunify with a child who remained in the United States, the case manager should also connect with the child before the parent's return to better understand the child's needs and wishes. Both an initial evaluation of a parent's and a child's needs, and the subsequent provision of services, must consider a diversity of resources to meet basic needs, such as food and housing, and more complex needs, such as legal and mental health services. By making early connections, case managers are in a better position to support the family as they develop a reunification strategy that is best for them. In early communications, case managers should explain what the return process will look like and what services are available, do an individual needs assessment that takes into account the unique circumstances of each individual or family, and begin to connect individuals to the appropriate services. For all class members, case managers should stay in regular contact in order to ensure that the services provided are adapted to families' evolving needs.

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<sup>4</sup> This is reflected in the Statement of Principles of the Reunification Task Force, which states that "support to reunified families will be defined very broadly, to include transportation, healthcare (including trauma and mental health services), legal services, and career and educational services . . . [and to] the extent possible, the expenses of reunification and reunification-related support will be borne by government, NGOs, and the private sector – and never by the families." See <https://www.dhs.gov/family-reunification-task-force>.

**Culturally Sensitive and Linguistically Accessible Services.** Class members and their child(ren), who hail from diverse cultural communities, must be contacted and counseled in their preferred language and through a culturally sensitive lens that recognizes how they may value, understand, and engage differently with services offered. Whenever possible, Indigenous individuals and organizations should provide services to Indigenous families. All individuals working with class members and children should have adequate access to training and resources to ensure they are able to navigate cultural differences and nuances in service provision.

**More Than Just a Referral – Personal Connections and Warm Hand-Offs.** Case managers working with class members and children should be actively engaged in connecting them to the services identified as necessary. This means not only identifying community resources and supports, but assisting in outreach, making appointments, supporting with interpretation services as necessary, and trouble-shooting any difficulty in accessing services requested by the family. Over time, case managers in different locations or with different agencies should share information and resources so that families have access and connection to meaningful services regardless of where they live within the United States.

**Ongoing Solicitation of Feedback from Parents and Children.** It is critical that the voices of the separated family members are heard in the process of determining the services and relief to which they have access. The government should solicit feedback from separated parents and children about (1) the obstacles to return and/or reunification that they anticipate or have already experienced and (2) the type of supports that they believe would mitigate those obstacles.

### **Summary of Recommended Services and Supports to be Offered**

- Basic Needs (through cash assistance and/or individualized supports)
  - Housing assistance
  - Food and clothing assistance
  - Transportation
  - Technology (phone/computer/internet) support
  - Medical care
  - Language access services
- Mental Health Services and Psychosocial Support
  - Counseling (Individual and family)
  - Evaluation
  - Prescription medication
  - Peer support
- Legal services
  - Expedited employment authorization
  - Immigration attorneys
  - Family law attorneys as needed
- Additional social services
  - Employment assistance programming
  - Education support

- Childcare vouchers
- Community navigators and cultural orientation

### **Explanation of Recommended Services and Supports**

**Basic Needs.** The primary objective of both the *Ms. L* litigation and the Family Reunification Task Force efforts is to reunify families who were unlawfully separated and to provide supportive services to mitigate the significant and lasting impact of the suffering they have endured. Providing mental health supports should be a key part of these reunification efforts. However, to be able to begin to rebuild interpersonal relationships and heal the psychological toll of separation, parents and children must first have their basic safety needs met.<sup>5</sup>

Many will arrive in the United States without a stable residence, weather-appropriate clothing, or sufficient financial resources to support themselves, their children, and other family members who may accompany them. These are not the conditions that lend themselves to meaningful engagement in a thoughtful and sustainable reunification process. Therefore, class members must be offered support for basic needs like housing, food, clothing, transportation, phone and internet service, and medical services immediately upon arriving. Class members must have access to these resources to ensure a baseline level of stability in their lives necessary to enable them to engage in the reunification processes. Of note, support for basic needs should never be made contingent on engaging in mental health care or counseling, which families may choose to accept or decline as they see fit.

Safe and secure housing is critical. Identifying affordable housing is challenging in the best of circumstances, and for class members without work permits, it is even more difficult to identify a landlord willing to accept them. Sufficient funding must be set aside to cover housing, including security deposits, first and last month's rent, and application fees. Where reunified families are moving in with family, they should be able to contribute to the family rent.

Regarding transportation, some might benefit from a monthly pass for the local public transportation system. Others will need to travel by taxi or hired car, which to the extent possible should be paid ahead of time rather than through a reimbursement model. Others might want to be able to reimburse a family member or friend who drives them to appointments for mileage and gas expenses. Or some combination of transportation methods might be needed.

Class members need to be able to access the internet for a host of reasons not least of which are children's effective participation in school and the family's engagement with legal services; again, support for this need will look different for each family. For most, that might be payment for internet service and a phone with internet connection ability. For someone moving in with family, it may be helpful for the class member to be able to contribute to the monthly internet or

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<sup>5</sup> See e.g., Carmela J. DeCandia *et al.*, Trauma-Informed Care and Trauma-Specific Services: A Comprehensive Approach to Trauma Intervention, Am. Inst. For Research (2014) ("Establishing a safe physical and emotional environment where basic needs are met; safety measures are in place" are core principles of trauma-informed care.").

electric bill of the family. Families may benefit from tech support or training, depending on their familiarity with technology. Children may need access to a tablet or other technology for school.

Planning and payment for medical care and services is also important. Case managers must be aware of what, if anything, is available to class members or children through their state Medicaid program. Where class members are not eligible for Medicaid, and they are likely not to be, the government should be prepared to pay for Medicaid-equivalent care (e.g., medically necessary care for children). Case managers should identify federally qualified health centers (FQHCs) and local providers who will accept class members as patients. Class members should also get COVID preventative supplies (masks and tests, for example) and, if they do test positive for COVID, access to comprehensive care.

**Mental Health Services and Psychosocial Support.** There is broad consensus about the need for mental health services and psychosocial support for class members.<sup>6</sup> The government has already provided behavioral health services to families who were reunited in the United States as a result of the preliminary injunction in the *Ms. J.P.* litigation. It is also currently seeking to expand upon those services through a new solicitation. Ultimately, separated families should have access to counseling (for individuals and families), evaluations, prescription medication, and connections to peer support.

In light of the historical trauma Indigenous peoples have experienced, if a class member identifies as Indigenous, mental health and psychosocial support should be provided by Indigenous mental health practitioners and approved by the spiritual and political authorities of Indigenous peoples consistent with international law.<sup>7</sup>

**Legal Services.** Class members will need connection with legal service providers for a number of reasons. Most critically, they will require immediate work authorization. The ability to work upon arrival is central to class members' ability to settle in the United States, provide for their family, and create an environment in which reunification is supported and sustainable. The government should therefore provide class members additional support in preparing and submitting the I-765 form for employment authorization. Currently, the International Organization for Migration has a contract with the federal government to assist humanitarian parole grantees in filling out an I-765 application prior to travel to the United States, but the application cannot be fully completed and submitted until after the family's arrival in the United States. Class members and adult relatives therefore carry the burden to complete the remaining sections of the form, procure a copy of their I-94, and mail out the application and supporting documentation. This has proven to be challenging for recently arrived families and has led to

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<sup>6</sup> See generally, Physicians for Human Rights, "*Part of My Heart Was Torn Away*": *What the U.S. Government Owes the Tortured Survivors of Family Separation*, 3-4, 22-24, 29 (Apr. 2022), <https://phr.org/our-work/resources/part-of-my-heart-was-torn-away/> (explaining the mental health diagnoses suffered by separated parents and setting forth the recommendation, both by physicians and parents themselves, that separated family members receive medical and mental health services).

<sup>7</sup> See Special Rapporteur, Permanent Forum on Indigenous Issues, U.N. Economic and Social Council, Preliminary study of the impact on Indigenous people of the international legal construct known as the Doctrine of Discovery, April 19-30, 2010, <https://www.un.org/esa/socdev/unpfi/documents/E.C.19.2010.13%20EN.pdf>.

delays in work authorization. Ideally, these applications would be completed and submitted concurrently with a parole application to avoid a situation where a class member is returned to the United States but without any means to support themselves. Alternatively, if a grant of parole is a prerequisite to filing an I-765, class members should receive additional assistance in preparing and submitting the I-765 for employment authorization promptly upon receiving parole, and USCIS should process these applications within 30 days; direct financial support for class members to meet their basic needs should be provided in the interim.

Class members will also require ongoing legal representation for immigration purposes. At this time, we understand that when granted, parole will last for a period of 36 months and will be renewable, subject to the policies of the federal administration at that time. Class members—most of whom came here fleeing unsafe and unstable conditions in their home country—will therefore need to seek more permanent relief from removal if they hope to remain safely in the United States as a reunited family.

Finally, in some particularly complex cases, both class member parents and children may require consultation with a family law attorney to understand and assert their rights with respect to reunification and custody. Though we expect that most reunifications will be without serious conflict—if they have been effectuated with the critical services noted in this memo—we recognize that years of separation may have changed family trajectories, negatively impacted familial bonds, or otherwise shaped children’s wishes. Because the appropriate forum for the resolution of any dispute arising out of a complex family reunification<sup>8</sup> is a state family court, some class member parents and children may therefore require representation in that setting.

Legal service providers working with class members that identify as Indigenous should have an understanding of international Indigenous peoples’ rights, including special rights and issues unique to Indigenous children, and the frameworks through which these rights can be asserted.<sup>9</sup>

**Additional Social Services.** Class members may benefit from additional social services as they continue to navigate the process of recovering from family separation and acclimating to life in the United States. After obtaining employment authorization, class members may benefit from assistance in obtaining employment, thereby increasing family stability. Parents might be interested in ESL classes or additional education or training options. Parents may also benefit from help enrolling their children in school and accessing additional supportive services through

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<sup>8</sup> A separate protocol should be prepared setting forth steps case managers should take when they identify that a reunification may be complex. The circumstances surrounding any given family’s reunification might be deemed “complex” for a variety of reasons. In one case, a parent returned without any information about where their child is or how to communicate with them. In other cases, separated children have expressed a desire not to reunify with a returning parent. The child’s wish could be grounded in a desire not to uproot themselves from a community and home in which they feel safe and established. But it could also stem from a safety concern that a child may raise about a returning parent. In still other cases, a legal guardian may not want to relinquish custody of the child. Each of these cases would require individualized assessment and connection to various services from Child Advocate services to family counseling sessions to legal counsel for purposes of filing a claim in state court.

<sup>9</sup> Such understanding should include, but not be limited to, that of the U.N. Declaration on the Rights of Indigenous Peoples, the Hague Convention on the Rights of Indigenous Peoples, and the Indian Child Welfare Act, along with other Indigenous tribal governments interests.

the educational system, such as special education services. Childcare support and vouchers will also be a crucial form of support if parents are to work to support and provide for their reunified family. This could look like day care, afterschool programs, or payment to a family member to provide childcare, depending on the needs of the family. Finally, community navigator programs will help acclimate class members to local resources and support systems and can serve to orient class members to the cultural expectations and legal obligations incumbent upon parents in the United States, especially insofar as they may differ from those in a class member's culture and country of origin.

## **Appendix**

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