**What new family separation policy is Trump considering?**

**PBS Newshour -** Oct 17, 2018

More than 60 migrant children remain in U.S. custody after being separated from their parents under the Trump administration’s “zero tolerance” policy, according to the latest update from the government.

The numbers come as President Donald Trump is reportedly considering another policy that could result in additional family separations at the border.

The federal government’s “zero tolerance policy” resulted in the family separations of more than 2,600 children along the Southwest border earlier this year.

When asked about the possible policy, [**first reported by The Washington Post**](https://www.washingtonpost.com/local/immigration/trump-administration-weighs-new-family-separation-effort-at-border/2018/10/12/45895cce-cd7b-11e8-920f-dd52e1ae4570_story.html?utm_term=.384b3e4fb87f), Trump said the new policy under consideration was a response to recent an increase in border crossings. “We’re looking at everything that you could look at when it comes to illegal immigration,” he said.

Here’s a look at what can happen next in the ongoing fight over family separations at the border.

**What are the latest numbers?**

The latest government government data released Monday said that of the 2,654 separated migrant children, **2,363 children have been “discharged.”** This means the children were either reunified with their parents or released to another sponsor within the U.S.

The federal government said an additional 67 children had been discharged since last week’s status update.

To date, **66 children remain in government custody**, according to the court document. The parents of 50 of those children are no longer in the U.S.

In that same group of 66, **one child is younger than 5 years old**, of the more than 100 children in this age group separated under the “zero tolerance” policy.

Here’s how the U.S. further breaks down the numbers of the children who remain separated:

**50 parents** are presently outside the U.S.

**16 parents are currently inside the U.S.** Of this group:

* 1 parent is in other federal, state, or local custody.
* 2 parents have “red flag” cases in ongoing review, regarding safety and well-being.

In recent weeks, the government has also identified additional children whom it has deemed no longer viable class members of a lawsuit brought against the Trump administration by the American Civil Liberties Union. The ACLU has been asking for further scrutiny of this group of removed class members. According to the latest status update, this group of children includes:

* 125 children whose parents are “presently departed” from the U.S. and do not wish to reunify. These cases have been confirmed by ACLU.
* 46 children who, upon further review, “were not separated from parents” by the Department of Homeland Security. In a statement to the NewsHour, a Health and Human Services official said that this group of minors were referred by DHS following their apprehension. “They were initially determined by HHS to be ‘potentially separated,’ but subsequent investigation determined that they were not separated from parents or legal guardians by the government. They may include minors who were separated from their parents during the journey by traffickers or smugglers prior to entering the U.S., minors who were separated by DHS from someone making a fraudulent claim of parentage, or minors who were separated by DHS from a relative other than a parent or legal guardian,” the official said.
* 27 children under U.S. care whose parents are in the U.S. but do not wish to be reunited.
* 26 children who cannot be reunified because the parent is “unfit or presents a danger to the child.”

The federal government said it was continuing to broker three-way phone calls with the ACLU to reach removed parents. Both parties, in past hearings, told U.S. District Court Judge Dana Sabraw that these calls — between parents, a case manager and the ACLU — have been successful in reaching parents who had been deported back to their home countries.

Sabraw, who has been overseeing the family reunification effort, has said since the beginning of these hearings that the [**“chaotic circumstances”**](https://www.pbs.org/newshour/politics/trump-administration-asks-for-more-time-to-reunite-families-separated-at-the-border) stemming from this policy were of the government’s own making.

In late September, after several weeks of negotiation between the government and the ACLU, the judge said that the case appeared to be drawing to [**“some meaningful closure”**](https://www.pbs.org/newshour/nation/fewer-than-200-migrant-children-remain-separated-from-their-parents) in the weeks ahead.

But while the numbers reveal the family separations still at play — including the parents who were deported without their children — there are also migrants who remain in U.S. family detention centers awaiting their chances at asylum together. In other words, even after reunification, some migrant families face an uncertain future in detention centers while waiting for their immigration cases to proceed.

**What is the new policy up for consideration?**

One option weighed by the administration, as [**reported by the Post**](https://www.washingtonpost.com/politics/trump-says-he-is-considering-a-new-family-separation-policy-at-us-mexico-border/2018/10/13/ea2f256e-cf25-11e8-920f-dd52e1ae4570_story.html?noredirect=on&utm_term=.cadc79d60d6d): Migrant families seeking asylum can be detained for up to 20 days, at which point they must decide whether to stay together in detention waiting for their cases to proceed or choose separation. This would involve children being transferred to a government shelter so other family members could claim custody.

Federal officials believe this can be done legally.

A DHS official told the NewsHour that the government said in a previous court proposal subsequently approved by Sabraw that parents could decide to reunite with their child while in detention and waive their child’s right to certain protections provided by the Flores agreement, which includes a 20-day ceiling for how long children can remain in detention.

If the government presses forward with this option, the ACLU will undoubtedly push back.

“The government need not, and legally may not, indiscriminately detain families who present no flight risk or danger,” ACLU attorney Lee Gelernt said in an email to the Post. “It is deeply troubling that this Administration continues to look for ways to cause harm to small children.”

**Why roll out a new family separation policy? Look at the latest border apprehension data**

DHS spokeswoman Katie Waldman told the NewsHour that there “is currently a crisis at our Southern border as we encounter rising numbers of adults who enter the country illegally with children,” adding that the administration was examining a range of options to secure the border.

Trump, too, brought up the rise in border crossing at the U.S.-Mexico border last week.

“We have people trying to come in like never before,” Trump told reporters Saturday, adding that he believed the notable increase of arrivals is because of the strengthening U.S. economy.  
Immigration officials are “going to do whatever we can do to get it slowed down,” Trump said.

The number of migrant families apprehended at the border jumped 38 percent from July to August, according to [**Customs and Border Protection’s monthly statistics**](https://www.cbp.gov/newsroom/stats/sw-border-migration).

Migration experts have long explained how migration patterns at the border can change depending on the season. The Washington Office on Latin America (WOLA), in their reaction to the latest government data, said the number “tends to increase from July to August due to seasonal trends.”

The Trump administration has blamed the increase on “loopholes” in the U.S. immigration system. The president and his administration have characterized the nation’s laws as lax in deterring the flow of illegal crossings. Waldman, in her statement, said these loopholes “incentivize illegal border-crossers to take this dangerous journey because they are unlikely to face consequences for their illegal conduct and in fact will almost certainly be released.”

Yet migration experts have questioned whether this type of deterrent strategy would work with today’s arrivals at the border, “which include humanitarian migrants facing intense pressure to flee,” the nonpartisan Migration Policy Institute [**wrote**](https://www.migrationpolicy.org/article/trump-administration-new-indefinite-family-detention-policy).

[**READ MORE: Officials were ‘not fully prepared’ to handle family separations at border, new report says**](https://www.pbs.org/newshour/politics/officials-were-not-fully-prepared-to-handle-family-separations-at-border-new-report-says)