



Despite claims, GOP immigration bill would not end family separation, experts say

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June 15, 2018

A new House Republican bill that supporters claimed would end the White House's new policy of separating children from parents at the border would not actually halt the policy, experts told NBC News.

The draft bill, crafted as a compromise between conservative and moderate Republicans, includes longstanding White House demands that would make it easier to detain children for longer periods, deport them more quickly, and make it harder for their families to claim asylum under the law. It also contains a list of other White House priorities, including cuts to legal immigration and funding for a border wall, as well as a path to legal status for recipients of DACA, called Dreamers.

But immigration lawyers, policy analysts and activists say that there's no language in the bill that overrules the Trump administration's decision to criminally prosecute parents, which places them in federal custody away from their children and is the direct cause of the current wave of family separation — nearly 2,000 kids have been taken from their parents in recent months, according to the Department of Homeland Security.

"This bill would not end family separation," said David Bier an immigration policy analyst at the Cato Institute's Center for Global Liberty and Prosperity, which broadly supports immigration. "As long as that administration policy continues, there will continue to be family separation at the border."

The experts reviewed the nearly 300-page draft of the legislation which was made public on Thursday.

A House Republican source involved in the drafting of the bill acknowledged the lack of such a provision to NBC News, but said backers were working on new language that would address family separation issues while parents undergo criminal proceedings.

The president and allies have falsely claimed that families are being separated because of an anti-trafficking law that passed unanimously in 2008 under President George W. Bush (Trump has incorrectly labeled it a Democratic bill) and a 1997 legal settlement under President Bill Clinton regulating treatment of minors at the border.

In fact, the change is actually due to a new "zero tolerance" policy by the administration that Trump's own top staff and cabinet officials have explicitly said is causing children to be taken from their parents as part of an effort to deter border crossings.

While the bill would not reverse the zero tolerance policy, it does address the legal decision and anti-trafficking law the White House has criticized.

First, there's the 1997 Flores Settlement Agreement, which sets the standard for treatment of minors at the border. It requires authorities to release them as soon as possible to a family member or program that can care for them and keep them in the least restrictive setting possible until then.

This settlement does not require parents to be separated, though.

Under President Barack Obama, officials responded to an increase in families from Central America at the border seeking asylum by putting them together in family detention, which ran into legal and logistical problems. Since then, the typical policy has been to release families into a supervised program while their cases were adjudicated.

While most families show up to their hearings afterwards, the Trump administration considers this approach "catch and release" and would prefer to hold them while their case is resolved. The new GOP bill would clarify that there's "no presumption that an alien child who is not an unaccompanied alien child should not be detained," effectively paving the way to keep families in detention for longer periods.

But this set of rules for minors — and the White House's objections — existed well before the new zero tolerance policy. Nor does it directly affect the family separation policy, experts say.

Regardless of the Flores Settlement, the administration's "zero-tolerance" plan puts parents into criminal proceedings, which places them in federal jails where children are not allowed. The bill does not yet address that issue.

"Kids will still have to be separated," Philip Wolgin, managing director of Immigration at the liberal Center for American Progress. "The only difference is that that if the parents plead guilty they could be put in immigrant detention facilities with their kids more quickly afterwards, or if they're not prosecuted and given a chance to make a case for asylum, they could be detained with their kids indefinitely."

The GOP bill also amends the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which makes it easier for unaccompanied children who are not from Mexico to seek shelter in the United States. If the new bill passed, Wolgin said, they could potentially be sent back to their home countries more swiftly, even if there was not an established system in place to care for them.

Finally, the legislation would make it harder for parents claiming to flee violence and persecution to successfully gain shelter under the law and ultimately permission to stay in America. It would raise the standards for migrants to demonstrate "credible fear," a prerequisite for asylum.

"Overall, the bill would be terrible for the children brought across the border by their parents — they could and would still be separated from the parents, they would have less protections than under current law, and they would be subjected to prolonged detention," said Kate Voigt, associate director of government relations at the American Immigration Lawyers Association, which opposes the bill.

It's unclear whether the president supports the bill. While it was negotiated with an understanding the White House would back it, he said in a "Fox & Friends" appearance on Friday that he would veto it. The president often appears confused by policy and has had to clarify his position on major legislation in the past.

But the legislation does appear to fit a larger ongoing negotiating strategy by the White House and Republican allies.

Since taking office, the Trump administration has moved to rescind protections for young undocumented immigrants (widely known as DREAMers) and begin taking children from their parents at the border. In each case, the president has claimed to favor a solution, but has refused to reverse the policy himself or consider narrow legislation to address it.

Instead, the administration has folded the issues into a broad wish list of pre-existing demands, from a border wall to cuts to legal immigration. But the power to end both situations still rests with the White House. There's nothing stopping them, regardless of what happens to this latest bill.