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TRUMP ADMINISTRATION PLANS TO ASK COURT TO APPROVE CHOICE FOR MIGRANT PARENTS

Federal officials look to formalize approach already used by ICE as they struggle to reunite separated families

By Sadie Gurman and Arian Campo-Flores
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The Trump administration plans to ask a judge to consider giving asylum-seeking parents arrested at the border a difficult choice: Agree to remain in custody with their children throughout their immigration proceedings or release the children to authorities to be placed with a sponsor.

The proposal, which the government said it would soon outline in a motion for a federal judge in San Diego to consider, comes as officials work to reunite more than 2,000 migrant children who were split from their families during an effort to step up prosecutions of illegal border crossers.

Federal officials have struggled to navigate between a pair of court orders, one of which requires families to be reconnected by the end of the month and another that says children can't be detained with their parents for more than 20 days.

An administration official said the government expects to have reunified all eligible children younger than 5 with their parents by early Thursday.

A Justice Department attorney, Scott Stewart, said the dueling orders, combined with the government's desire to prosecute all adults who illegally cross the border, means parents will have to decide whether to stay together in detention or voluntarily separate. Department of Homeland Security officials said they would release some parents in the meantime, using monitoring tools including ankle bracelets to ensure they maintain contact ahead of court appearances.

President Donald Trump, Attorney General Jeff Sessions and other administration officials have argued that nearly all immigrants caught crossing the border illegally should be detained and quickly deported. Administration officials have argued that allowing those immigrants to be released into the country while they await hearings that could take years is a "catch-and-release" policy that prevailed during the Obama administration, and leads to such people disappearing in the U.S.

If the judge were to approve the motion, it would likely set the stage for more large-scale detentions. It would also formalize an approach already in use by U.S. Immigration and Customs Enforcement. The agency started giving migrant parents who have been given deportation orders a form laying out their options. The new form is specifically for parents who were separated from their children at the border under the zero-tolerance policy.

The American Civil Liberties Union said it agreed with the government's interpretation of the two court orders and would be joining the government in filing its motion. The court case stems from a lawsuit brought by the organization.

Lee Gelernt, deputy director of the ACLU's Immigrants' Rights Project, said he agreed with the government that parents should be the ones making the best-interest determination for their children, but added, "Neither ruling prevents the government from releasing the parent so that she doesn't have to make this horrible choice." And he said if the government detains families without consideration of whether they are a flight risk or danger, the group will sue again.

He said the government must make such a determination on an individual, case-by-case basis. If instead it is detaining adults indiscriminately, additional litigation is likely, Mr. Gelernt said.

The administration has taken steps to prepare for mass detentions. Last month, the Department of Homeland Security asked the Pentagon to prepare housing for 12,000 people from immigrant families, using bases or building tent camps.

ICE made clear this month that it was planning for the possibility of detaining thousands of immigrant families when it published a request for information from contractors for "housing and care options" for as many as 12,000 detention beds at government facilities, likely to be on military bases.

Among the services requested: "Structured, grade-level appropriate education programs for children ages four and above," "baby formula, baby food," and "provision of monitored certified care for children while their parents are engaged with attorneys."