



## Policy Brief: S. 3478 Would Codify Cruelty Against Arriving Children

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S. 3478, introduced by Senator Ron Johnson (R-WI) and scheduled for markup before the Senate Homeland Security and Governmental Affairs Committee, would eviscerate long-standing legal standards and protections for immigrant children and families seeking asylum who arrive at the U.S. border. Inaptly titled “The Families Act,” S. 3478 would codify the cruel treatment of children arriving with their parents by mandating their indefinite detention, expanding overall detention capacity for families, and compelling the separation of families in many circumstances.

AILA has direct experience with the trauma children and their families suffer while in detention through the Immigration Justice Campaign (IJC), a partnership with the American Immigration Council which serves families in immigration detention. Many of the IJC’s clients have fled life-threatening persecution in their home countries and will qualify for asylum or other humanitarian protection under U.S. law. Yet they face mistreatment and horrific detention conditions that no adult or child should endure. Two decades ago the U.S government entered into the court-monitored *Flores* Settlement Agreement after litigation was brought alleging that children had been subjected to abusive conditions in detention. The *Flores* Settlement Agreement established national standards for the care, treatment, and the release of children from government custody—essential protections that would be gutted if S. 3478 becomes law. S. 3478 would subject extremely vulnerable children, many of whom have already experienced violence and persecution, to even more profound trauma. AILA opposes the bill and urges senators to reject it.

Among other harmful provisions, this legislation would:

- **Mandate the indefinite detention of asylum-seeking children arriving at the border with their parents.** Currently, ICE may detain children accompanied by their parents for no longer than 20 days, a period of time that is already exceptionally long and has been shown to cause trauma to children.<sup>1</sup> But this legislation would eradicate the 20-day cap. The bill would not only authorize longer periods of detention but also *require* ICE to hold children and their families *indefinitely* in deplorable detention conditions. S. 3478 provides no humanitarian exceptions, such as for a child’s disability or serious illness.
- **Substantially expand family detention capacity.** This bill would mandate an increase of at least 1,000 family detention beds. In 2016, the Homeland Security Advisory Council of the Department of Homeland Security (DHS) concluded that “detention is generally neither appropriate nor necessary for families- and that detention ...[is] never in the best interest of children.”<sup>2</sup> Instead of heeding the DHS Advisory Council and ending the practice of family detention, S. 3478 vastly expands it. The bill also compels DHS and the Department of Justice to enter into agreements to “secure” new family detention centers.
- **Render even more ineffectual the inspection process for family detention centers.** As recently as June 2018, the DHS Office of the Inspector General criticized ICE’s inspection procedures as weak and incapable of resulting in compliance.<sup>3</sup> Instead of providing for

more robust, independent inspections, S. 3478 would enable ICE to conduct its own inspections of family detention centers.

- **Lower hiring standards for Customs and Border Protection agents.** S. 3478 would weaken CBP hiring standards including polygraph test requirements, despite several independent reports of widespread abuses by CBP agents. Congress should hold the agency more accountable, not less.

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<sup>1</sup> See, e.g., Julie M. Linton, Marsha Griffin, Alan J. Shapiro, “Detention of Immigrant Children,” Council on Community Pediatrics, *Pediatrics* (Mar. 2017);

<http://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>.

<sup>2</sup> Homeland Security Advisory Council, “Report of the ICE Advisory Committee on Family Residential Centers,” Department of Homeland Security, (Oct. 7, 2016) 6,

<https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

<sup>3</sup> Office of Inspector General, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements” (Jun. 26, 2018);

<https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>