

FOIA MARKER

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Original OA/ID Number: 2764				
Document ID: 9908934				
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UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9908934
RECEIVED: 09 DEC 99 10

TO: PRESIDENT

FROM: BERGER

DOC DATE: 09 DEC 99
SOURCE REF:

KEYWORDS: CUBA MIGRATION

LEGAL ISSUES

PERSONS: GONZALEZ, ELIAN

SUBJECT: CASE OF ELIAN GONZALEZ

ACTION: NOTED BY PRESIDENT

DUE DATE: 15 DEC 99 STATUS: C

STAFF OFFICER: BUSBY

LOGREF:

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

BUSBY

NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSGP

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DOC 2 OF 2

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ACTION DATA SUMMARY REPORT

RECORD ID: 9908934

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 BERGER
002 PRESIDENT
002

Z 99120921 FWD TO PRESIDENT FOR INFORMATION
Z 99120922 FOR INFORMATION
X 99121310 NOTED BY PRESIDENT

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

002 991209
002 991209

VICE PRESIDENT
WH CHIEF OF STAFF

UNCLASSIFIED

**NATIONAL SECURITY COUNCIL
THE WHITE HOUSE**

PROOFED BY: _____ LOG # 8934
 URGENT NOT PROOFED: _____ SYSTEM PRS INT ARS
 BYPASSED WW DESK: _____ DOCLOG _____ A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
 GIRE	_____	_____	_____
JACOBSON	<u>1</u>	<u>DJ 12/9</u>	_____
POWELL	_____	_____	_____
SARGEANT	_____	_____	_____
BRADTKE	_____	_____	_____
RUDMAN	_____	_____	_____
STEINBERG	_____	_____	_____
BERGER	<u>2</u>	_____	_____
SITUATION ROOM	_____	_____	_____
WEST WING DESK	<u>3</u>	<u>EW 12/11</u>	<u>N</u>
RECORDS MGMT.	<u>4</u>	_____	<u>N</u>
_____	_____	_____	_____

A = ACTION I = INFORMATION D = DISPATCH R = RETAIN N = NO FURTHER ACTION

CC:

COMMENTS:

Case of Elean Gonzales

EXEC SEC OFFICE HAS DISKETTE

Yes _____

NATIONAL SECURITY COUNCIL

THE WHITE HOUSE

PROOFED BY: _____ LOG # 8934
 URGENT NOT PROOFED: _____ SYSTEM PRS INT ARS
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	SEQUENCE TO	INITIAL/DATE	DISPOSITION
GIRE			
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POWELL			
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CC:

COMMENTS:

Case of Elian Gonzalez

EXEC SEC OFFICE HAS DISKETTE Yes

12-10-99

8934

THE WHITE HOUSE

WASHINGTON

December 9, 1999

INFORMATION

99 DEC 9 PM 3:30

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER 

SUBJECT: Case of Elian Gonzalez

Background: On Thanksgiving morning, six-year-old Elian Gonzalez was rescued from an inner tube by fishermen off the coast of Florida. Elian was one of three survivors from a boat holding 14 Cuban migrants that capsized at sea; Elian's mother and her mother's boyfriend were among those who perished. Elian was turned over to the Coast Guard, which, after conducting a medical evaluation, decided to bring him into the United States for emergency treatment. He was held in a hospital for several hours and then released by local Immigration and Naturalization Service (INS) officials into the custody of extended relatives in Miami. He currently resides with his father's uncle and aunt.

Immigration Status: As with other aliens who arrive on U.S. soil, INS considers Elian an applicant for admission to the United States. Any such applicant must be "inspected" before the applicant can be legally "admitted" to the United States. In this case, INS has deferred Elian's inspection until December 23. (This inspection may be deferred further.)

In the meantime, like almost all other Cubans who arrive here illegally, Elian has been granted immigration parole. This permits him to reside on U.S. territory even though he has not been formally admitted. Such status also brings him within the scope of the Cuban Adjustment Act of 1966, which means that he will be eligible to become a lawful permanent resident (LPR) a year and a day after his parole.

Procedures in the Case: The key issue in this case at present is whether Elian wishes to be an applicant for admission. Because he is a minor, it is generally assumed that Elian is not competent to represent his own wishes. The question then becomes who can speak for him. Ordinarily, it is presumed that

cc: Vice President
Chief of Staff

PHOTOCOPY WJC HANDWRITING

a parent with lawful custody over a minor may speak for him or her. However, this proposition has been successfully challenged several times in the immigration context.

Request from Father: The Cuban government has forwarded to us a request from Elian's father that Elian be returned to him. In response to that letter, INS is seeking to deliver a letter to the father that describes the information and documents he needs to provide to establish (1) paternity and (2) his parental rights over Elian. INS is also seeking to interview the father in our Interests Section in Havana on these issues and to ascertain his wishes for his son. Should the father prove both paternity and his custodial rights under Cuban law, INS believes he would have a powerful claim to speak on behalf of his child.

Intervention by Others: At the same time, it is clear that others, including the great uncle and great aunt with whom Elian currently resides, also intend to intervene on Elian's behalf. For instance, we have received reports that Elian's relatives in Miami are preparing an asylum application for him and may file both state and federal court actions to prevent his removal from the United States. In the context of the immigration process, INS is prepared to consider all claims made by other relatives on Elian's behalf. INS is still exploring the standards to apply in considering these claims against any interests asserted by the father.

Timing: INS believes that it should be able to make a decision about who speaks for Elian soon after receiving the necessary information from the father and any claims made by other relatives. However, it is unclear how long it would take to resolve litigation that may be undertaken to thwart the father's claim (should he be successful in establishing paternity and custody). The issues in this case are unusual in the immigration context and will be decided in a politically charged atmosphere. Thus, we imagine there could be significant delay in bringing closure to this case.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

December 9, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ SB *lv*

FROM: SCOTT BUSBY SB

SUBJECT: Case of Elian Gonzalez

Attached is the memorandum to the President you requested on the above subject.

Concurrence by: Mary DeRosa, Arturo Valenzuela) *via e-mail*

RECOMMENDATION

That you sign the attached memorandum.

Attachment

Tab I Memorandum to the President

THE WHITE HOUSE
WASHINGTON

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spell out

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